

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.33947 of 2016

and

WMP.Nos.29300, 36902, 34300 to 34302 of 2016

M.V.Sreenivaas Petitioner

-vs-

- 1.The Director,
Rukmini Devi College of Fine Arts,
Kalakshetra Foundations,
Thiruvannamipur, Chennai - 41.
 - 2.Ms.Priyadarsini Govind,
(Director),
Rukmini Devi College of Fine Arts,
Kalakshetra Foundations,
Thiruvannamipur, Chennai - 41.
 - 3.The Administrative Officer,
Rukmini Devi College of Fine Arts,
Kalakshetra Foundations,
Thiruvannamipur, Chennai - 41.
- ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records for the first respondent made in No.KF/RDCFA/Charge Sheet-1 dated 23.06.2016 and consequently direct the first respondent to allow the applicant in all the Kalakshetra Concerts within India and abroad to accompany on Violin.

For Petitioner :: Mr.Silambanan Senior Counsel
for
M/s. Kaavya Silambanan Asso.

For Respondents :: Mr.Karthik Mukundan
(For R1 & R2)
No appearance (For R3)

* * * * *

O R D E R

The Charge Memo dated 23.06.2016 issued by the first respondent is under challenge in this writ petition.

2.The learned Senior Counsel appearing on behalf of the writ petitioner states that the writ petitioner is a Violin Artist employed in Rukmini Devi Fine Arts, Kalakshetra Foundation, Chennai - 41.

3.The writ petitioner was appointed as a Violin Artist on 14.06.1993 and he was attached to the concerts section by an order of the Principal dated 14.06.1993. In the new foundation constituted by virtue of an act enacted by the Parliament, the petitioner was appointed as a Tutor with effect from 01.10.1993. Subsequently, he was promoted to the post of Lecturer on 01.08.2003 and the petitioner was further promoted to the post of Assistant Professor on 19.04.2014. The learned Senior Counsel strenuously contended that the writ petitioner has performed the duties and responsibilities with utmost care and to the satisfaction of the superiors. This being the case, based on certain false set of facts a charge memo was issued to the writ petitioner vide proceedings dated 23.06.2016. The learned Senior Counsel urged this Court by stating that the charges are vague in nature and the nature of the allegations are not capable of proceedings under the Discipline and Appeal Rules. At the outset, the charges are incapable of prosecution under the rules and the same are to be quashed.

4.It is further stated that the entire charge memo was issued on account of certain personal motive with the Director, Ms.Priyadarshini Govindh and therefore, the charges are unsustainable and to be scrapped. The charge memo was issued on mala fides and otherwise the allegations are not so serious, warranting any Disciplinary action under the relevant rules. By reading the entire charges, the learned Senior Counsel made a sincere attempt to convince the Court by stating that the allegations are very minor in nature and therefore, the charges being for reporting major penalty is unsustainable. The learned Senior Counsel has taken considerable length of time to convince this Court in respect of the nature of allegations set out in the charge memo impugned in this writ petition.

5.The learned counsel appearing for the respondent in short contended that the allegations set out in the charge memo remains serious and the learned Senior Counsel though read out the charges had failed to look into the statement of imputation of misconduct and enclosed along with the memorandum of charges. At this juncture, the learned Senior Counsel further states that

the statement of imputation are also not so serious and those allegations are set out due to the personal vengeance on the part of the second respondent.

6.The learned counsel for the respondent urged this Court by stating that the statement of allegations are unambiguous in respect of the alleged misconduct committed by the writ petitioner. Six charges were framed in page No.31 of the typed set of papers filed along with the writ petition. Annexure 2 are the charges. On a perusal of the allegations of misconduct, the learned counsel for the respondent states that certainly the allegations are serious and the particulars of the incidents are well narrated in the statement of allegations. This apart, the procedure contemplated under the rules for initiating Disciplinary Proceedings are followed by the respondent. Thus, there is no infirmity in respect of the initiation of the Disciplinary Proceedings and it is for the writ petitioner to participate in the Enquiry Proceedings and prove his innocence in respect of the allegations set out in the charge memo.

