

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.A.No.210 of 2015 and M.P.No.1 of 2015

1. The District Collector,
Krishnagiri.
2. The District Revenue Officer,
Krishnagiri. ... Appellants/Respondents

Vs.

S.Samraj ... Respondent/Petitioner

Prayer : Writ Appeal filed under Clause 15 of Letters Patent to allow the Writ Appeal by setting aside the order dated 07.07.2014 in W.P.No.8782 of 2014.

W.P.8782/14:Filed Under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other Writ or Order or direction in the nature of Writ, calling for the records relating to the 1st respondent vide proceeding No.Roc. No. 2871/2014/A1 dt 10.2.14 and to quash the same and consequently direct the 2nd respondent to issue a charge memo under Rule 17(a) instead of 17 (b) of the T.N.C.S. (D & A) Rules if so warranted.

For the Appellants : Mr.P.S.Sivashanmugasundaram

For the Respondent : Mr.S.Vijayakumar

ORDER

(Order of the Court was delivered by Justice V.PARTHIBAN)

The present Writ Appeal is filed against the order, dated 07.07.2014 passed by the learned single judge in W.P.No.8782 of 2014 allowing the writ petition as prayed for. The prayer in the writ petition is as follows:-

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the first respondent vide proceedings No.ROC.No.2871/2014/A1 dated 10.02.2014 and to quash the same and consequently, direct the second respondent to issue a charge memo under Rule 17(a) instead of 17(b) of the TNCS (D & A) Rules, if so warranted.

2. The respondents in the writ petition are the appellants before us and the writ petitioner is the respondent herein. The respondent herein approached this Court in the above said writ petition challenging the charge sheet, dated 10.02.2014 framed under 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules contending that substance of the charges did not attract major penalty proceedings under Rule 17(b) and if at all, the charges framed against him, should be under Rule 17(a) of the Rules, which would entail only minor punishment.

3. The counsel for the writ petitioner contended before the learned Single Judge that detailed guidelines have been issued for deciding what are the charges to be framed under Rule 17(b) and the guidelines were extracted in order passed by the learned Single Judge. As per the guidelines, in case of irregularity and negligence in the discharge of official duties, there should be dishonest motive in order to attract major penalty proceedings as per Rule 17(b). In the case on hand, though certain acts of irregularity were alleged against the writ petitioner, but, no where, in the charge sheet, any dishonest motive was attributed to the employee and hence charge sheeting the employee under Rule 17(b) was not justified, the same being contrary to the guidelines issued by the Government. It was further contended that even in the counter filed on behalf of the respondent, nothing has been stated about any dishonest motive on the part of the employee and the substance of the entire allegation being that the employee did not conduct proper enquiry while discharging his duties. On behalf of the employee several decisions were cited in support of his prayer.

1) W.P.No.19144 of 2004 dated 07.12.2004 (The Secretary to Government Home Police (SC) Department, Chennai Vs. S.Nithyanandam and another.

2) W.P.No.8538 of 2008 dated 22.04.2008
(R.Chandran Vs. The Secretary to Government Home
(Transport) Department, Secretariat, Chennai and 2
others.

3) (2009) 8 MLJ 217) S.Kannan Vs. State of Tamil
Nadu and others

4) W.P.No.3558 of 2004 dated 05.09.2006
(G.Prakasam Vs. The Secretary to Government, Revenue
Department, Chennai & 3 others)

4. Per contra, on behalf of the Government/appellant herein it was contended that whether the employee should be proceeded either under Rule 17(b) or under Rule 17(a) can be decided only at the time of imposing punishment and before that, the writ petitioner is not entitled to state that the charges will not attract Rule 17(b) of the Rules. The decision reported in 2006 12 SCC page 28 in the matter of Union of India and another Vs. Satyanarayana, was also cited in support of the contention. In the circumstances, the counsel for the respondents in the writ petition/ appellants herein prayed for dismissal of the writ petition.

5. Noting the submissions of the parties, the learned Judge relied upon the decisions of this Hon'ble Court as cited in para 10 of the judgment and finally held that the substance of the charge framed against the writ petitioner did not call for invocation of Rule 17(b). In such circumstances, the learned Judge allowed the writ petition and liberty was granted to the respondents, the appellants herein to proceed against the writ petitioner under Rule 17(a) of the Rules and pass appropriate orders.

6. Heard the learned counsels for the appellants as well as the respondent. The respective counsels have reiterated the submissions.

7. The order of the learned Single Judge appears to be well founded on the basis of several judgments passed by the Hon'ble Supreme Court of India and also in line with the guidelines framed by the Government of Tamil Nadu for issuing charge memo under Rule 17(b) of the Rules. The learned Judge, while adjudicating the claim, has found that no where dishonest motive was attributed to the employee and hence the charges did

not attract major penalty proceedings to be initiated under Rule 17(b) of the Rules and if at all, the employee to be proceeded with, he can be proceeded under Rule 17(a) of the Rules. The reasoning of the learned Judge is well founded and does not suffer from any infirmity calling for any interference.

8. Therefore the present writ appeal fails and dismissed. The appellants are directed to issue charge memo under Rule 17 (a) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules as against the respondent and proceed with enquiry in terms of the Rule 17(a) and complete the disciplinary proceeding against the respondent within a period of three months from the date of receipt of copy of the order. In the circumstances there shall be no order as to costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

adl

To

1. The District Collector,
Krishnagiri.
2. The District Revenue Officer,
Krishnagiri.

+lcc to Mr.S.Vijayakumar, Advocate Sr.70186

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