

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.40802 of 2016

K.Sekar

... Petitioner

vs.

1. The Secretary to Government,
Agricultural Department,
Fort St. George,
Chennai 600 005.
 2. The Director/Commissioner of Agriculture,
Chepauk,
Chennai 600 005.
 3. The Joint Director of Agriculture,
Villupuram.
- Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of certiorari seeking to call for the records of the 3rd respondent in connection with the impugned charge memo issued by the 3rd respondent in Charge Memo No.23/394104, dated 23.04.2004 and quash the same.

For Petitioner : Mr.S.Sivakumar
For Respondents : Mr.K.Dhananjayan,
Special Government Pleader

O R D E R

The petitioner has come up with this Writ Petition seeking to quash the impugned charge memo dated 23.04.2004 issued by the 3rd respondent vide No.23/394104.

2. According to the petitioner, he is a Diploma Holder in Agriculture and he entered into the service as Assistant Agriculture Officer through Employment Exchange in the year 1981 and the next avenue of promotion is the Assistant Seed Officer and Deputy Agriculture Officer, for which he is eligible for 1996 and 2007 panel years, respectively.

3. While the petitioner was serving as Assistant Agriculture Officer at Seerpanandal @ Ariyalur during 2002-2003, he was issued with a Charge Memo dated 23.04.2004 u/r 17(b) of TNCS (D & A) Rules for the alleged occurrence that took place in the year 2002-2003, wherein two charges were framed against the petitioner. The allegation against the petitioner are that while he was serving as Assistant Agricultural Officer, Seerpanandal from 01.07.2002 to 31.03.2003, he failed to sell the seeds and pesticides in time, due to which they became ungerminated and therefore, the petitioner caused loss to the Government to the tune of Rs.77,204/-.

4. It is the case of the petitioner that the allegation against him is not maintainable, since he sold seeds and pesticides as much required by the farmers and due to monsoon failure and other reasons, there was no cultivation and thereby, there was no demand from the farmers and hence, the question of fixing/achieving the target does not arise. Further, it is his case that he has not been entrusted with the stocks and there is a depot Manager incharge for the seeds and pesticides stored in the godown. Also, the Assistant Agricultural Officers like that of the petitioner does not insist the farmers to purchase the seeds and pesticides from the Government depot and moreover, in respect of AAO, there was no entrustment and thereby, the present charges are unwarranted and liable to be quashed.

5. Narrating all the facts, the petitioner submitted his explanation and the disciplinary authority, not being satisfied with the explanation, appointed the Assistant Director of Agriculture, Villupuram as the Enquiry Officer. The Enquiry Officer conducted the enquiry in a manner unknown to law and submitted the proved minute. After the receipt of the Enquiry Report, respondents 2 and 3, instead of passing final order, simply sent the file to the 1st respondent and after the receipt of the same, the 1st respondent issued a show cause notice dated 30.12.2015 and directed the petitioner to submit further explanation. Thereafter, the 1st respondent sent a communication to the 2nd respondent and sought for certain particulars regarding the petitioner's service and inspite of repeated communication, the 2nd respondent has not furnished the particulars so far and the last communication is on 01.03.2016.

6. The grievance of the petitioner is that there is inordinate delay in concluding the disciplinary proceedings and the matter is kept under cold storage for the past ten years. Due to the pendency of the present Charge Memo, the petitioner has not been promoted. Hence, having no other alternative, he has approached this Court to quash the impugned charge memo dated 23.04.2004 issued by the 3rd respondent.

7. Heard the learned counsel on either side and perused the material documents available on record.

8. When the matter is taken up for consideration, learned counsel for the petitioner submitted that for the occurrence which took place in the year 2002-03, charge memo has been issued to the petitioner, but the disciplinary proceedings are not yet completed. He further submitted that the petitioner is going to retire in March 2017 and hence, he sought to quash the said Charge Memo.

9. In a similar circumstance, this Court in W.P.Nos.19186 of 2004, etc batch of cases, by an order dated 03.12.2008, quashed the impugned orders and allowed the Writ Petitions. Relevant portion of the said order reads thus:

''4.

''It is the case of the petitioner that in his explanation submitted to the impugned memo that as Assistant Agricultural Officer, he is not entrusted with the stocks. As correctly pointed out by the learned counsel for the petitioner, exactly the same issue came to be decided in respect of another Assistant Agricultural Officer in O.A.No.5815 of 2001, dated 01.10.2001 wherein the Tribunal has held that even assuming that there is a failure to achieve the target of sale of seeds in a subsidized price, there can be no cause of action for recovery of amount from the salary holding that even the case of the Government is that the Government has invested money in purchasing fertilizers and other inputs which have been kept idle in the godown instead of being sold to the farmers who were entitled to purchase the same in a subsidized rate and ultimately held that in respect of Assistant Agricultural Officers, there was no entrustment and therefore, the recovery from the salary is unwarranted. That was the view taken in a subsequent case also by the Tamil Nadu Administrative Tribunal. Ultimately, when a matter was taken to this Court in W.P.No.14888 to 14892 of 2006 in S.N.Ahmed vs. The Commissioner of Agriculture, Chennai-5 and others, in the judgment dated 21.06.2006. ...

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10. In view of the above, without going into the merits of the case, this Court directs the petitioner to give a fresh representation to the respondents along with a copy of this order within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the respondents are directed to consider the petitioner's representation on merits and in accordance with law in the light of the judgment dated 03.12.2008 rendered by this Court in W.P.No.19186 of 2004, batch of cases, and pass appropriate orders within a period of four weeks, thereafter.

The Writ Petition is disposed of with the above direction. No costs. Consequently, connected W.M.P.No.34768 of 2016 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary to Government,
Agricultural Department,
Fort St. George,
Chennai 600 005.
2. The Director/Commissioner of Agriculture,
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Chennai 600 005.
3. The Joint Director of Agriculture,
Villupuram.

+1cc to Mr.Sivakumar, Advocate Sr.69821
+1cc to the Government Pleader Sr.70088

W.P.No.40802 of 2016

mg[co]
srg 19/12/2016