

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.11.2017

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.26283 of 2014

and

M.P.No.1 of 2014

S.Pethaperumal

.. Petitioner

vs

Commissioner of Police,
Coimbatore City,
Coimbatore District

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the charge memo issued by the respondent herein in his Na.Ka.No.F1/P.R.79/2014 under Tamilnadu Pension Rules 9(2) (b) dated 05.09.2014 and quash the same.

For Petitioner : No Appearance
For Respondents : Mr.R.Vijayakumar

O R D E R

The charge memo issued to the writ petitioner by the respondent in proceedings dated 05.09.2014 is under challenge in this writ petition.

2.The affidavit filed in respect of the writ petition states that the petitioner was holding the post of Sub-Inspector of Police and retired from service on 30.06.2012. However, a charge memo was issued to the writ petitioner on account of the registration of a criminal case against the writ petitioner in Crime No.495 of 2012 under Sections 190, 509, 506(1) IPC and Section 4 of the Women Harassment Act. In view of the registration of a criminal case, the writ petitioner was issued with a charge memo under Rule 9(2) (b) of the Tamil Nadu Pension Rules 1978. The petitioner has retired from service on 30.06.2012 and the charge memo was issued in proceedings dated 05.09.2014.

3.Thus, the initiation of disciplinary proceedings was done by the competent authorities within four years from the date of retirement and there is no infirmity in respect of the initiation of the disciplinary proceedings against the writ petitioner under Rule 9 of the Tamil Nadu Pension Rules 1978.

4.This apart, the writ petitioner made an attempt to enumerate in this writ petition that he is not responsible for any such misconduct as set out in the charge memo and further, it states that he has not involved in any such criminal case. Those factors are to be considered by the competent authorities while conducting enquiry in respect of the merits. This Court cannot go into the merits and demerits of this case at this point of time. It is for the writ petitioner to submit his explanation/objections and by participating in the enquiry proceedings in order to prove his innocence. Further, this Court cannot adjudicate the merits of the matter in this writ petition, wherein the charge memorandum is itself under challenge.

5.No writ can be entertained against a charge memo in a routine manner. A writ against a charge memo can be entertained only on exceptional circumstances. If the charge memo was issued by an incompetent authority having no jurisdiction or if the charge memo is in violation of any statutory rules or if an allegation of mala fides are raised. Even, in case of raising an allegation of mala fides, the authority against whom such an allegation is made is to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any one of these legal grounds, no writ can be entertained against a charge memo.

6.Intermittent intervention against the charge memo are certainly not preferable and the Court can entertain a writ only on exceptional circumstances and not otherwise. The other grounds raised by the writ petitioner in relation to the merits regarding the allegations and his innocence in relation to the charges, cannot be considered in this writ petition and it is left open to the writ petitioner to make use of the opportunities under the Rules and defend his cases before the enquiry proceedings, to be conducted.

7.On a perusal of the entire affidavit filed in support of the writ petition, this Court is of the opinion that the writ petitioner has made an attempt to get over the clutches of disciplinary proceedings by narrating the facts and evidences regarding the allegations set out in the charge memo.

8.The learned Additional Government Pleader appearing on behalf of the respondent brought to the notice of this Court that earlier, the writ petitioner filed W.P.No.29522 of 2005. However, the case was with regard to the Prevention of Corruption Act, more specifically, Special Calendar Case No.7 of 2003 and that was a case unconnected with the present charges issued against the writ petitioner in proceedings dated 05.09.2014.

9. At the outset, this Court is of the opinion that the writ petitioner is not having clean records of service and have been involving in corruption cases in earlier circumstances. May that it be, this Court need not go into the merits and demerits of the service records or otherwise of the writ petitioner. As far as the present writ petition is concerned, the charge memo challenged cannot be adjudicated on merits in this writ petition and it is left open to the writ petitioner to submit his explanation/objections in respect of the allegations and prove his innocence before the enquiry proceedings.

