

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.15749 of 2014
and
M.P.No.1 of 2014

P.Mala .. Petitioner

Vs.

1.State Planning Commission
rep. By Member Secretary,
Chepauk, Chennai - 5.

2.Sugato Dutt, I.F.S.,
Member Secretary (Incharge) and
Head of Division (Land Use),
State Planning Commission,
Chepauk, Chennai - 5. ... Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorari to call for the records on the file of the first/second respondent herein in proceedings Rc.No.278/A2/SPC/2014 dated 15.05.2014 and quash the same.

For Petitioner .. Mr.M.Ravi

For Respondents .. Mr.R.A.S.Senthilvel,
Addl. Govt. Pleader for R1
R2 - No appearance

ORDER

The petitioner has approached this Court seeking the following relief:

to issue a writ of certiorari to call for the records on the file of the first/second respondent herein in proceedings Rc.No.278/A2/SPC/2014 dated 15.05.2014 and quash the same.

2.The petitioner was initially appointed as Personal Clerk on 28.05.1990, having been directly recruited through the Tamil

Nadu Public Service Commission. She was promoted as Planning Assistant in 1996 and further promoted as Technical Assistant in 2003. The petitioner was subsequently promoted as Planning Officer on 29.12.2010. According to the petitioner, the second respondent, who was originally working as Head of Division (Land Use), had developed animosity towards the petitioner as the petitioner was not being pliable to the illegitimate demands of the second respondent. In view of the animosity developed by the second respondent towards the petitioner, the second respondent used to find fault with the working of the petitioner for invalid reasons.

3.While matter stood thus, the second respondent was posted as Member Secretary (Incharge) in 2014. The moment he became Member Secretary (Incharge), the second respondent issued a charge memo on 15.05.2014 against the petitioner. The charge memo contains four articles of charges. The charges as contained in the charge memo are extracted below:

Charge I:

That the said Tmt.P.Mala while functioning as Planning Officer has failed to deliver the work entrusted to her by the Head of Division (Land Use) on 20.01.2014, even partly, which had to be reported to the Vice Chairman on 20.01.2014 itself. By this she has violated rule 20 of the Tamil Nadu Government Servant Conduct Rules by shirking of responsibilities.

Charge II:

That the said Tmt.P.Mala while functioning as Planning Officer in the aforesaid office in the Land Use Division, has absented to office on 21.01.2014 and 22.01.2014. She neither informed her absent on duty to the Head of Division (Land Use) concerned nor the Member-Secretary. She has submitted leave application for her absent on duty for the days 21.01.2014 and 22.01.2014 after she rejoined duty on 23.01.2014. By this she has violated rule 20 of the Tamil Nadu Government Servant Conduct Rules by shirking of responsibilities and lack of devotion to duty.

Charge III:

That the said Tmt.P.Mala, Planning Officer while functioning in the aforesaid office, has entered in Casual Leave from 04.11.2014 to 08.11.2014 without prior information to the Head of Division (Land Use), but submit her leave application directly to the Member-Secretary, State Planning Commission on 01.11.2013 and having committed an act which amounts to an unbecoming Act of a Government servant by rule 20 of Tamil Nadu Government Servant Conduct Rules.

Charge IV:

That the said Tmt.P.Mala, Planning Officer is habituated of taking leave often even during the crucial period during which urgent works were to be attended by the division and some such leave spells were availed without even informing or without the knowledge of the Head of Division of the Division. By this she has violated rule 20 of the Tamil Nadu Government Servant Conduct Rules by shirking of responsibilities and lack of devotion to duty.

