

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.04.2016
CORAM:

THE HONOURABLE Mr. JUSTICE T.RAJA

W.P. No.13923 of 2016
and
W.M.P. No.12195 of 2016

R.Poongavanam

..Petitioner

-Vs-

1.The Commissioner,
Social Welfare Department,
Commissionerate (Social Welfare),
Guindy, Chennai-32.

2.The District Collector,
O/o.District Collector,
Perambalur District.

..Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the impugned order of suspension of the second respondent in RC.No.235/2015/A1 dated 10.05.2015 and the impugned order of charge memo of the first respondent under Ref.Na.Ka.No.15638/ Nir-5-2015 dated 07.01.2016 and to quash the same and reinstate the petitioner awarding the petitioner all attendant and retiral benefits in short all monetary benefits.

For Petitioner : Mr.S.Xavier Felix

For Respondents : Mr.R.Vijayakumar

Additional Government Pleader

सतयमेव जयते
O R D E R

The petitioner, Mrs.R.Poongavanam has filed this petition challenging the impugned order of suspension passed by the second respondent in RC.No.235/2015/A1 dated 10.05.2015 and the charge memo issued by the first respondent in Ref.Na.Ka.No.15638/ Nir-5-2015 dated 07.01.2016, to quash the same with a direction to re-instate her with all attendant and retiral benefits.

2.Learned counsel appearing for the petitioner would submit that the petitioner was placed under suspension by the District Collector, Perambalur/the second respondent herein in RC.No.235/2015/A1 dated 10.05.2015 under Sub-Rule (e) of Rule 17 of Tamil Nadu Civil Supplies (Discipline and Appeal) Rules.

Although the said suspension order was passed on 10.05.2015, after about seven months, a charge memo was issued on 07.01.2016 in Na.Ka.No.15638/ Nir-5-2015 alleging that the respondents have received a Whatsapp message against the petitioner and as per the said Whatsapp message, the petitioner demanded a sum of Rs.1,000/- from one Parameswari, who has registered through on line for the grant of certain benefits from Tamil Nadu Government. When the marriage of the said Parameswari was held on 02.11.2014 and she has registered through on line for the grant of certain benefits from Tamil Nadu Government on 24.10.2014 itself, the petitioner, being transferred from Chinna Salem and joined the present place only on 03.11.2014, could not have any acquaintance either with the said Parameswari or with her relatives. Merely on the basis of Whatsapp message given by some one, the second respondent, without even verifying the date on which the petitioner demanded the alleged bribe from the said Parameswari and without conducting any preliminary enquiry and without ascertaining the genuineness of the Whatsapp message as to whether it was given by any miscreant or by a person really affected, has wrongly proceeded to place the petitioner under suspension by order dated 10.05.2015 as if the petitioner has committed a grave misconduct warranting suspension under sub-rule (e) of Rule 17 of Tamil Nadu Civil Services (Discipline and Appeal) Rules with effect from 10.05.2015 itself. After placing the petitioner under prolonged suspension, the charge memo was issued only on 07.01.2016.

3. Adding further, he would submit that when the alleged widow re-marriage of the said Parameswari had taken place on 02.11.2014 and the same was registered through on line for the grant of certain benefits from Tamil Nadu Government on 24.10.2014 itself, it is not known how after seven months the petitioner could be placed under suspension by order dated 10.05.2015 as if the second respondent has received a Whatsapp message with regard to demand of bribe of Rs.1,000/- for giving the benefit of widow re-marriage to the said Parameswari, which also does not mention anything about the petitioner's name. Therefore, when the alleged Whatsapp message, which cannot be relied upon at any point of time by anyone and the same has also not mentioned the name of the petitioner, the second respondent without any basis, on mere surmises and conjectures, placed the petitioner under suspension on 10.05.2015 and have issued a vague charge memo without having anything on record to prove that the voice of the parties are that of the petitioner and the said Parameswari, as a result, a public servant has been put under suspension for no reason. Therefore, the petitioner after serving for a long time, has also given a representation on 26.03.2016 making it clear that though she sought for transfer to a vacant place at Villupuram District, she has been

transferred to Kalvarayanmalai, Villupuram District on 26.03.2015, however, when she was not issued with any order of transfer and retained in Chinna Salem, she got transferred to Perambalur District and as a result, she has been wrongly punished by way of suspension followed by the issuance of the charge memo when she has been left with only few months to retire from service.

4. Concluding his arguments, learned counsel appearing for the petitioner would submit that a repeated reading of the charges would show that the Whatsapp message received by the second respondent has not mentioned the name of the petitioner. Secondly the Whatsapp message does not mention the author of the message as to whether it was given by Parameswari or any other person. Thirdly it is not known on what date the Whatsapp message was received against the petitioner. Therefore, merely on the ground that some one has given the said message, which is considered only as anonymous Whatsapp message given to the second respondent that one MS has demanded a bribe of Rs.1,000/- from one Parameswari, the respondent cannot place the petitioner under prolonged suspension and prosecute departmentally without any valid reason or material evidence.

5. Although sufficient time was given to the respondents to file counter affidavit, they have not come forward to file the same.

6. A perusal of the affidavit shows that the petitioner was placed under suspension by order dated 10.05.2015 passed by the second respondent under Sub-Rule (e) of Rule 17 of Tamil Nadu Civil Services (Discipline and Appeal) Rules with immediate effect from 10.05.2015 itself and she has been issued with a charge memo dated 07.01.2016, after seven months from the date of suspension order. The same would further reveal that the second respondent has received a Whatsapp message alleging that a person claiming to be MS has demanded a bribe of Rs.1,000/-.