7.Considering the arguments so advanced by the learned Senior Counsel appearing on behalf of the writ petitioner as well as the learned counsel appearing for the respondent, this Court has to consider the nature of the allegations which are extracted here under:

ANNEXURE I

"Statement of Article of Charge framed against Sri.V.Srinivasan, Assistant Professor (Violin), Rukmini Devi College of Fine Arts, Chennai

ARTICLE I

That the said Sri.V.Srinivasan, Assistant Professor (Violin), Rukmini Devi College of Fine Arts, Chennai in his representation dated 15.10.2015 addressed to the Director Kalakshetra Foundation with a copy marked to the Chairman, Kalakshetra Foundation falsely stated that the Director, on 06.10.2015, in a meeting with him along with two other senior faculty members had confirmed that the administration of Kalakshetra had requested Sri Eswar Ramakrishnan to play violin in Kalakshetra Annual Art Festival 2015. On the contrary there was no such confirmation by the Director of such an engagement which is affirmed by the statement of two senior faculty members who were part of the meeting on 06.10.2015. Sri.V.Srinivasan's statement to the contrary in his representation amounts to misrepresentation of facts as well as making false accusations.

By the aforesaid acts, Sri.V.Srinivasan failed to maintain absolute integrity and devotion to duty

and exhibited conduct unbecoming of a an employee of Kalakshetra Foundation thereby violating the provisions of Rule 3(1)(i),(ii)&(iii) of the CCS Conduct Rules, 1964.

ARTICLE II

That the said Sri V.Srinivasan, Assistant Professor (Violin), Rukmini Devi College of Fine Arts, Chennai had not submitted the Deed for name change in the proper format as per Government of India rules to enable the management to effect the name change and despite repeated reminders, he has not taken steps to submit the same. However, he has changed his signature on his own in the attendance register since 16.03.2016 without the change being recorded procedurally in the office records.

By the aforesaid acts Sri,V.Srinivasan failed to maintain devotion to duty and exhibited conduct unbecoming of a an employee of Kalakshetra Foundation thereby violating the provisions of Rule3(1)(ii)&(iii)of the CCS Conduct Rules, 1964.

ARTICLE III

That the said Sri.V.Srinivasan had accompanied on violin a programme presented by Ms.Meenakshi Chittharanjan during the morning session of Baani festival held at the Rukmini Arangam of Kalakshetra Foundation on 13th March 2016 without taking prior permission from the Management and refused to receive the office memo served on him in that regard.

By the aforesaid acts, Sri,V.Srinivasan failed to maintain absolute integrity and devotion to duty and exhibited conduct unbecoming of a an employee of Kalakshetra Foundation thereby violating the provisions of Rule 3(1)(i), (ii)&(iii) of the CCS Conduct Rules, 1964.

ARTICLE IV

That the said Sri.V.Srinivasan, Assistant Professor (Violin), Rukmini Devi College of College & Fine Arts, Chennai had not executed the duty assigned to him for accompanying on the violin for the 4th year Diploma concert exam scheduled to be held on 18th and 19th March 2016 and not given any valid reason for the same.

By the aforesaid acts, Sri V. Srinivasan failed to maintain devotion to duty and exhibited conduct unbecoming of a an employee of Kalakshetra Foundation

thereby violating the provisions of Rule 3(1)(ii)& (iii) of the CCS Conduct Rules, 1964.

ARTICLE V

That the said Sri. V. Srinivasan was not punctual and very irregular in taking classes for Ms. T.Vedhapriya thus greatly inconveniencing/prejudicing the student and also the institution.

By the aforesaid acts, Sri.V.Srinivasan failed to maintain absolute integrity and devotion to duty and exhibited conduct unbecoming of a an employee of Kalakshetra Foundation thereby violating the provisions of Rule 3(1)(i),(ii)&(iii) of the CCS Conduct Rules, 1964.

ARTICLE VI

That the said Sri.V.Srinivasan, made discourteous remarks to K.Saishankar, a faculty member, while on his way to the performance--Sita Swayamwaram at Music Academy on 03.12.2014.

