

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :13.10.2017
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.26559 of 2009
and
WMP.No.1 of 2009

M.Mohan

.. Petitioner

Vs.

The Principal Secretary/Commissioner of
Revenue Administration,
Disaster Management and
Mitigation Department,
Ezhilagam, Chennai - 600 005. ... Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari
calling for the records pertaining to Charge Memo issued by the
respondent in Ser.2(1)/61075/2008-1 dated 24.03.2009 and quash
the same.

For Petitioner : No appearance

For Respondents: Mrs.K.Bhuvaneswari
Government Advocate

* * * * *
O R D E R

The charge memo issued by the respondent in proceedings
dated 24.03.2009 is under challenge in this writ petition.

2.The writ petitioner was holding the post of Special Deputy
Collector (Stamps) and the following charges were framed against
him:-

"Charge No.1:

That the said Thiru.M.Mohan, Deputy Collector
while functioning as Special Deputy Collector
(Stamps), Salem during the period 2006 and 2007,
failed to consider the 23 feet road approach for the
said Murugan theatre lay out from Salem Main Road and
fixed value of the sites on par with Kathiresan Road
for Rs.300/- per sq.ft. without properly assessing the
value of the site and suppressing the Salem Main Road
value of Rs.750/- per sq.ft. as well as the manifold

market rate to help the parties.

Charge No.2:

That, during the aforesaid period and while functioning in the aforesaid office, the said Thiru.M.Mohan, formerly Special Deputy Collector (Stamps), Salem, caused loss to the Government totally to the tune of rs.10,76,135-00, by fixing value for 15 sites (Documents No.1875/06 to 1889/06 relating to Murugan theatre lay out in Komarapalayam Municipal limits) on par with Kathiresan Road for Rs.300/- per Sq.ft. without properly assessing the value of the sites and suppressing the Salem Main Road value of Rs.750/- per Sq.ft. and without actually ascertaining the real value of the plots.

Charge No.3:

Thus by his above act, he has failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government Servant and thereby violated the provisions laid down under rule 20(1) of Tamil Nadu Government Servants' Conduct Rules 1973."

3.The charge memo impugned provides statement of allegations namely imputations of misconduct or misbehavior. Annexure-III provides the list of documents, based on which, the charges are framed against the writ petitioner and, Annexure-IV provides the list of witnesses, by whom, the charges are framed against the writ petitioner. Thus, there is no infirmity in framing of the charges and all the requirements are followed while framing of the charge memo impugned.

4.On a perusal of the nature of the allegations, this Court is of the view that the charges are serious in nature and warranting a full fledged enquiry to cull out the truth behind the allegations against the writ petitioner, who is a public servant. The writ petitioner instead of participating in the Disciplinary Proceedings by submitting his explanations/objections and by defending his case, has chosen to prefer this writ petition under Article 226 of the Constitution of India on the ground that he was performing his powers as Quasi Judicial Authority and the actions of the Quasi Judicial Authority cannot be questioned by the Disciplinary Authority. In other words, it is stated that the writ petitioner is functioning as a Special Deputy Collector (Stamps) and passing orders in his capacity as a Quasi Judicial Authority and such orders passed in such capacity cannot be a ground for framing of charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The very ground raised in this regard is to be rejected at the outset.

5. The public servants, while functioning or passing any orders in their capacity as a Quasi Judicial Authority cannot claim any immunity from actions under the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The officials working in various Departments of States and Unions are exercising their powers under the statute under one way or other. The Competent Authorities are implementing the Acts and Rules enacted by the Parliament or Legislature. While implementing the Acts and Rules they have to function impartially and exercise of powers is certainly as a Quasi Judicial Authority. The orders passed in their capacity as a Quasi Judicial Authority also has to be scrutinized in all respects and any glaring violation or misconduct, if committed, during the course of exercising the powers, then certainly an action under the Discipline and Appeal Rules are warranted.

6. In this regard, it is relevant to examine the Tamil Nadu Government Servants Conduct Rules, 1973. The said rules are part and parcel of the service conditions of the Government Employees and the rules were framed in exercise of the powers conferred by the proviso under Article 309 of the Constitution of India by the Governor.

Rule 1 defines that short title and application and Sub clause 2 states that the rules will apply to all person appointed to civil services and post in connection with the affairs of the State of Tamil Nadu.

