IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2017

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.No.18096 of 2017
&
W.M.P.No.19637 of 2017

B.Murugesh ... Petitioner

Vs

1. Union of India,
   The Secretary to Government,
   Ministry of Home Affairs,
   New Delhi.

2. Union of India,
   Secretary to Government,
   Department of Personnel,
   Public Grievances and Pensions,
   North Block, New Delhi - 110 001.

3. The Union Public Service Commission,
   Rep by the Secretary,
   Dholpur House, Shajahan Road,
   New Delhi-110 001.

4. Government of Tamil Nadu,
   Rep by its Secretary to Government,
   Public(Special-A)Department,
   Fort St. George, Chennai-600 009.

5. Government of Tamil Nadu,
   Rep by its Secretary to Government,
   Revenue (Service - I)Department,
   Fort St. George, Chennai-600 009.

6. The Principal Secretary,
   Commissioner of Revenue Administration,
   Ezhilagam, Chepauk,
   Chennai - 600 005. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Charge Memo bearing letter No. Ser 2 (4) 4425/2013 dated 02.06.2017 served on dated 03.06.2017 on the file of the 6th respondent and quash the same and consequently directing the respondents 1 to 3 to appoint the petitioner by promotion to I.A.S for the year 2015.

For Petitioner : Mr.U.Karunakaran

For Respondents : Mr.S.Gunasekaran, Additional Public Prosecutor (For R4 to R6)

ORDER

The charge memo dated 2nd June 2017 is under challenge in this writ petition. The writ petitioner as of now is holding the post of District Revenue Officer and Law Officer in M/s. Chennai Metro Rail Limited, Chennai and formerly he was working as a District Revenue Officer in Madurai district.

2. The Principal Secretary to Government/ Commissioner of Revenue Administration, on the basis of certain materials on record, formulated the charges against the writ petitioner.

3. On perusal of the contents in the charge memo, it is found that the first charge is that the writ petitioner has wrongly issued Patta in favour of Thiru.P.Karmegham in respect of certain land and the second charge says that the said land is classified as “Government Poramboke-Salai” in UDR's Village accounts. The third charge stipulates that the writ petitioner failed to obtain the remarks from the Hindu Religious and Charitable Endowment Department, prior to passing orders in proceedings No.G2/4974/2011, dated 29.08.2011, since the land in subject was originally owned by Arulmighu Subramaniyaswamy Thirukoil. The fourth charge is that the act of the writ petitioner resulted in wrongful issue of patta to a private person when both sides of the land are “Salai” (Road) and that too, when the said land belongs to Government (Temple land acquired by Highways Department). The fifth charge is that the writ petitioner has caused huge loss to the Government by way of issuing orders vide proceedings No.G2/4974/2011, dated 29.08.2011 granting patta in favour of Thiru P.Karmegham for the Highways land. The sixth charge is that the writ petitioner has failed to maintain absolute integrity and devotion to duty and acted in a manner prejudicial to the interest of the Government, which is unbecoming of the Government Servant and violating of Rule 20(1) of the Tamil Nadu Government Servant Conduct Rules 1973.

4. The learned counsel appearing for the writ petitioner contended that the writ petitioner passed such an order in his

capacity as a Quasi-Judicial Authority. An order passed by the Quasi-Judicial Authority cannot constitute a source for framing the charges. In other words, an order passed by an Authority, which is Quasi-Judicial in nature, cannot be a ground to formulate a charge under Rule 17(b) of the Tamil Nadu Civil Services and (Discipline & Appeal) Rules. Secondly, the learned counsel contended that the writ petitioner passed such orders based on the records available and by applying his mind and thus, the charge memo issued against the writ petitioner is untenable. Thirdly, the writ petitioner contended that the Appointing Authority for the writ petitioner is the Secretary to Government, Public Department and the charge memo issued by the Principal Secretary /Commissioner of Revenue Administration is without jurisdiction.

5. In respect of the powers of the Quasi Judicial Authority, no doubt, if an order is passed on good faith and upon issuance of the order, if any error occurred, such an error is excusable, but not all the orders passed in the capacity as Quasi Judicial Authority. There cannot be any uniform standard in such cases. The Authorities Competent have to find out whether there is any irregular or illegal or motivated act committed by any Quasi Judicial Authority while passing such orders. In the case on hand, on perusal of the charges, it is apparent that certain legal requirements and formalities to be adopted before passing such orders, had not been followed by the writ petitioner and that made the Authorities for constituting the charges. This Court is deeply conscious of the fact that any observation made on merits will certainly affect the right of the writ petitioner to defend the disciplinary proceedings. Thus, this Court without expressing any opinion on the merits of this case, on mere reading of the charges, is able to observe that it is a case where a detailed enquiry is just and required. Only on enquiry, certain facts can be culled out by the Disciplinary Authority and it is left open for the writ petitioner to defend his case and prove his innocence before the Enquiring Authority and the Disciplinary Authority.

6. The learned counsel cited a judgment passed by this Court in the case of S.Muthuramu Vs. State of Tamil Nadu, rep by its Chief Secretary to Government, Public (Special-A) Department, Chennai and another reported in (2008) 3 MLJ 766.

