

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.07.2017

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP.No.19214 of 2017 and WMP.No.20740 of 2017

R.Shahana Begum ...petitioner in W.P.No.19214/2017

Versus

- 1.The Government of Tamil Nadu
rep.by its Additional Chief Secretary,
Finance (T&A-II) Department,
Secretariat, Chennai-600 009.
 - 2.The Principal Secretary to Government,
Social welfare and Nutritious Meal Programme Department,
Secretariat, Chennai-600 009.
 - 3.The Director-Cum-Mission Director,
Integrated Child Development Scheme,
Tharamani, Chennai-600 113.
- ...Respondents

PRAYER:Writ petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the first respondent herein in G.O.(3D) No.19, Finance (T&A-II) Department dated 16.06.2017 and quash the same in so far as including my name (as S.Nos.xii) is concerned and consequently confer all the benefits with due regards to my seniority.

For petitioner : Mr.R.S.Anandan

For Respondents : Mr.S.Gunasekaran,Additional Govt Pleader

ORDER

By invoking Rule 9-A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the 1st respondent issued G.O.(3D) No.19, Finance(T&A-II) Department dated 16.06.2017. The said order is under challenge in this writ petition. The writ petitioner is holding the post of Child Development Project Officer under the control of the respondents 2 and 3.

2. The learned counsel appearing for the writ petitioner contended that a criminal case has been registered against one Smt.R.Vadivazhagi, Child Development Project Officer, CDPO, project-VII and investigation by the Vigilance & Anti-corruption Department is pending. Before finalisation of the investigation and filing of the final report, the Government has issued an order invoking Rule 9-A. The learned counsel appearing for the petitioner states that an enquiry by the Vigilance & Anti-corruption Department is still pending against the said R.Vadivazhagi. Therefore, even before fixing the liability and responsibility and involvement in relation to the irregularities and illegalities, the

Government is wrong in invoking the Rule 9-A by issuing the impugned order.

3. In other words, the learned counsel is of the opinion that only after initiation of Disciplinary Proceedings on finding out a *prima facie* case against the writ petitioner, Rule 9-A shall be invoked and not before that. Thus, he is of the opinion that the initiation of the proceedings by the Government under Rule 9-A of the Tamil Nadu Civil Services (Discipline and Appeal Rules) was without jurisdiction and to be scrapped.

This Court has gone into the subject of Rule 9-A which is extracted here under:

9-A. *"In any case where more than one Government servant of the same Department are jointly involved or whose cases are interconnected the Authority competent to institute disciplinary proceedings shall be the immediate higher Authority in that Department in respect of the Government servant who holds the highest post among such Government servants and the disciplinary proceedings against all of them shall be taken together. Where inquiry is to be conducted in terms of Rule 17(b) the said Authority may either himself conduct inquiry or*

get the inquiry conducted by an Inquiring Officer appointed by the Authority competent to impose major penalty in respect of the Government servant who holds the highest post among such Government servants. The said Authority shall remit the case, at the appropriate stage to the Authority competent to impose any of the penalties specified in Rule 8 in respect of the Government servant who holds the highest post among such Government servants in that Department for passing final orders:]

provided that in the case of Government servants belonging to different departments who are jointly involved or whose cases are interconnected, the Government shall be the Authority competent to initiate disciplinary proceedings and impose any of the penalties specified in Rule 8 and in such cases the administrative department of Secretariat in respect of the Government servant who holds the highest post will initiate such disciplinary proceedings and issue final orders after complying with the entire procedure laid down in these rules:

Provided further that this Rule shall not apply to cases in which officers coming under the administrative control of the Chief Secretary to Government are jointly involved."

4. The Learned counsel appearing for the petitioner made an emphasis on the proviso clause which states that in the case of Government servants belonging to different departments who are jointly involved and whose cases are interconnected, the Competent Authority shall impose any of the penalties specified in Rule 8.

5. Be that as it may, in this context, this Court has to look into the order impugned in this writ petition. The impugned order states that :

- WHEREAS the Government servants specified below are jointly and severally involved in a disciplinary case...

6. Thus, it is clear from the impugned order that *prima facie* materials are already gathered and available on file with the Government and appropriate action has to be taken in this regard. After specifying the names of the fifteen officers from various departments, the Government further proceeded to pass the impugned order by exercising the power

conferred by Rule 9-A of the Tamil Nadu Civil Services (Discipline and Appeal Rules). It is further stated in the impugned order that

“The Government here by directs :

1. The disciplinary action against all the State Government servants shall be taken in common proceeding.
2. The Government shall function as a Disciplinary Authority for the purpose of common proceedings and shall be competent to impose any of the penalties mentioned in Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal Rules).
3. that the procedure prescribed in Rule 17(b) of the said Rules shall be followed in the said proceedings.
7. Let us now look into the manner in which the directions are

issued in the order impugned :

Clause I states that:

that disciplinary action against all the said Government Servants shall be taken in a common proceedings.