Rule 2 (3) defines that Government Servant means any person appointed to any civil service or post in connection with the affairs of the State of Tamil Nadu.

Rule 3 deals with gifts. The rule defines that save as otherwise provided in these rules, no Government servant shall, except with the previous sanction of the Government, accept or permit his wife or any other member of his family, to accept from any person any gift of value exceeding Rs.5,000/- (Rupees Five thousand only).

Rule 3(A) (1) states that no Government servant shall give or take abet the giving or taking of dowry; or demand, directly or indirectly, from the parents or guardian of a bride or bridegroom as the case may be any dowry; and

3 (A) (2) states that every Government servant shall after marriage or when he celebrates the marriage of his children, furnish to the Head of Department, a declaration that he has not taken any dowry. Where the Government Servant gets married, the declaration shall be signed by the Government servant, the wife or husband, as the case may be, of the Government servant and thier parents or guardian. Where the son or daughter of the Government servant

gets married, the declaration shall be signed by the parties to the marriage and their parents or guardian which shall include the Government servant also.

Rule 4 deals with public demonstration in honour of Government servants.

Rule 5 deals with subscriptions

Rule 6 deals with investments, lending and borrowing

Rule 7 deals with movable, immovable and valuable property

Rule 8 deals with private trade or employment

Rule 9 deals with insolvency and habitual indebtedness

Rule 10 deals with communication of official information

Rule 11 deals with connection with press, television or radio

Rule 12 deals with criticism of Government

Rule 13 deals with evidence before committee or any other authority

Rule 14 deals with taking part in politics and elections and position of Government servants in relation to elections

Rule 14.A deals with prohibition of membership of any communal organisation etc.

Rule 15 deals with vindication of acts and character of Government servants

Rule 16 deals with membership of service association

Rule 17 deals with employment under or with near relatives in service and employment of near relatives in firms enjoying Government patronage

Rule 18 deals with canvassing of non-official or other outside influence

Rule 19 deals with Bigamous marriages

Rule 20 deals with integrity and devotion to duty. The said rule states that every member of the service shall at all times maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the service.

Rule 20 (2) states that every member of the service shall take all possible steps to ensure integrity and devotion to duty by all Government servants for the time being under his control and authority.

Rule 20 (3) (i) states that no government servants shall in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgement except when he is acting under the direction of his official superior.

Rule 20 (3) (ii) states that the direction of the

official superior shall ordinarily be in writing, Oral directions to Subordinates shall be avoided. Where the issue of oral direction becomes unavoidable the official superior shall confirm it in writing immediately thereafter.

Rule 20 (3) (iii) states that a Government servant who has received oral directions from his official superior shall seek confirmation of the same in writing as early as possible, where upon it shall be the duty of the official superior to confirm the direction in writing.

Rule 20 (3) (iv) states that no Government servant shall, in the performance of his official duties or in the exercise of powers conferred on him evade the responsibility devolving legitimately on him and seek instruction from, or approval, of a superior authority when such instruction or approval is not necessary in the scheme of distribution of powers and responsibilities."

7. Thus, it is made clear that the Government servants while performing their official duties and in exercise of their powers conferred on them through any Act or Rules is to act, and to ensure an absolute integrity and devotion to duty. In this regard, the higher officials are bound to monitor the orders passed even while exercising the quasi judicial powers. The executives are the implementing authorities of the State and almost all the Departments are executing the Act, Rules and the lawful orders issued by the Government, in this regard.

8. The executive authority is to be checked and their actions must be with utmost care and while executing the orders, they must maintain absolute integrity and honesty. If, it is found that any authority even while exercising the powers of Quasi Judicial in nature, they have exercised their powers with some motives or in order to favour some particular persons or agency, then, the same will amount to violation of the Tamil Nadu Government Servant Conduct Rules and the Disciplinary Authorities are bound to initiate action against such authorities.

9. A total immunity from the initiation of disciplinary proceedings cannot be granted even, while exercising the powers of quasi judicial functions. All the powers exercised by the public authorities must be in consonance with the Rules and Regulations and any violation thereof will attract penal actions under the laws. Thus, on the ground that the writ petitioner has exercised the powers under the Stamp Act, which is quasi judicial in nature cannot be considered. If, such a contention is accepted, then, no action can be initiated by any authority exercising the powers under any Act or Rules. Thus, this Court

cannot subscribe such an idea of exempting the quasi judicial authorities from the Departmental Disciplinary Proceedings or any prosecution under the penal law.