7. The learned counsel taken this Court on the observation made in paragraph 6 of the order, which is extracted hereunder:

> "6. From the perusal of the charge memo it could be seen that the allegation against the petitioner is that he has fixed the market value at Rs.22/- per sq.ft. in document No.70 of 1998 whereas the adjacent lands were acquired by the Government

> on negotiation at the rate of Rs.58/- per sq ft. in the years 1999. No motive or ill-will is alleged in the said imputation of charge. Admittedly, the petitioner is exercising quasi-judicial function under Section 47-A (1) of the Indian Stamp Act. If the Department is not satisfied with the valuation, nothing prevented the Department from filing appeal before the Inspector General of Registration challenging the order passed by the petitioner fixing the market rate of Rs.22/- per st. ft. In the absence of any motive or bad intention, no charge could be framed against the Quasi-Judicial Authority and the same is well settled."

8. In fact the said case cited supra is relating to fixation of market value by the authority concerned. Further, there is an observation that no motive or ill-will is alleged in the imputation of charge. More so, in respect of the fixation of market value on particular price, motive or ill-will is a basic requirement. In the absence of motive and ill-will, the Court can consider the matter. Therefore, this Court cannot follow the decision rendered in the judgment cited supra in view of the factual differences.

9. This apart, to deal with the charge memo, this Court has to go into the grounds raised in the petition and the cases which were decided on the basis of certain facts cannot be adopted as it is.

10. When the charge memo issued against any public servant is at the preliminary stage, this Court cannot quash the same in a routine manner and it is necessary to conduct a proper enquiry to arrive a logical conclusion so as to see that any violation took place or has committed any misconduct or not. The Courts are to be very conscious while quashing the charges itself since the Supreme Court of India as well as this Court time and again reiterated and emphasised that a charge memo cannot be quashed except on exceptional circumstances. Normally, those exceptional circumstances are that if the charge memo was issued without jurisdiction or the Authority issued has no competency or malafides are alleged against the officer. Even in the case of alleging malafides, such an Authority should be impleaded as a party in his personal capacity in the writ proceedings. In the absence of any of these legal grounds, it is not advisable to quash the charges itself.

11. In respect of the jurisdiction point raised by the learned counsel for the writ petitioner, it is clear that the appointing authority is the Secretary to Government, Public Department, but the order of suspension, charge memo shall be issued by the Head of the Department and there is no infirmity.

12. Rule 12 (2) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules reads as follows:-

> "2. Notwithstanding anything contained in these rules, the appointing authority or any authority administratively higher to the appointing authority may impose the penalties specified in items (i), (iii) to (viii) and (ix) of rule 8 on members of the State Service:
>
> Provided that where the members of the State Services have been appointed by the Government or by any authority administratively higher than the appointing authority, the penalties specified in items (iii) in so far as it relates to withholding of promotion and items (iv), (vi), (vii) and (viii) in rule 8 shall be imposed only by the Government or by such higher authority:
>
> Provided further that where the State Government are the appointing authority for members holding the posts included in the State Services, the Heads of Departments concerned may impose any of the penalties specified in item (i) and item (iii) in so far as it relates to withholding of increments and item (v) and (ix) in rule 8 on those members other than such members who are immediately below such Heads of Departments;
>
> Provided also that all authorities directly higher to the members holding the posts included in the State Services may frame charges against such members of the State Services under rule 17(b) or issue show cause notice under rule 17(a) even if they are not the competent authority to impose the penalty and they may conduct the inquiry themselves or request the competent authority to appoint an officer to conduct the inquiry. They shall remit the papers to the competent authority for passing final orders, after the case is processed upto the level of completion of inquiry or after receipt of explanation to show cause notice, as the case may be.
>
> Provided also that where the appointing authority or the authority administratively higher to the appointing authority have passed orders of suspension under rule 17(e) on the members of the State Services, they may exercise the power to impose the penalty specified in item (ix) in rule 8 on such members."

13. In respect of the case of the writ petitioner who is an employee from "State Services", the above rule squarely applies. Thus, the Head of the Department shall frame charges against an employee of the State Services under Rule 17(b). Even if they are not the Competent Authority to impose penalty, they may conduct the enquiry and shall remit the paper to the Competent Authority for passing final orders. Thus, this Court is of the view that the Head of the Department is competent to issue either the order of suspension or the charge memo and conduct the enquiry. Thus, the ground of jurisdiction raised by the learned counsel for the writ petitioner deserves no merit consideration.

14. In respect of the other grounds raised that the writ petitioner had acted as a Quasi-Judicial Authority cannot be a ground to exonerate the writ petitioner from the charges. It is left open for the petitioner to prove his innocence before the Enquiry Officer and at this point of time, this Court will not be in a position to appreciate the merits and demerits in relation to the facts of the case.

15. In this view of the matter, the writ petition deserves no further consideration and stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
   Ministry of Home Affairs,
   New Delhi.

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   Chennai - 600 005.

+1cc to Mr.U.Karunakaran, Advocate, S.R.No.50794
+1cc to the Government Pleader, S.R.No.50953

W.P.No.18096 of 2017

KJI(CO)
CA(31/07/2017)