By the aforesaid acts, Sri.V.Srinivasan exhibited conduct unbecoming of an employee of Kalakshetra Foundation as well exhibiting discourteous behaviour thereby violating the provisions of Rule (3)(1)(iii)of and Rule 3A(a) the CCS Conduct Rules, 1964."

8.On a perusal of the nature of the allegations as contended by the learned Senior Counsel, some doubts may arise. However, on reading the entire statement of imputation of misconduct or misbehaviour in support of the charge memo issued in Annexure 2 clarifies the nature of the allegations against the writ petitioner. Annexure 2 of the charge memo categorically enumerates the imputation of misconduct or misbehaviour in support of the article of the charges. Annexure 3 provides the list of documents by which the articles of charges are framed and Annexure 4 provides the list of witnesses by whom, the articles of charges are framed against the writ petitioner and proposed to be sustained.

9.At the outset, this Court is of the view that there is no infirmity in the manner in which the charge memo is issued. The contention of the learned Senior Counsel is that the charges are vague and minor in nature and the same cannot be framed for imposing major penalty under the Discipline and Appeal Rules, this Court has to consider that the framing of the charges falls

under the wisdom of the Disciplinary Authorities and certain minor discrepancies, if any, in respect of the allegations or the statement of imputation ought to be adjudicated by the competent authorities and to be considered at the time of conducting Enquiry Proceedings and while taking decision in Disciplinary Proceedings.

10. However, this Court has to consider the grounds for challenging the very charge by way of filing a writ petition under Article 226 of the Constitution of India. The scope of entertaining a writ petition against the charge memo is limited and the High Courts cannot entertain the writ petition against the charge memo in a routine manner. A writ petition can be entertained only on exceptional circumstances, in the event of coming to the conclusion that the charges are issued by an incompetent authority or if the allegation of mala fides are substantiated so as to come to a conclusion that the charges issued are on mala fide intention. In the event of substantiating the mala fide intention to the satisfaction of the Court, then a writ proceedings can be entertained. Undoubtedly a judicial review against the charge memo is to be exercised cautiously and sparingly. Thus, this Court is of the opinion that a mere allegations of vagueness is insufficient for quashing of the charge itself and the same has to be established.

11. Intermittent intervention in the Departmental Disciplinary Proceedings are not preferable. Departmental Disciplinary Proceedings initiated against an official should be allowed to be concluded in all respects and the same should reach its logical conclusion. The Authority Competent shall be allowed to continue the enquiry in all respects and the power of taking a decision provided under the rules must be exercised in all respect by the Competent Authorities by providing all reasonable opportunities to the Delinquent Officials.

12. The legal principles in respect of the charge memo is settled by the Hon'ble Supreme Court of India long before in the case of Union of India and others -Vs- Upendra Singh reported in (1994) 3 Supreme Court Cases 357 and it is relevant to extract Paragraph No.6 of the same:

"6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary

authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal v. Gopi Nath & Sons⁵. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8)

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in Judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

13. However, this Court is of the opinion that the Apex Court of India categorically held that once the charges are framed in accordance with the rules in force and when the allegations are unambiguously set out in the charge memo in clear terms, then, it is for the authorities to proceed with the Enquiry Proceedings and conclude the same in all respect and take a decision and pass final orders in the disciplinary proceedings. The Courts cannot quash the charges merely on the ground that the charges are minor in nature. In the case on hand, on a perusal of the statement of imputation of misconduct or misbehaviour issued in support of article of charges in annexure 2 of the charge memo clearly states that the petitioner had made certain false and untrue statements and further it is stated that he failed to maintain devotion to duty as a Violin Artist

in the Rukmini Devi College of Fine Arts, Kalakshetra Foundation, thereby violating the provisions of Rule 3(1)(i), (ii)&(iii) of the CCS Conduct Rules, 1964.