10. Thus, the ground raised in this writ petition is that the writ petitioner while functioning as a Special Deputy Collector (Stamps) shall pass orders and such orders passed under his capacity as a Quasi Judicial Authority will not constitute a ground for initiation of disciplinary proceedings and therefore, neither charges can be initiated based on the order nor the order will not constitute a ground for framing of charges under the Discipline and Appeal Rules. The very idea is bad in law and the public servants and all the Government employees are liable for disciplinary proceedings, if they have violated any of the Rules of the Tamil Nadu Government Servants Conduct Rules, 1973 or any other Rules and Regulations, in this regard.

11. The Service Rules framed by the State are part and parcel of the service conditions and all the civil servants are bound by the service conditions. While accepting the offer of appointment, they have subjected themselves to the service conditions and therefore, they are bound by the same. Seeking exemption on the ground that exercising their powers as a Quasi Judicial Authority cannot be a ground or any action or any orders passed by the Government Servants under the Acts or Rules or in their capacity as Quasi Judicial Authority are certainly subjected to scrutiny by the higher officials and by the State and in the event of finding some mal practices, motives or otherwise are found then, those Government servants are bound to face the Departmental Disciplinary Proceedings under the provisions of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. Such being the view of this Court, the very ground raised in the writ petition deserves no further consideration and the charges framed against the writ petitioner is very much, in accordance with law.

12. The charge memo can be challenged on the limited grounds and no writ proceedings can be entertained against the charge memo only on exceptional circumstances. No writ can be entertained in a routine manner, if a charge memo/show cause notice is challenged. A charge memo can be challenged, if the same is issued by an incompetent authority having no jurisdiction or incompetency or allegation of mala fides are raised or if the charge memo is in violation of statutory rules. Even in the case of rising the allegation of mala fides, the authority, against whom, such an allegation is raised, has to be impleaded as a party in the writ proceedings in his personal capacity. In the absence of any one of these legal grounds the charge memo cannot be challenged in the writ proceedings.

13. Once the disciplinary proceedings are initiated, it is for the Delinquent Official to submit his explanations/objections and defend his case before the Enquiry Proceedings, so appointed. It is the part and parcel on the duty of the Delinquent Employee to prove his innocence before the Enquiry Proceedings and before the Disciplinary Authorities. Contrarily, he cannot move this writ petition, challenging the very charge memo by raising the merits and demerits and the facts and circumstances of the case. The writ petitioner is at liberty to submit his explanations/objections and prove his innocence before the Enquiry Officer, whom is to be appointed to continue the disciplinary proceedings.

14. On a perusal of the grounds raised in this writ petition, it is clear that the writ petitioner has made an attempt to adjudicate the matter on merits. The merits and the demerits of the allegation set out in the charge memo cannot be adjudicated by way of the writ petition and the disciplinary authority once initiated the disciplinary proceedings are bound to complete the same.

15. Intermittent intervention in disciplinary proceedings are not preferable and the authority, who initiated the disciplinary proceedings shall be allowed to complete and conclude the same in accordance with the rules. The disciplinary proceedings shall be allowed to reach its logical conclusion.

16. This Court is of the opinion that every competent authority under the law should be allowed to function and such authority should complete his responsibility by concluding the proceedings, as early as possible, without any undue delay. Thus, the disciplinary proceedings initiated against the Government servants are to be concluded at the earliest possible. Since the long pendency of the disciplinary proceedings will cause not only hardship but also will deprive the rights of the Government Employees in getting their other service benefits including promotions, retirements etc.

17. While initiating the disciplinary proceedings against the Government Employees, the authorities competent is also to be cautious and they should also show their utmost integrity and honesty, by expediting the same and concluding the proceedings without any undue delay. In the event of causing undue delay, it provides a cause for the Delinquent Officials to move the High Courts, in this regard. Thus, the disciplinary authorities are also directed to exercise all precautions on initiation of the disciplinary proceedings. Further, actions must be completed in all respects, within a reasonable period of time. For all these reasons the ground raised in this writ petition deserves no further consideration.

18. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Principal Secretary/Commissioner of
Revenue Administration,
Disaster Management and
Mitigation Department,
Ezhilagam, Chennai - 600 005.

+1 cc to the Govt Pleader sr 74750

W.P.No.26559 of 2009

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