4.Learned counsel appearing for the petitioner would submit that the first three charges relate to the time when the second respondent was acting as Head of Division (Land Use), who was none other than the petitioner's immediate superior and therefore, in order to wreak vengeance on the petitioner, the charge memo was issued after he became the Member Secretary (Incharge). It is the case of the petitioner that the first charge being extremely vague as to what extent she failed in her duty when a work was entrusted to her by the second respondent has not been explained in the charge. As regards the second charge is concerned, the same is with regard to her absence on 21.01.2014 and 22.01.2014. For this, the petitioner's explanation was that due to ailment, she had to go on leave for two days and her absence was conveyed to the second respondent through his Personal Clerk and after joining duty on 23.01.2014, she had duly submitted her leave letter along with the medical certificate and the said leave had also been sanctioned. As regards the third charge is concerned, the explanation of the petitioner was that she suffered cervical spondylitis and during the time when the second respondent was away on camp duty, she had to submit her leave application to the then Member Secretary, finding out the fact that the Head of Division was on camp duty. In fact, the case of the petitioner was that even this information was conveyed to the second respondent on his mobile phone and a permission was also granted and moreover, the Medical Board had duly recommended for grant of medical leave for the said period, which formed part of the third charge.

5.Inso far as the fourth charge is concerned, the explanation sought for from the petitioner and the same had already been conveyed to the predecessor of the second respondent and after accepting the petitioner's explanation, the matter was not proceeded further and no further action was taken. According to the petitioner, in view of the constant medical treatment undergone by her for her ailment, she had to take leave quite often and that the leave has been properly applied for and sanctioned. Therefore, learned counsel for the petitioner would submit that by no stretch of legal standards, the absence as explained above, can be the basis for proceeding against the petitioner for misconduct.

6.Mr.M.Ravi, learned counsel appearing for the petitioner would submit that on the face of it, the issuance of charge memo suffers from vice of arbitrariness and malafides since the second respondent who had become the Member Secretary (Incharge) had issued the charge memo and if the enquiry is allowed to be proceeded, he would be a witness himself as he had a direct role against the petitioner in respect of first three charges atleast, in which event, the second respondent, after becoming the Member Secretary (Incharge) would be a judge of his own cause and therefore, the issuance of charge memo as such suffers from colourable exercise of power.

7.Upon notice, Mr.R.A.S.Senthilvel, learned Additional Government Pleader entered appearance on behalf of the first respondent and filed a detailed counter affidavit. In the counter affidavit, the learned Additional Government Pleader would submit that the petitioner was in the habit of absenting herself quite frequently and in a particular year, she was absent for more than eight months and therefore, the charge memo was rightly issued and no interference of this Court is called for at the present stage. According to the learned Additional Government Pleader, the second respondent is competent to issue a charge memo and in the said circumstances, the petitioner is not entitled to any relief at this stage.

8.This Court has given its anxious consideration to the rival submissions of the learned counsels for the parties and perused all the relevant materials and pleadings placed on record. This Court has gone through the contents of the charge memo dated 15.05.2014. As rightly submitted by the learned counsel for the petitioner, the charge memo as it is discloses malafide intention on the part of the respondents. As rightly contended by the learned counsel for the petitioner, the first three charges contained in the charge memo wherein the involvement of the second respondent as he then was as Head of the Division (Land Use) could be seen. As regards the fourth charge is concerned, the same was explained satisfactorily in 2010 itself and no further action was taken and the matter was given a complete quietus. From the contents of the charge memo, it could be deduced that the second respondent has nurtured some grouse and grudge against the petitioner for whatever the reasons and such grudge had appeared to be the foundation for issuing the charge memo against the petitioner. The malafide intention is quite writ large on the contents of the charge memo and therefore, the learned counsel for the petitioner was right in assailing the charge memo on the ground of malafides and arbitrariness.

9.It is also to be seen the moment the second respondent had been put incharge as Member Secretary, prompt action was taken against the petitioner in order to settle the personal scores. Such action on the part of the first respondent is clearly colourable exercise of power and the same is therefore liable to be interfered with.

10.In the light of the above discussion and the narrative, this Court has no hesitation in quashing the impugned charge memo dated 15.05.2014. Hence the charge memo issued vide proceedings in Rc.No.278/A2/SPC/2014 dated 15.05.2014 is quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/--

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mmi

To

The Member Secretary,
State Planning Commission,
Chepauk, Chennai - 5.

+1cc to Mr.M.Ravi, Advocate, S.R.No.68563

W.P.No.15749 of 2014

SS(CO)
GN(26/10/2017)

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