

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2015

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.26182 of 2015

And

M.P.No.1 of 2015

S.Kalaimurugan

... Petitioner

Vs.

- 1 The State of Tamilnadu
Rep. by the Principal Secretary to
Government Micro Small & Medium
Enterprises Department Secretariat
Chennai-9.
- 2 The Principal Secretary/
Industries Commissioner and Director of
Industries & Commerce SIDCO Buildings
Guindy Chennai-32.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of the 2nd respondent herein in Charge Memo RC.No.26021/EG.3/ 2014 dated 07.01.2015 and the order issued in R.C.No. 26021/EG.3/ 2014 dated 05.06.2015 and to quash the same and to direct the 1st respondent to include the name of the petitioner in the appropriate place in panel for promotion to the post of Assistant Director of Industries and Commerce (IC) for the year 2013-14 and promote him as such with all consequential benefits.

For Petitioner : Mr.M.Ravi

For Respondents: Mr.S.Gunasekaran

Government Advocate

ORDER

By consent, the writ petition is taken up for final disposal.

2.The petitioner was initially appointed as Typist in the year 1997 got promotion to higher post and at present working as Industrial Co-operative Officer/ Secretary, Madurai District Printers Service Industrial Co-operative Society limited. According to the petitioner, he is fully qualified and eligible and ripe for empanelment and promotion to the post of Assistant Director of Industries and Commerce (Industrial Co-operatives).

3.The petitioner would state that to his shock and surprise on

the verge of promotion, he was issued with charge memo by the second respondent on 07.01.2015 consisting of ten allegations and the first five allegations revolve around the acts of the President of Madurai District Printers Service Industrial Co-operative Society Limited and the sixth allegation pertains to the act of one of the members printing a Calendar in the name of the Society together with the name of the President and Secretary, by affixing their TIN Number, Phone Number and e-mail address, seventh allegation pertains to failure to obtain either administrative permission or to amend the Bye law, to give any advance to the Members of the Society, eighth allegation pertains to failure to complete the Subsidiary ledgers for the past one year, even though instructions given during instructions, thus resulting in inaccuracy of the balances, ninth allegation according to the petitioner, is only a repetitive charge and the tenth allegation is that he was absent on 25.07.2014 during Quarterly inspection and no movement register was maintained and the whereabouts of the petitioner was not known.

4.The contention put forth by the petitioner is that even assuming or admitting that the allegations are sustainable, it can make out a case for issuance of charge memo under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and not Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the second respondent has purposefully issued the charge memo on 07.01.2015 to decline the petitioner for his empanelment to the post of Assistant Director of Industries and Commerce (Industrial Co-operatives). Therefore, the petitioner came forward to file this writ petition challenging the legality of the impugned order of the second respondent with consequential direction directing the first respondent to include his name in the panel for the post of Assistant Director of Industries and Commerce (Industrial Co-operatives) for the year 2013-14.

5.The learned counsel appearing for the petitioner has drawn the attention of this Court to the order dated 22.03.2013 made in W.P. (MD) No.12725 of 2011 reported in 2013 SCC OnLine Mad 1057 (M.Sampoornam V. State of T.N.) and would submit that in the said judgment reliance was placed on an earlier judgment of this Court reported in (2009) 8 MLJ 217 (S.Kannan V. State of Tamil Nadu) and as per the judgment, unless there is dishonest motive, misconduct or misappropriation of funds of the Government or wilful and dishonest act, there cannot be any departmental proceeding initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, as per the guidelines issued by the Government and in the light of the above said judgment, the charges framed against the petitioner, in any event would contract only Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and not Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

6.The learned counsel appearing for the petitioner also put

forth merits with regard to the contents of the charge memo and prays for quashment of the same.

7.Per contra, Mr.S.Gunasekaran, learned Government Advocate who accepts notice on behalf of the respondent observed the argument made by the learned counsel appearing for the petitioner who relied upon the merits of the charges framed against the petitioner. Therefore, this Court in exercise of its power under Article 226 of the Constitution of India may not interfere the same and would further submit that it is always open to the petitioner to submit his response and since some of the charges are serious in nature, he has to face the disciplinary proceedings and come out with clean hands so as to get his name included in the panel for the post of Assistant Director of Industries and Commerce (Industrial Co-operatives) for the year 2013-14 and prays for dismissal of the writ petition.

8.This Court has carefully considered the rival submissions made on either side and perused the materials placed before it.

9.A perusal of the charge memo as well as the statement of allegations, more particularly, para nos. 9 and 13 would prima facie disclose that there seems to be some irregularity with regard to the approval of payment as well as collection of sundry debtors. However, this Court is not expressing any opinion on the merits of the charges framed against the petitioner or the defence to be projected against the petitioner in the form of written statement of defence. The petitioner in response to the charge memo, has submitted his explanation on 13.07.2015.

10.This Court taking into consideration the submission made by the learned counsel appearing for the petitioner that the order dated 22.03.2013 made in W.P.(MD) No.12725 of 2011 reported in 2013 SCC OnLine Mad 1057 (M.Sampoornam V. State of T.N.) wherein reliance was placed upon an earlier judgment of this Court reported in (2009) 8 MLJ 217 (S.Kannan V. State of Tamil Nadu) is squarely applicable to the facts and circumstances of the case, is of the view that it would be suffice to permit the petitioner to submit one more detail representation to the first respondent by enclosing a copy of the judgments relied upon as well the other materials supporting his case with further a direction directing the first respondent to dispose of the same within a stipulated time.

11.This Court without going into the merits of the claim projected either by the petitioner or by the disciplinary authority, permits the petitioner to submit one more representation to the first respondent by enclosing a copy of this order as well as the judgments relied upon as well as copies of the documents petitioner sought to

be relied upon, within a period of two weeks from the receipt of a copy of this order and the first respondent on receipt of the same, is directed to consider the same on merits and in accordance with law and pass orders within a further period of four weeks thereafter and inform the decision taken, to the petitioner.

12.The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1 The Principal Secretary to Government,
State of Tamilnadu
Micro Small & Medium
Enterprises Department Secretariat
Chennai-9.

2 The Principal Secretary/
Industries Commissioner and Director of
Industries & Commerce SIDCO Buildings
Guindy Chennai-32.

+1cc to Mr.M. Ravi, Advocate, S.R.No.44729

+1cc to the Government Pleader, S.R.No.44576

TEJ(CO)
EU(26/08/2015)

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