7. Firstly, the alleged charge does not show as to whether the petitioner has demanded money from A or B or C. Secondly, none of the beneficiaries had made any complaint against the petitioner alleging that she demanded any illegal gratification. While so, it is not known how the District Collector, Perambalur/the second respondent herein can entertain the Whatsapp message given by an unknown person for proceeding against a Government servant, without conducting any preliminary enquiry whatsoever. Even assuming there had been an illegal demand made by the petitioner from the said beneficiary Parameswari, who had registered the widow re-marriage for getting some benefit from the Government, nothing prevented the second respondent from ascertaining the facts from the

Parameswari or any other persons to satisfy himself prima facie. If the allegation of the second respondent shown in the charge memo is accepted, for a moment that the petitioner had demanded some illegal gratification from the beneficiaries, ironically, not even a single name of the beneficiaries has been mentioned in the charge memo.

8. It is a well settled legal position that no charge memo will be issued on vague conjectures or surmises. When the disciplinary authority wants to proceed against a Government servant by initiating departmental action, a definite charge must be arrived at based on some evidence, which is legally admissible. Although the provisions of the Evidence Act may not be applicable to the said proceeding, the principles of natural justice are required to be followed strictly. It is a well settled legal position that the suspicion howsoever high may be, can under no circumstances be held to be a substitute for legal proof. Merely on conjectures and surmises, a charge cannot be issued against anyone. It is unfortunate that the respondents had accepted the allegation made through unsafe Whatsapp message from unknown sender, more particularly, without there being any legal proof or any author. The facts in the case on hand would clearly show that it is not a case of any evidence. But as I mentioned above, there is no written complaint given by anyone against the petitioner and there is no specific allegation against the petitioner that she demanded any illegal gratification from anyone and more over she has been placed under suspension at the fag end of her service on a mere vague charge without conducting any enquiry.

9. A cursory reading of the charge memo does not throw any light whatsoever with regard to the alleged Whatsapp message as to whether the said message was given by any person on any particular date and the same has not even named the petitioner. Based on mere conjectures and surmises, coming to a conclusion that the said MS represents the petitioner herein is only a vague allegation. Therefore, this Court has no hesitation to set aside the same. Accordingly, the charge memo is quashed. Since the charge memo itself is set aside, the order of suspension also will go. Accordingly, the writ petition stands allowed as prayed for. No costs. Consequently, connected W.M.P. is closed.
vga

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TO

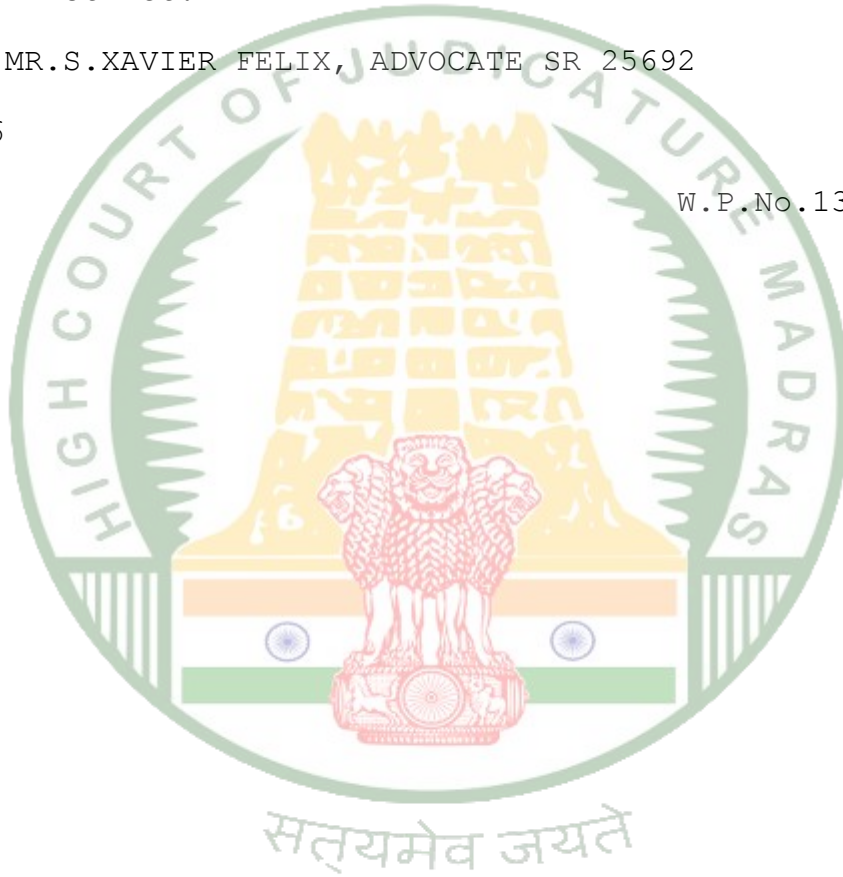
1.The Commissioner,
Social Welfare Department,
Commissionerate (Social Welfare),
Guindy, Chennai-32.

2.The District Collector,
O/o.District Collector,
Perambalur District.

+ 1 CC TO MR.S.XAVIER FELIX, ADVOCATE SR 25692

KR/10/6/16

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