

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM

AND

THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Petn.No.31796 of 2014

- 1.The Principal Secretary to Government,
Home-SC Department,
Fort St.George,
Chennai-600 009.
- 2.The Director General of Police,
Office of the Director General of Police,
Kamarajar Salai, Chennai-600 004 Petitioners
- vs.
- 1.Dr.Y.John Nicholson, I.P.S.,
Deputy Inspector General of Police,
Crime Branch-CID-SIT,
No.220, Pantheon Road,
Chennai-600 008
- 2.The Chairman,
Union Public Service Commission,
New Delhi.
- 3.The Registrar,
Central Administrative Tribunal,
Madras Bench, Madras. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for the records of the Central Administrative Tribunal, Madras Bench, the third respondent herein, pertaining to the impugned order dated 13.11.2014 made in Original Application No.310/01392/2014 and quash the same and consequently, permit the petitioners herein to continue the disciplinary proceedings, pending against the first respondent herein.

For Petitioners : Mr.S.T.S.Moorthy,A.A.G.
Assisted by Mr.C.Jagadeesh

For Respondents : Mr.S.Thankasivam for R1
Dr.M.Devendran for R2
R3 Tribunal

ORDER

(Order of the Court was delivered by
A.SELVAM, J)

This writ petition has been filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus, calling for the records relating to the order dated 13.11.2014, passed in Original Application No.310/01392/14, by the Central Administrative Tribunal, Madras Bench and quash the same.

2. The first respondent herein, as applicant, has filed Original Application No.310/01392/14, on the file of the Central Administrative Tribunal, Madras Bench, wherein, the present petitioners and second respondent have been arrayed as respondents.

3. In O.A.No.310/01392/14 it is averred that during the relevant period, the applicant has served as Deputy Inspector General of Police and during his tenure of office, a charge memo dated 13.09.2014 has been issued, wherein it has been specifically stated that without getting previous sanction from the Central Government, the applicant has held the post of President of Tamil Nadu Fencing Association from 4.11.2009 to 03.11.2013 and in order to quash the same, the present Original Application has been filed.

4. The Central Administrative Tribunal, after considering the rival contentions raised on either side, has allowed Original Application No.310/01392/14 by way of passing the impugned order and the same is being challenged in the present writ petition.

5. The learned counsel appearing for the petitioners has repletedly contended that during the relevant period, the first respondent/applicant has served as Deputy Inspector General of Police and during his tenure of office, he has been selected as President of Tamil Nadu Fencing Association for the period starting from 4.11.2009 to 3.11.2013 and as per Rule 13 (5) of All India Services (Conduct) Rule 1968, no previous sanction of the Central Government has been obtained and under the said circumstances, the charge memo dated 13.09.2014 has

been issued and without giving proper explanation, the first respondent/application has filed the Original Application No.310/01392/14, on the file of the Central Administrative Tribunal, Madras Bench. The Central Administrative Tribunal, Madras Bench, without following Rule 13(5) of All India Services (Conduct) Rules 1968, has erroneously allowed Original Application No.310/01392/14 by way of passing the impugned order and therefore, the impugned order passed by the Central Administrative Tribunal is liable to be quashed.

6. The learned counsel appearing for the first respondent/applicant has also equally contended that even though in Rule 13(5) of All India Services (Conduct) Rules 1968, it has been specifically stated that previous sanction of the Central Government is required in case of more than four years or for one term, whichever is less, the first respondent/applicant has actually served as the President of Tamil Nadu Fencing Association for a period of two years and six months and under the said circumstances, Rule 13(5) of All India Services (Conduct) Rules, 1968, is not applicable to the case of the first respondent/applicant and the Central Administrative Tribunal, after considering the over all factual circumstances, has rightly allowed Original Application No.310/01392/14, by way of passing the impugned order and the same does not call for any interference.

7. For considering the rival submissions made on either side, the Court has to look into Rule 13(5) of All India Services (Conduct) Rules, 1968 and the same reads as follows:-

"Contesting election to sports bodies etc:- Subject to the provisions of sub-rule (2) of rule 13, no member of the service shall, except with the previous sanction of the Central Government:-

(i) Hold an elective office in any sports association/federation/body, by whatever name known at State/National level for a term of more than 4 years or for one term, whichever is less, provided that this restriction will not apply to functionaries like the District Magistrate, Superintendent of Police etc. when they hold posts in ex-officio capacity at Divisional/District/Sub-divisional/Taluk levels;

(ii) Canvass either for his own candidature or for any other person for holding elective office in such sports bodies is mentioned in clause (i) above.

(iii) While canvassing for contesting elections either on his own behalf or any other person, indulge in conduct and becoming a member of the service.

(iv) Shall proceed on travel abroad in connection with the work or other activities of any sports bodies described in clause (i) above without prior cadre clearance from the Central Government.."

8. A mere perusal of the said Rule would clearly go to show that for holding any post in sports association for more than a period of four years or for one term, whichever is less, previous sanction of the Central Government is mandatory.

9. In the charge memo, dated 13.09.2014, it has been specifically stated that the first respondent/applicant has acted as President of Tamil Nadu Fencing Association from 4.11.2009 to 3.11.2013. But the learned counsel appearing for the first respondent/applicant has represented that the first respondent/applicant has acted as President of Tamil Nadu Fencing Association only for a period of two years and six months.

