

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.1152 of 2015

P.Chandira

... Petitioner

-Vs-

1. The State represented by the Principal Secretary
Highways and Minor Ports Department
Secretariat, Chennai-9
 2. The State represented by the Principal Secretary
Personnel and Administrative Reforms Department
Secretariat, Chennai-9
 3. The Chief Engineer (General)
Highways, Chepauk
Chennai-5
redesignated as the Director (General)
Highways, Chepauk, Chennai-5
- ... Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the third respondent in (1) Memo No.284/Conf.3(2)/2012-1 dated 24.2.2012; (2) Memo No.1479/Conf.2/2009-1 dated 12.5.2009 and the proceedings of the first respondent in G.O.(3D)No.85, Highways H.S.3 Department dated 26.6.2007 and in G.O.(3D) No.59, Highways H.S.3 Department dated 31.3.2004 and quash the same and direct the respondents to keep one post vacant in Assistant Divisional Engineer.

For Petitioner : Mrs.P.Chandira
Petitioner-in-Person

For Respondents : Mr.A.Kumar
for RR1 to 3 Special Government Pleader

ORDER

Mrs.P.Chandira, presently working as Assistant Engineer in National Highways department, has been appearing before me as party-in-person. Today, she has brought the present writ petition surprisingly challenging the various departmental proceedings initiated against her in one writ petition. Firstly, she has challenged the charge memo issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules issued by the Director (General), Highways in Memo No.284/Con.3(2)/2012-1 dated 24.2.2012 containing five charges, while she was serving as Assistant Engineer, National Highways, Nagercoil, on the untenable ground that the charges are vague in nature and issued with a mala fide intention. Secondly, she has challenged yet another charge memo issued by the Chief Engineer (General), Highways under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules in Memo No.1479/Con.3(2)/2009-1 dated 12.5.2009 containing three charges on the very same ground. Thirdly, as against the punishment of stoppage of increment for six months without cumulative effect imposed in G.O.(3D) No.85, Highways (HL.3) Department dated 26.6.2007, on completion of the disciplinary proceedings initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules for various irregularities, without even challenging the order of punishment by way of appeal, has sought for a prayer to quash the same. Fourthly, she has also challenged another punishment of stoppage of increment for one year without cumulative effect imposed in G.O.(3D) No.59, Highways (HL.3) Department dated 31.3.2004 on completion of the disciplinary proceedings initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules for various irregularities.

2. The petitioner/party-in-person started to argue so assertively before me without even pinpointing any violation in the conduct of the enquiries and the imposition of the punishments as aforementioned. Even though the petitioner continued to argue on the issues which are not connected to the prayer in the writ petition and almost wasted the Court's time, this Court allowed her to argue the matter since she was presenting her case in person. Taking advantage thereof, without even indicating where the disciplinary authority or the enquiry officer has committed any error or violation of procedure, she went on repeating her arguments without even going to either the foundation or the basis for passing the impugned punishment orders or for issuing the impugned charge memos.

3. A detailed counter affidavit has been filed by the respondents. Mr.A.Kumar, learned Special Government Pleader for

the respondents submitted that while the petitioner was working as Assistant Engineer at Chidambaram (Highways) from 11.2.2000 to 26.8.2003, suffered a disciplinary proceeding initiated against her under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules in Chief Engineer's (H) memo No.2243/Con 2/2001-5 dated 17.10.2001 for the following irregularities:-

- "(i) She has failed to auction the trees (200) that had fallen due to cyclone during November, 2000 as per rules.
- (ii) She has failed to send a report on the number of fallen trees, number of auctioned trees and amount remitted into Treasury etc.
- (iii) She has failed to remit the auction amount into Treasury.
- (iv) She has failed to record measurement of the works completed, despite the instruction by higher officers.
- (v) She entered on leave and left her Headquarters without furnishing the report on issuance of patta called for by the District Collector and the Divisional Engineer (H), Cuddalore and disobeyed the orders.
- (vi) She has delayed the submission of completion report without any valid reasons.
- (vii) She has failed to fulfil the demands of subordinates and made them to make complaint against her.
- (viii) She has violated the Tamil Nadu Government Servant's Conduct Rules and has failed in discharging her duties."