This Court is of the opinion that such a direction is necessarily to be issued before initiation of disciplinary proceedings only to avoid future complications in this regard. Thus, there is no infirmity in the impugned

order in the issuance of such a direction by the Government even before initiation of the disciplinary proceedings and there is no ambiguity in the first direction. For instance, if an action has already been initiated by the different departments in a different manner under Tamil Nadu Civil Services (Discipline and Appeal Rules), certain delay creates confusion and chaos, while proceeding with the disciplinary proceedings. Since, the allegations are relating to one and the same incident, the very purpose of Rule 9-A is to avoid such kind of discrepancies. Thus, the first direction was issued in order to avoid all future discrepancy, so that, the common proceedings can be initiated against the officials who belongs to different departments.

In respect of the second direction issued in the impugned order, it is stated that:

"the Government shall function as the Disciplinary Authority for the purpose of common proceedings and shall be competent to impose any of the penalties mentioned in rule 8 of the said Rules."

This direction was given to avoid all such contradiction and discrepancies, because if each department is allowed to initiate separate actions, the uniformity in disciplinary proceedings will be paralised and the

respective delinquents in this regard will escape from the clutches of disciplinary proceedings by stating that there is a possibility of discrimination, discrepancies etc., in the cases in other departments with regard to the same incident. In order to advert all this controversies, it is just and necessary that the single authority who conduct the disciplinary proceedings should conclude the same. Such an uniform procedure is to be conducted for a logical conclusion of the disciplinary proceedings, wherein the officials from more than one department are involved in such alleged misconduct.

The third direction issued by the Government in this regard is that:
the procedure prescribed in rule 17(b) of the said Rules shall be followed in the said proceedings.

On further a perusal of this direction issued in the impugned order, this Court is of the undoubted opinion that all these directions are necessarily to be issued even before initiation of the disciplinary proceedings. Then only the purpose of Rule 9-A will be satisfied and will have a meaning. The very object of the Rule 9-A is to avoid multiple proceedings, discrimination and discrepancies in conducting and concluding the disciplinary proceedings. Such being the object of the rule, there is no infirmity in the order impugned in these writ petition.

8. The Learned counsel appearing for the writ petitioner stated that as on today, there is no *prima facie* case is made out against the writ petitioner and there is no material shown to the writ petitioner nor a charge memo is issued against the writ petitioner. Such an argument advanced deserves to be rejected. At the outset, the order impugned is an order issuing certain procedures to be followed before initiation of the disciplinary proceedings. Thus, this Court is of the view that the writ petitioner cannot be construed as an aggrieved person before this Court and out of the order passed by the Government invoking Rule 9-A of the Tamil Nadu Civil Services (Discipline and Appeal Rules). As on today, against the writ petitioner no disciplinary action is initiated nor the charge memo was issued. Thus, the writ petitioner is not an aggrieved person and the direction given under Rule 9-A at this stage by the Government regarding the method to be followed for initiation of disciplinary proceedings are in order. In this view of the matter no further adjudication is required to be undertaken in this writ petition and the writ petition is premature.

10. Accordingly, the writ petition stands dismissed. No costs.

27.07.2017

S.M.SUBRAMANIAM.,J
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Index: Yes/No
Internet: Yes/No

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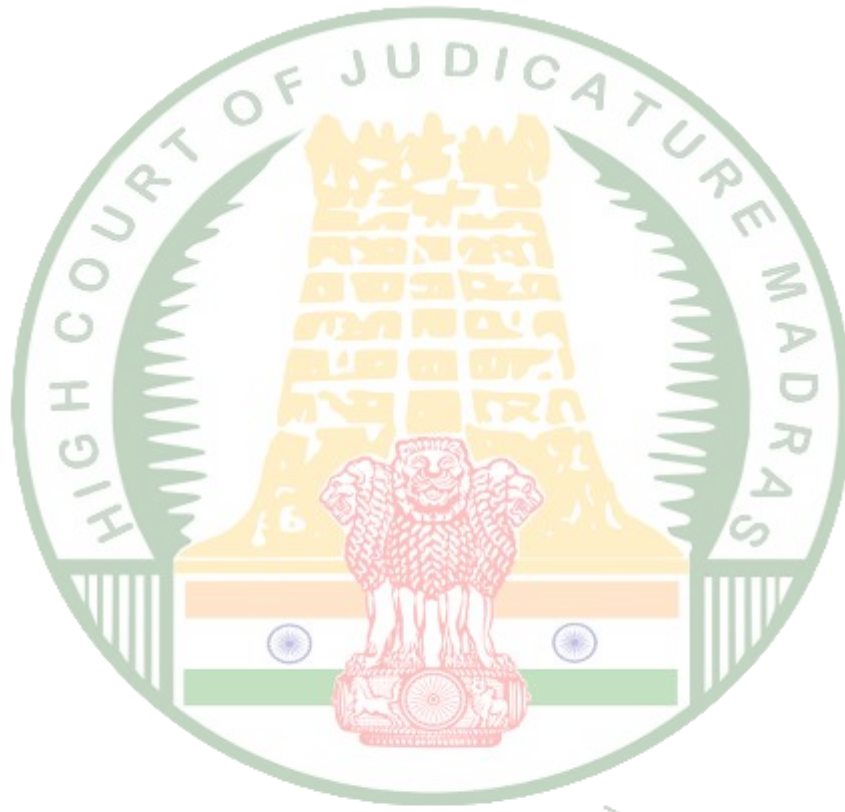
To

- 1.The Additional Chief Secretary,
Finance (T&A-II) Department,
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- 2.The Principal Secretary to Government,
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