10. At this juncture, the learned counsel appearing for the petitioners has also relied upon the letter given by the first respondent/applicant, wherein it has been specifically stated that he acted as President of the said Association for a period of three years and subsequently, an ad hoc committee has been appointed.

11. In view of the divergent contentions raised on either side, the Court has to look into the following document.

In the letter, dated 4.09.2014, given by the Joint Commissioner of Police, it has been clearly stated that the first respondent/applicant has acted as President of the said Association from 4.11.2009 to 28.12.2011.

12. The learned counsel appearing for the first respondent/applicant has also represented that till ad hoc committee has been appointed, the first respondent/applicant has acted as the President of the said Association.

13. Even in the typed set submitted on the side of the petitioners, at page No.41, it has been clearly mentioned that an ad hoc committee has been appointed on 9.5.2012, to look into the affairs/administration of the Tamil Nadu Fencing Association.

14. Therefore, there is no incertitude in coming to a conclusion that on 9.5.2012, an ad hoc committee has been appointed for the purpose of doing the administration of the said association. In the charge memo it has been specifically stated that from 4.11.2009 to 3.11.2013, the first respondent/applicant has acted as the President of Tamil Nadu Fencing Association. But the same has been belied after the formation of ad hoc committee on 9.5.2012. Therefore, it goes without saying that the first respondent/applicant has served in the said post from 4.11.2009 to 9.5.2012 and he has hardly held that post for a period of two years and six months.

15. It has already been pointed out that as per Rule 13(5) of All India Services (Conduct) Rules 1968, if anybody holds any post in sports association for more than a period of four years or one term, whichever is less, sanction under the said Rule is mandatory. In the instant case, the first respondent/applicant has served as President of the Association mentioned supra only for a period of 2 1/2 years and therefore, it is quite clear that the period mentioned in the charge memo itself is erroneous. Since the period mentioned in the charge memo itself is erroneous, the same is liable to be set aside/quashed.

16. The learned counsel appearing for the petitioners has drawn the attention of the Court to the following decisions:

(a) In (2006) 12 Supreme Court Cases 28 - Union of India and Another vs. Kunisetty Satyanarayana, at paragraph Nos.13 and 14, the Hon'ble Supreme Court has observed as follows:-

"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 vs. Ramesh Kumar Singh ((1996) 1 SCC 327), Special Director v. Mohd. Ghulam Ghouse ((2004) 3 SCC 440)), Ulagaappa v. Divisional Commissioner, Mysore ((2001) 10 SCC 639)), State of U.P. v. Brahm Datt Sharma ((1987) 2 SCC 179)) 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 petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. 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."

(b) In (1994) 3 Supreme Court Cases 357-Union of India and Others vs. Upendra Singh, in paragraph No.4, the Hon'ble Supreme Court has observed as follows:

"4. When the matter went back to the Tribunal, it went into the correctness of the charges on the basis of the material produced by the respondent and quashed the charges holding that the charges do not indicate any corrupt motive or any culpability on the part of the respondent. We must say, we are not a little surprised at the course adopted by the Tribunal. In its order dated September 10, 1992, this Court specifically drew attention to the observations in A.N.Saxena ((1992) 3 SCC 124) that the Tribunal ought not to interfere at an interlocutory stage and yet the Tribunal chose to interfere on the basis of the material which was yet to be produced at the inquiry. In short, the Tribunal undertook the inquiry which ought to be held by the disciplinary authority (or the inquiry officer appointed by him) and found that the charges are not true. It may be recalled that the jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal. If the original application of the respondent were to be filed in the High Court it would have been termed, properly speaking, as a writ of prohibition. A writ of prohibition is issued only when patent lack of jurisdiction is made out. It is true that a High Court acting under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in

view, as observed by this Court in T.C.Basappa v. T.Nagappa ((1995) 1 SCR 250)). It was observed by Mukherjea, J. speaking for the Constitution Bench:

"The language used in Articles 32 and 226 of our Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, writs or directions including writs in the nature of 'habeas corpus, mandamus, quo warranto, prohibition and certiorari' as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provisions in our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an order or issue a writ in the nature of 'certiorari' in all appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law."

17. It is a settled principle of law that for deciding/quashing a charge memo, the Tribunal is not having power. But in the instant case, as taunted earlier, the period mentioned in the charge memo itself is erroneous. Even on the basis of documents filed on the side of the petitioners, the Court can easily deduce that the first respondent/applicant has served as President of the said Association only for a period of 2 1/2 years and therefore, the mandatory provision available under Rule 13(5) of All India Services (Conduct) Rules 1968, is not at all applicable. Under the said circumstances, the charge memo in question is liable to be set aside/quashed.

18. The Central Administrative Tribunal, after considering the over all circumstances/facts available in the present case, has rightly allowed the Original Application No.310/01392/14 and in view of the discussion made earlier, this Court has not found any illegality or infirmity in the impugned order passed by the Central Administrative Tribunal, Madras Bench and altogether, the present writ petition deserves to be dismissed.

In fine, this writ petition is dismissed without cost and the order passed in O.A.No.310/01392/14, by the Central Administrative Tribunal, Madras Bench, is confirmed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

msk

To

1.The Registrar,
The Central Administrative Tribunal,
Madras Bench,
Chennai-600 104

2.The principal secretary to Government
Home SC Department
Fort St.George
Chennai-600 009

3.The Director General of Police
office of the Director General of Police
Kamarajar Salai Chennai-04

+1 cc to M/s.S.Thankasivan Advocate sr 48426

W.P.No.31796 of 2014

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