14.All the allegations set out in the charge memo enumerates that there are certain dereliction of duty and violations and it is left open to the writ petitioner to submit his explanation/objection and prove his innocence before the Competent Authorities. This Court cannot adjudicate the merits and demerits of the allegations set out in the charge memo. It is the duty of the Delinquent Officials to participate in the Enquiry Proceedings by availing the opportunities provided under the rules. Thus, this Court is of the view that the writ petitioner has not substantiated the mala fide allegations, though certain bald allegations are made in the affidavit filed in support of the writ petition. Such bald unspecified allegations cannot be considered as a valid ground for the purpose of quashing the charge memo itself.

15.Under these circumstances, the respondent are permitted to proceed with the Enquiry Proceedings at the earliest possible and conclude the same in all respects and pass final orders without any further delay.

16.Undoubtedly, the Disciplinary Proceedings initiated against an employee is to be completed in all respects as early as possible without any undue delay. Delay in concluding the Disciplinary Proceeding will cause prejudice to the Delinquent Officials and the same will affect the service benefits of an employee. Thus, the Disciplinary Authorities, once the proceedings are initiated must be vigilant and see that the proceedings are completed in all respects within a reasonable period of time. This being the view of this Court, the merits of the charges deserves no further consideration.

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

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Director,
Rukmini Devi College of Fine Arts,
Kalakshetra Foundations,
Thiruvanmiyur, Chennai - 41.

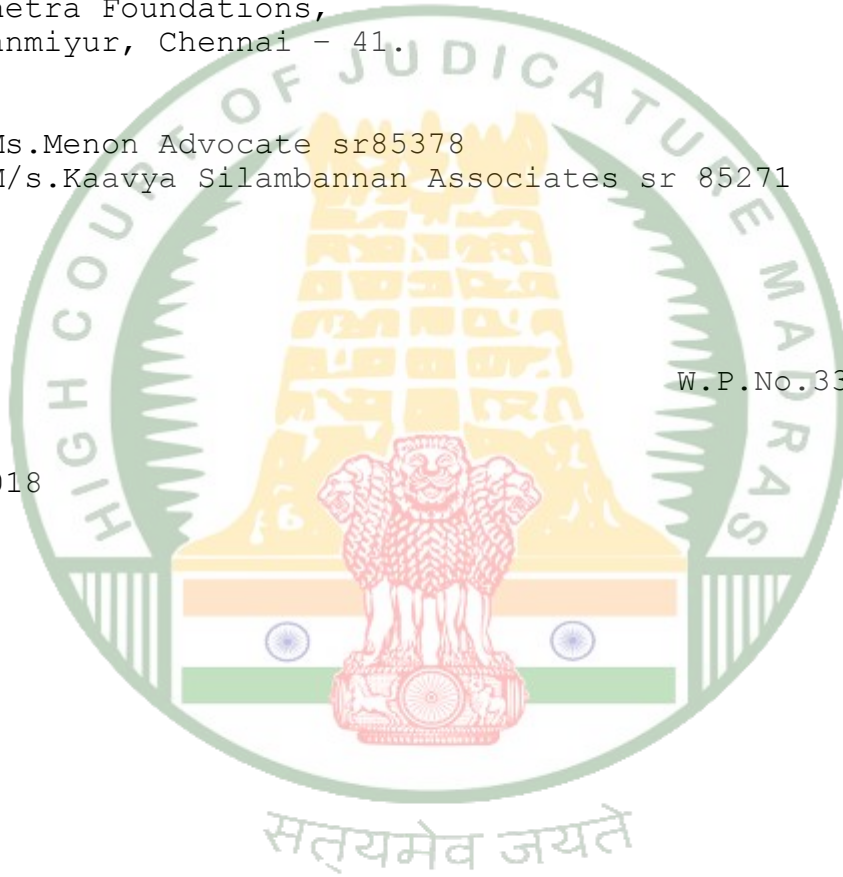
2.The Administrative Officer,
Rukmini Devi College of Fine Arts,
Kalakshetra Foundations,
Thiruvanmiyur, Chennai - 41.

+1 cc to Ms.Menon Advocate sr85378

+1 cc to M/s.Kaavya Silambannan Associates sr 85271

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