10. It is necessary to clarify that a mere pendency of the criminal case is not a bar for the department to continue the departmental disciplinary proceedings. This Court is of the view that if the records, materials, evidences and witnesses are available with the department, then the department is at liberty to proceed with the disciplinary proceedings in accordance with the Discipline and Appeal Rules, conclude the same and pass final orders in the disciplinary proceedings. Further, it is relevant to state that once disciplinary proceedings are initiated against a Government servant, the disciplinary authorities are bound to conclude the same as early as possible without causing undue delay. Long pendency of the disciplinary proceedings will cause prejudice to the employees also.

11. In this view of the matter, the disciplinary proceedings initiated against a public servant have to be concluded at the earliest possible without causing much delay. In the case on hand, already a charge memo was issued against the writ petitioner and the charge memo contained the Statement of Allegations, List of Documents and List of Witnesses. Thus, there is no infirmity in the charge memo and the records and the witnesses are also available as per the charge memo. Thus, the respondent is at liberty to continue the enquiry proceedings, conclude the same by providing opportunity to the writ petitioner and take a decision and pass final orders in the disciplinary proceedings as early as possible.

12. In this view of the matter, no further adjudication is required in this writ petition. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

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Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

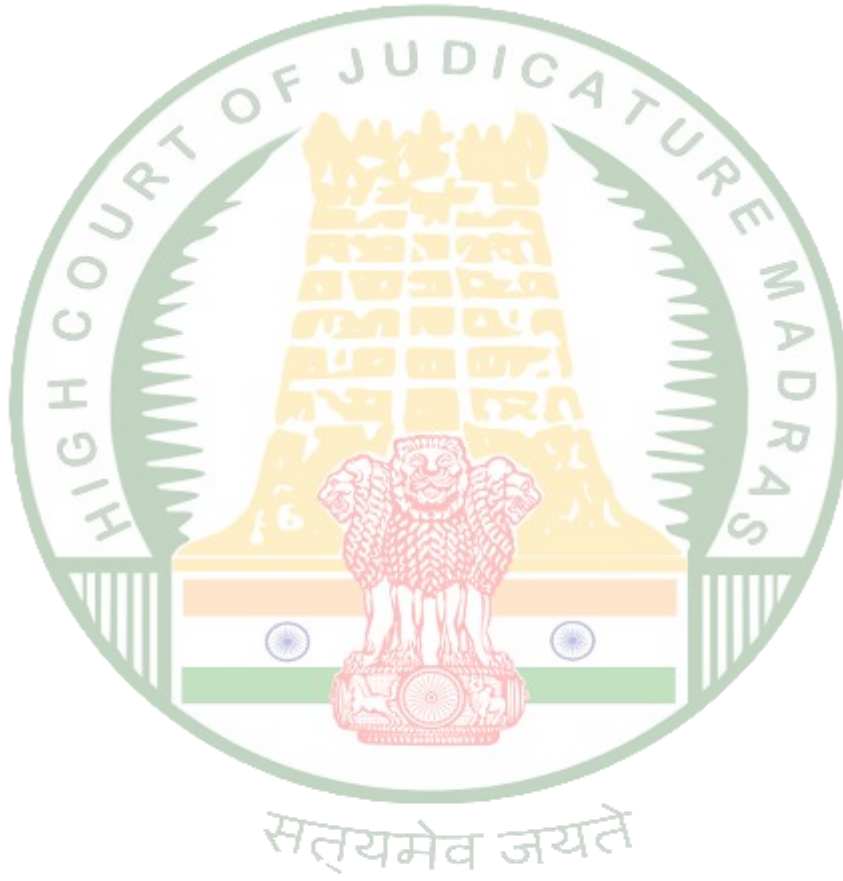
To

Commissioner of Police,
Coimbatore City,
Coimbatore District

+lcc to Government Pleader Sr.No.82032

W.P.No.26283 of 2014

sm:8.12.2017



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