After completion of the detailed enquiry, the enquiry officer concluded that the charges 2, 7 & 8 were held proved. Therefore, for the proven charges, the Government in G.O.(3D) No.59, Highways (HL3) Department dated 31.3.2004 had issued an order imposing punishment of stoppage of increment for one year without cumulative effect. After sometime, she suffered another departmental proceeding initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline Appeal) Rules in Chief Engineer's (H) memo No.9268/Con 2/2002-1 dated 16.10.2002 for the following complaints:-

- "(i) She has made certain complaints to Superintending Engineer and Chief Engineer (H) bypassing the immediate superior officers viz., Divisional Engineer and Assistant Divisional Engineer in violation of Tamil Nadu Government Servant's Conduct Rules.
- (ii) She has recorded incorrect measurements in the M.Book regarding collection of metal

and gravel and has made corrections in the M.Book in violating Department Code Rules.

(iii) She has given interview and made statements in the media (newspapers) without prior permission of Government.

(iv) She has celebrated the birthday of her son in the office complex.

(v) She has failed to complete the road works in time, which was criticised by the media (newspaper).

(vi) She trespassed entry in the chamber of Divisional Engineer (H) Cuddalore when the review meeting was going on in his chamber and argued with the Divisional Engineer for more than half an hour regarding production of certain documents for her perusal and interrupted his discussion during review.

(vii) She had left her headquarters without intimating her higher officers nor applied any leave also.

(viii) She had failed to obtain permission to leave headquarters and met the Superintending Engineer (H) Villupuram at his chamber and requested him to allow her for perusing the confidential documents and argued with the Superintending Engineer for more than half an hour and prevented the Superintending Engineer from doing his duty. Similarly she did not attend office on 4.9.2002 and not applied for any leave.

(ix) She failed to render proper accounts for the disbursement of payment to daily wages labourers engaged to take traffic census.

(x) She failed to submit proper accounts on permanent advance in time.

(xi) She has violated Tamil Nadu Government Servants Conduct Rules and has failed in discharging her duties."

Again after a detailed enquiry, the charges 2 and 11 were found proved against the petitioner. Accordingly, she was once again imposed with the punishment of stoppage of increment for six months without cumulative effect in G.O.(3D) No.85, Highways (HL3) Department dated 26.6.2007.

4. Again he submitted that on the third occasion, the petitioner suffered a departmental proceeding under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules in Chief Engineer's memo No.1479/Con 3(2)/2009-1 dated 12.5.2009 for the following delinquencies:-

- "(i) She failed to submit land acquisition proposals for construction of two ROB despite several reminders.
(ii) She failed to submit progress report of construction of ROB and relevant M.Book.
(iii) She failed to submit her journals in time."

After completion of the enquiry, the Government had forwarded the enquiry report to the petitioner requesting her to furnish her further defence statement and that the explanation has since been received, the same is under examination by the Government. In spite of the above, the petitioner has committed various irregularities while serving as Assistant Engineer (NH), Nagercoil by demolishing the public shelters on her own without obtaining prior permission from the higher authorities and on various other charges. In this case also, he pleaded that the enquiry officer, on completion of the enquiry, submitted the report and a copy thereof has also been furnished to the petitioner asking her to submit her defence statement. Since the explanation has since been received, the same is under examination by the Government. When the departmental proceedings initiated against the petitioner are pending consideration, she has not been considered for elevation to Senior Grade. In view of the above departmental action, she has been unnecessarily filing petitions before the authorities concerned seeking for sanction of prosecution without there being any reason. It has become the habit of the petitioner to make baseless allegations against her superior officers to cover up her lapses both in the execution of works and in the routine day to day work.

5. Learned Special Government Pleader for the respondents, bringing to notice of this Court an order passed by this Court in Crl.O.P.Nos.1195 and 6854 of 2015 on 17.4.2015 filed by the petitioner, further submitted that pursuant to the filing of the above petitions, when a detailed enquiry was made, it was revealed that only to make out the reason to escape from the departmental enquiry, she has been targeting the superior officers. Further she has also made unnecessary allegations against the officials of the police department alleging that the police have conducted a perfunctory investigation on her complaint and she sought for transfer of investigation to some other agency. Even before the learned Judicial Magistrate, when the police filed a detailed report, the petitioner was informed on 13.3.2015 by the learned Magistrate that action was taken on her complaint by the Inspector of Police. But once again she approached this Court in the aforementioned criminal original petitions with a frivolous prayer in order to divert the attention of the disciplinary authority. In these

circumstances, this Court, accepting the report of the enquiry officer, reached a conclusion that the petitioner has been resorting to intimidating tactics by filing frivolous petitions. On this score the petitions were dismissed with exemplary costs of Rs.10,000/- to be paid to the Tamil Nadu State Legal Services Authority. When this Court has already deprecated the conduct of the petitioner, she has been relentlessly raising innocuous issues no way connected to the department and not cooperating with the enquiry initiated by the department and also not attending the office. On these aspects, the learned Special Government Pleader requested this Court to dismiss the writ petition directing the petitioner to cooperate with the departmental proceedings pending against her.

