

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.05.2017
Coram

The Hon'ble Mr. Justice S.M. Subramaniam

Writ Petition No. 15598 of 2008
and
M.P. Nos. 1 and 2 of 2008

K. Dinakaran

...Petitioner

Vs.

The Chief Inspector of Factories,
Chennai - 5.

...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the respondent, in connection with the impugned order passed by him in U2/18963/2006, dated 06.07.2006, and to quash the same.

For Petitioner : Mr. M. Muthappan

For Respondent : Mr. A. Zakir Hussain
Government Advocate

O R D E R

The prayer in this Writ Petition is for issuance of a Writ of Certiorari, to quash the impugned order (viz. chargememo) passed by the respondent, dated 06.07.2006.

2. The facts, which led to the filing of this Writ Petition in gist are as follows:-

i) The petitioner joined the service of the respondent as Inspector of Factories on 29.12.1995, and has been serving since 1995 in various places in Tamil Nadu. The nature of work assigned to the petitioner is to conduct surprise inspection in Factories to find out as to whether children are employed in the Factories, and in such a case, he has to prepare a report and submit the same to the Head of the Department fortnightly. In the year 2005, all of a sudden, his health condition got deteriorated, and on medical check up, it was found that he had

70% block in the arteries, and he was advised to undergo surgery by the Doctors. Accordingly, he went on medical leave for treatment from 04.01.2006 to 03.01.2007. While he was undergoing treatment in a Hospital, he was served with the charge memo (impugned herein) by the respondent, under Rule 17-B of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (henceforth, referred to as 'Rules'), dated 06.07.2006.

ii) The allegations levelled against the petitioner are that, a) he has failed to send the report within the permitted time (viz., fortnight), pursuant to the inspection conducted by him for the period from 01.01.2005 to 30.09.2005 and also from 01.11.2005 to 30.04.2006 to the higher officials, as a result of which, follow up action in the Factories, where, the petitioner had conducted the inspection could not be taken up. b) The second charge is that the report in respect of October, 2005 was sent after a delay of six months.

iii). Challenging the said charge memo, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner assailed the charge memo on several grounds. Firstly, by contending that the charges framed against the petitioner would not attract major punishment of dismissal, removal or compulsory retirement from service, under Rule 17(b). Secondly, it is contended that the charge memo has been issued in violation of the guidelines issued by the Government, vide Circular No.14353/Per.N/93-1, dated 11.03.1993. In this connection, the learned counsel has placed reliance on the decision of this Court, in W.P.No.25785 of 2011, in the case of (R. Raja Sekaran Vs. The Principal Secretary to Govt. and two others), dated 06.02.2012, wherein, the learned Single Judge enunciated the guidelines issued by the Government, vide Circular dated 11.03.1993, for the Government Officials to follow for the purpose of deciding as to whether the employee could be proceeded under Rule 17 (a) or 17 (b) of the Rules. The learned counsel contended that the charge framed against the petitioner herein falls under category 3, viz., dereliction of duty, which does not involve cause of corruption, moral turpitude, disproportionate assets to the known sources of income, disobedience, and in such a manner, causing revenue loss to the Government exchequer. nor the petitioner has performed any act with dishonest motive, and hence, the petitioner cannot be proceeded against under Rule 17 (b) but only under Rule 17 (a). Thirdly, it is contended that the petitioner has not been provided with sufficient ministerial staff in the respondent/Office to prepare reports and send the same to the Head of the Department then and there, and therefore, there was no intentional delay on the part of the petitioner in sending the report belatedly. This apart, the health condition of the

petitioner got deteriorated during that time, and hence, he was not in a position to submit the report within the time frame. The fourth ground, on which, the charge memo has been assailed is being that, seeking for certain documents/details, which formed the basis for issuance of the charge memo, the petitioner made a representation, dated 18.07.2006, and the respondent, without responding to the same, and without furnishing the documents, has straightaway appointed an enquiry officer to conduct disciplinary enquiry. The learned counsel for the petitioner, therefore, contended that, on the aforesaid grounds, the charge memo will have to be set aside.

4. At the threshold, the learned counsel for the respondent submitted that, in view of the subsequent developments in the present case, the Writ Petition cannot be entertained. Further, it is submitted that the question of applicability of Rules 17-A or 17-B of the Tamil Nadu Civil Services (Discipline and Appeal) Rules will have to be decided only by the Disciplinary Authority, viz., the respondent herein based on the facts and circumstances of the case, and the circular issued by the Government, dated 11.03.1993, relied upon by the learned counsel is nothing but guidelines to be followed by the Officials of the Government, and the same cannot have any force of law or backed with statutory provisions. It is his further submission that the guidelines cannot be construed as mandatory, and it can be treated only as instructions given to the Officials of the Government, and such guidelines will not confer any right to the petitioner to seek for issuance of a writ of certiorari to quash the charge memo. The learned Government Advocate, therefore, prays for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate for the respondent and perused the materials on record.

6. As rightly pointed out by the learned Government Advocate for the respondent, in view of the subsequent development, the various contentions raised by the learned counsel for the petitioner need not be gone into. On the face of the circular issued by the Government, dated 11.03.1993, it is clear that the said circular is nothing but guidelines to be followed by the Officials of the Government and the same cannot have any force of law or backed with statutory provisions, and the guidelines cannot be construed as mandatory, and it can be treated only as instructions given to the Officials of the Government, and the Courts cannot go into the grievance of the petitioner based on the guidelines issued by the Government, because, such guidelines will not confer any right to the petitioner to seek for issuance of a writ of certiorari to quash the charge memo. Once charges are framed against the

petitioner, it is left open to the petitioner to prove his innocence before the Competent Authority.

7. Thus, while deciding the merits of the case based on the report submitted by the Enquiry Officer, the respondent will have to take into consideration the circular dated 11.3.1993. Therefore, this Court is of the opinion that in the present case no prejudice would be caused to the petitioner to participate in the enquiry and submit his explanation and in case, the Enquiry Officer holds that the charges framed against the petitioner are proved and if any orders are passed adverse to the interest of the petitioner, then, it is open to the petitioner to proceed legally, defying the same.

8. For the reasons stated hereinabove, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sd

To

The Chief Inspector of Factories,
Chennai - 5.

+1 cc to the Government Pleader sr 36961
+1 cc to Mr.M.Muthappan Advocate sr 36697
+1 cc to the Special Govt Pleader forest Chennai
sr 36675

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sj(co)
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