

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2017

Coram

The Honourable Mr.Justice RAJIV SHAKDHER
and
The Honourable Mr.Justice N.SATHISH KUMAR

Writ Petition No.13480 of 2017

and W.M.P.Nos.14553 & 14554 of 2017

M.Priya

.. Petitioner

Vs.

1. The Principal District Judge,
Salem.

2. The Subordinate Judge,
Attur.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking Writ of Ceritorari, calling for the entire records connected with the impugned memo, passed by the 1st respondent, dated 04.05.2017 and quash the same.

* * *

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.Mahesh
for Mr.V.Vijayashankar

O R D E R

(Order of the Court was delivered by RAJIV SHAKDHER,J.)

1. The writ petitioner seeks to challenge the show cause notice dated 04.05.2017. The translated copy of the show cause notice is also produced. The operative part of the show cause notice reads as follows:

"The Subordinate Judge, Attur, in her letter No.307/2017 dated 12-04-2017 has reported that your conduct is very worst and work performance not satisfactory. Knowing the above report, you have improperly alleged several complaints against the Subordinate Judge, Attur to the District Judge, Salem. Also, without citing any

reason, you have submitted transfer petition to him for transfer to a Criminal unit. Thus, your activities shows clearly about your in subordination and disobedience during the period of probation. In the above circumstance, it is decided to discharge you from the service on the ground that you are unfit to continue in the service. You are therefore directed to submit your explanations if any for this memo within 15 days from the date of receipt of this memo failing which it will be construed that you have no explanation to offer and accordingly you will be discharged from service." (emphasis is ours)

2. It is the submission of the learned counsel for the petitioner that a perusal of the operative part of the show cause notice would show that the first respondent has already taken a decision to remove the writ petitioner from service.

2.1. Therefore, according to the learned counsel, the opportunity given to the petitioner to submit her explanation is a mere empty formality and a ritual.

3. We may only note that the respondents in rebuttal to the contentions raised in the writ petition have relied upon Section 31(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The relevant provision as extracted in the counter affidavit, reads as follows:

"Section 31(1) Where the special rules of any service prescribe a period of probation for appointment as a full member of the service, or where such period of probation has been extended under section 33, the appointing authority may, at any time before the expiry of the prescribed period of probation or the extended period of probation, as the case may be—

(i) discharge a probationer from the service for want of a vacancy; or

(ii) at its discretion, by order, either extend the period of probation of the probationer in case the probation has not been extended under section 33 or terminate his probation and discharge him from service after giving him a reasonable opportunity of showing cause against the proposed termination of probation:...."

3.1. The impugned show cause notice has been issued pursuant to this provision.

4. On the other hand, learned counsel for the petitioner relies upon Explanation II of Section 32 of the very same Act. For the sake of convenience the same is extracted hereunder:

"Explanation II. of Section 32 – Where the competent authority proposes to terminate the probation of a member of a service for general unsatisfactory work or incapacity without the need for enquiry into specific charges, he shall do so under section 31 or under this section, as the case may be. In cases where he proposes to terminate the probationer of such member for specific charges in addition to, or distinct from, general inefficiency or incapacity, he shall frame specific charges and follow the procedure laid down in rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, as such termination of probation by way of penalty will attract the provisions of Article 311(2) of the Constitution....."

5. Based on the aforesaid, the counsel for the petitioner says that in cases where it is proposed to terminate the services of a probationer, based on specific charges, in addition to distinct from general inefficiency or incapacity, specific charges are to be framed and the procedure formulated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules is required to be followed.

6. We may note that the petitioner had approached this Court earlier by way of a writ petition, when this Court, via order dated 30.03.2015, had allowed the writ petition challenging the notices dated 25.02.2015 and 12.03.2015 issued by the first respondent herein.

6.1. While allowing the writ petition, the Division Bench had made the following observations:

"5. At the outset, it should be pointed out that no disciplinary proceedings appear to have been initiated against the petitioner in terms of Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The procedure prescribed therein, cannot be by-passed, when the first respondent seeks to impose the penalty of

removal from service or any other major penalty, on allegations of grave misconduct.

6. A look at the first show cause notice, dated 25-02-2015, would show that several allegations, without details, have been made against the petitioner at the behest of the learned Sub-Judge, Attur. Therefore, the first respondent is not entitled to keep everything secret and merely issue a show cause notice for removing the petitioner from service.

7. In view of the above, the writ petition is allowed and the impugned proceedings are set aside. It will be open to the first respondent to follow the procedure prescribed by law. No costs. The connected miscellaneous petition is closed."

7. In our opinion, as to whether the provisions of Section 31 or Section 32 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 would apply, would depend on the course of action that is intended to be taken which in turn would depend upon the conduct of the petitioner.

7.1. In case the petitioner's probation is sought to be terminated on the ground of general inefficiency or incapacity, then reasonable opportunity by way of a show cause notice may suffice.

7.2. If however, specific charges are levelled against the petitioner in addition to and distinct from general inefficiency or incapacity displayed by the petitioner, then procedure under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules would have to be followed.

8. In any event, for the moment, the grievance of the petitioner is that the impugned show cause notice is legally unsustainable as it clearly reflects the bias of the first respondent in as much as it brings out the fact that the decision to remove the petitioner has already been taken.

8.1. On this score, we agree with the learned counsel for the petitioner. The reason being that the impugned show cause notice carries inter alia the following statement:

"In the above circumstance, it is decided to discharge you from service on the ground you are unfit to continue in the service.....".

This statement shows predisposition to "discharge" petitioner from the service on the ground of being unfit for service.

8.2. Quite clearly, giving opportunity to the petitioner to respond to the show cause notice in these circumstances will be a pyrrhic exercise and an empty formality.

8.3. Accordingly, the impugned show cause notice is set aside.

9. Needless to say this would not come in the way of the respondents in taking recourse to the appropriate provisions of law if they decide to act against the petitioner.

10. The writ petition is disposed of in the aforesaid terms. Consequently, the connected miscellaneous petitions are closed. Parties are left to bear their own costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1. The Principal District Judge,
Salem.

2. The Subordinate Judge,
Attur.

+1cc to Mr.S.N.Ravichandran, Advocate sr.no.87164

W.P.No.13480 of 2017 and
W.M.P.Nos.14553 & 14554 of 2017

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