

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.05.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No. 9100 of 2009 and

M.P. 1 of 2009

AND

W.P. No. 10361 of 2009 and

M.P. 1 of 2009

R. Sundarsanan ..Petitioner in both
Writ Petitions

Vs

1. The Special Commissioner and
Commissioner of Revenue Administration,
Chepauk,
Chennai-5.
2. The Collector
Dharmapuri District. ..Respondents in both
Writ Petitions.

Prayer in W.P.No. 9100 of 2009:

Writ petition filed under 226 of Constitution of India to issue a Writ of Certiorari, calling for the records relating to the 2nd respondent dated 24.03.2009 vide N.K. No. 29989-2008 (A2) and to quash the same.

Prayer in W.P.No. 10361 of 2009:

Writ petition filed under 226 of Constitution of India to issue a Writ of Certiorari, calling for the records relating to the 2nd respondent dated 29.05.2009 vide Roc. 15334/2009/A2 and to quash the same.

For Petitioner	: Mr.S. Vijayakumar
For Respondents	: Mr.K. Dhanajeyan, Spl. GP

COMMON ORDER

The Charge Memo is under challenge in this writ petition and factual matrix of the case on hand as per the affidavit filed by the writ petitioner, the writ petitioner joined in the Department of Revenue as Junior Assistant in the year 1980, recruited through Tamil Nadu Public Service Commission. Subsequently, the writ petitioner was promoted as Assistant during the year 1993 and posted in the Collectorate of Dharmapuri. Thereafter, he was promoted as Deputy Tahsildar and was working in Tahsildar Office at Pennagaram.

2. The charge memo dated 10.09.2007 was issued to the writ petitioner with an allegation that the writ petitioner has married one Smt. Rani as second wife and also nominated her in his service register. Knowing this fact by the 1st wife of the petitioner Smt. Baby had given a complaint to the authorities. Based on the complaint, the charge memo was issued to the writ petitioner seeking his explanation.

3. This apart, the complainant Smt. Baby filed a suit in O.S. No. 367 of 2008 on the file of District Munsif, Omalur and subsequently the suit was dismissed, since, the plaintiff herself abandoned the suit and not pressed the relief sought for in the suit. The points to be considered in this writ petition is that whether the charge memo is liable to be quashed or not?

4. It is needless to state that every public servant is duty bound to maintain discipline and decorum both inside the office and outside. The public servant is a servant of the citizen, have to work 24 hours as per the needs of the state and he cannot seek any exemption that he was not on duty. At the outset, any government employee or the public servant has to maintain discipline and personal affairs in good terms both inside the office as well as outside. Keeping this formula in mind, this court has to take decision whether the charge memo is liable to be quashed or not?

5. The learned counsel appearing for the writ petitioner contended that the complaint given was not based on any material and the writ petitioner has never contracted any marriage with second wife and in fact as per the averments, the said Rani was taking care of the children of the writ petitioner and the writ petitioner has not contracted for any marriage.

6. The learned counsel appearing for the petitioner further contended the Rule 19 of The Tamil Nadu Government Servant Conduct Rules, 1973, which reads as follows;

- (1) (i) No Government servant shall, enter into or contract, a marriage with a person having a spouse living : and

(ii) No Government servant having a spouse living, shall enter into or contract, a marriage with any person :

Provided that the Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in clause (i) or clause (ii), if they are satisfied that

(a) Such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage ; and

(b) There are other grounds for so doing.

(2). No Government servant shall involve himself in any act involving moral turpitude on his part including any unlawful act, which may cause embarrassment or which may bring, discredit to Government.

7. On reading of the said conduct rules and the facts and circumstances, the respondent ought not to have issued the charge memo at all, since, it will not fall under Rule 19 of The Tamil Nadu Government Servant Conduct Rules, 1973. The said argument was unable to be accepted by this court, in view of the fact that the Rule 19(1) says that "any government servant shall, enter into or contract, a marriage with a person". The charge memo is mere allegation and one cannot come to the conclusion that whether the writ petitioner had contracted for second marriage or not. The said factual merits and demerits can be arrived after a full fledged enquiry by going into the documents and other details. It is not for this court to consider all these documents and materials and make a finding that the allegations are false.

8. Such factual findings cannot be given by this court in writ jurisdiction, it is for the disciplinary authority to go into the factual aspects and the documents produced during the enquiry and come to the conclusion, whether the writ petitioner has committed any misconduct or not.

9. At the outset, challenging of the charge memo can be done only on limited grounds and if the authorities issued the charge memo without any jurisdiction, this court cannot look into the statutory requirements, but with regard to the factual aspects, if the charge memo issued to the government employee, it is his duty to rebut the allegation and not for the court to go into the merits and demerits into the

allegation and made findings to that effect.

10. In these circumstance, without going into merits and demerits of the case, this court of the firm view that the grounds raised in this writ petition, challenging the charge memo will not stand to the scrutiny of this court and accordingly, the writ petition stands dismissed.

11. The charge memo was issued to the writ petitioner on 24th March 2009 and considering the length of time due to pendency of the writ petition, this court directs the disciplinary authority to proceed with the enquiry and conclude the same by providing reasonable opportunities to the writ petitioner contemplated under the Rule and pass appropriate orders as early as possible preferably within six months.

Accordingly, the writ petition stands dismissed.

W.P. No. 10361/ 2009

The prayer sought for in this writ petition is to quash the order of suspension issued on 29th May 2009. In view of the fact that the writ petitioner was due to be superannuated, he was placed under suspension in furtherance to the charge memo issued to him under Rule 17 (b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, since the writ petition in W.P. No. 9100 of 2009, challenging the charge memo stands dismissed, this writ petition is also dismissed.

No costs. Consequently, connected MPs are closed.

Sd/-
ASST. REGISTRAR

/TRUE COPY/
सत्यमेव जयते

SUB ASST. REGISTRAR

WEB COPY

To

1. The Special Commissioner and
Commissioner of Revenue Administration,
Chepauk,
Chennai-5.

2. The Collector
Dharmapuri District.

+2 cc to Govt. pleader High court madras 104 SR.NO. 36881/17
and SR.NO. 36882/17
+2 cc to Mr.S.VIJAYAKUMAR Advocate SR.NO. 36704/17 & 36705/17

Common Order in
W.P. No. 9100 of 2009
and
W.P. No. 10361 of 2009

SJ(CO)
T.R (15/05/2017)



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