6. This Court finds merit in the submissions made by the learned Special Government Pleader for the respondents. As highlighted above, the petitioner has suffered a departmental proceeding under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules for various allegations and finally imposed with the punishment of stoppage of increment for one year without cumulative effect in G.O.(3D) No.59, Highways (HL3) Department dated 31.3.2004. Again she suffered one another departmental proceeding initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules for eleven charges mentioned above, for which also the enquiry officer found her guilty in respect of the charges 2 & 11 and thereupon she was also imposed with the punishment of stoppage of increment for six months without cumulative effect in G.O.(3D) No.85, Highways (HL3) Department dated 26.6.2007. The petitioner has not shown any reason for approaching this Court with a huge and unexplained delay of eleven years and eight years respectively after the imposition of the above punishments. On this sole ground the writ petition is liable to be dismissed.

7. Coming to the issuance of the other two charge memos under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules dated 12.5.2009 and 24.2.2012 against the petitioner are concerned, the learned Special Government Pleader for the respondents submitted that the enquiries in respect of the above two charge memos have been completed and that the enquiry officer had also filed the enquiry reports and thereupon the copies of the enquiry reports have also been furnished to the petitioner for filing of her defence statements and that the explanations of the petitioner have also been now received and the same are under the examination of the Government. Even otherwise, it is a well settled legal position that no writ will lie against a charge memo or chargesheet. Useful reference can also be had from the judgment of the Apex Court in the case of

Union of India and another v. Kunisetty Sathyanarayana, (2006) 12 SCC 28, wherein it is held thus:-

''13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show cause notice vide Executive Engineer, Bihar State Housing Board v. Ramdesh Kumar Singh and others, JT 1995 (8) SC 331, Special Director and another v. Mohd.Ghulam Ghouse and another, AIR 2004 SC 1467, Ulagappa and others v. Divisional Commissioner, Mysore and others, 2001 (10) SCC 639, State of U.P. v. Brahm Datt Sharma and another, AIR 1987 SC 943 etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show cause notice or charge sheet is that at that stage the writ petition may be held to be premature. A mere charge sheet or show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show cause notice or charge sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.''

In the light of the above ratio and coupled with the fact that final orders are to be passed in respect of the enquiries conducted on the above two charge memos by the Government, the writ petition cannot be entertained challenging the charge memos. It may be mentioned herein that even against the order of punishment of stoppage of increment for one year imposed in G.O.(3D) No.59, Highways (HL3) Department dated 31.3.2004, she has not made out any case to interfere with the same, as the said punishment was imposed on 31.3.2004 and the petitioner has approached this Court after a long lapse of eleven years.

Similarly, challenging the imposition of punishment of stoppage of increment for six months without cumulative effect in G.O. (3D) No.85, Highways (HL3) Department dated 26.6.2007, the petitioner has filed the writ petition only after a lapse of eight long years.

8. For all the aforementioned reasons, the writ petition fails and it is dismissed with costs of Rs.10,000/- payable to the Tamil Nadu State Legal Services Authority within a period of two weeks from the date of receipt of a copy of this order. Consequently, M.P.Nos.2 to 4 of 2015 are also dismissed. No costs. However, it is open to the respondents to consider the explanations submitted by the petitioner on merit and pass final orders in respect of the departmental proceedings initiated against the petitioner as expeditiously as possible.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ss

To

1. The Principal Secretary to Government
Highways and Minor Ports Department
Secretariat, Chennai 600 009
2. The Principal Secretary to Government
Personnel and Administrative Reforms Department
Secretariat, Chennai 600 009
3. The Chief Engineer (General)
redesignated as Director (General)
Highways, Chepauk,
Chennai 600 005
4. The Secretary,
TamilNadu State Legal Services Authority,
High Court Building, Chennai 104.

+1cc to Mr.P.Chandira, Petitioner-in-Person, S.R.No.16792
+1cc to the Government Pleader, S.R.No.16703

W.P.No.1152 of 2015

PVS (CO)
CA(04/05/2016)