

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 21-04-2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

AND

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.37023 OF 2016

R.Bagyalakshmi ...Petitioner

-vs-

1.The Principal District Judge/
Disciplinary Authority,
Namakkal - 637 001.

2.The Subordinate Judge/
Enquiry Officer,
Tiruchengode - 637 211.

... Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, to call for the records relating to Roc.No.1671/A/2016, dated 15.02.2016, on the file of the first respondent and quash the same.

For petitioner : Mr.S.Subbiah

For respondents : Mr.M.Baskar

Reserved on : 20-12-2016 Pronounced on : 21-04-2017

O R D E R

Nooty.Ramamohana Rao,J.

This Writ Petition is instituted by a former Grade-I Bench Clerk of the Principal District Court, Namakkal, challenging the validity of proceedings in Roc.1671/A/2016, dated 15.02.2016, passed by the first respondent-Principal District Judge-cum-Disciplinary Authority, Namakkal.

2. The writ petitioner, upon selection by Tamil Nadu Public Service Commission, came to be appointed as a Junior Assistant in Tamil Nadu Judicial Ministerial Services, where, she joined duty on 03.03.1989. She earned promotion to next higher posts as and when they fell due and she was promoted as Bench Clerk, Grade-I, and posted at Principal District Court, Namakkal, where she joined the Sessions branch on 07.07.2013. On 25.11.2015, she opted to retire voluntarily from service with effect from 29.02.2016. That offer to retire voluntarily has been accepted by the Principal District Judge, Namakkal. The Principal District Judge, Namakkal, through proceedings in Roc.No.1992/A/2016, dated 29.02.2016, permitted the writ petitioner to retire from service voluntarily on the afternoon of 29.02.2016, subject to the disciplinary proceedings initiated against her to be continued under Rule 9 of the Tamil Nadu Pension Rules, 1978. Thus, the writ petitioner had retired from service on the afternoon of 29.02.2016.

3. However, on 15.02.2016, two separate proceedings have been drawn by the Principal District Judge, Namakkal; one bearing proceedings Roc.No.1670/A/2016, dated 15.02.2016, in a standard form of show cause notice, for imposition of minor penalties. The minor penalty proceedings under Rule 17 (a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, hereinafter referred to as "the Rules" have been drawn for six lapses, said to have been committed by the writ petitioner, as detailed therein. The first one relates to lapse of not addressing the Superintendent of Police, Namakkal, with regard to non-execution of NBW in Sessions Case No.91 of 2012 since 12.02.2013, despite the directions issued to do so on 30.08.2013. The second lapse also relates to a similar incident of not addressing the Superintendent of Police, Namakkal, with regard to non-execution of NBW in S.C.No.41 of 2013 since 20.08.2013, despite the directions issued on 29.01.2014 to the individual. The third lapse relates to misplacement of records of M.C.No.20 of 2012 in C.R.P.No.14 of 2013, instead of M.C.No.22 of 2012 on the file of Chief Judicial Magistrate Court, Namakkal, leading to much inconvenience to the Judicial Officer. The fourth lapse relates to non-placing of Witness Summons List served by the S.I. of Police, Mallasamudram Police Station in S.C.No.86 of 2013 for trial on 26.08.2014 till 12.00 Noon, leading to unnecessary waiting of counsel from Tiruchengode till 12.30 p.m., on that day. The fifth lapse relates to the alleged failure to put up the list of criminal cases posted on 05.11.2014 and the number of witnesses present for trial on that day, leading to inconvenience in arranging the other work and in giving priority to the corruption cases for inquiry. The last of the lapses relates to failure to attend to

the 'Calling Work' on 07.11.2014, though the writ petitioner was placed in additional charge of the O.P. Branch of Principal District Court, Namakkal.

4. Learned counsel for the writ petitioner has criticised that the Memo, dated 15.02.2016, has been drawn by the Principal District Judge with regard to the events, which have taken place quite sometime past, as the lapses themselves point out that the instructions said to have been given on 30.08.2013, 29.01.2014, 07.11.2014 etc., have not been faithfully carried out by the writ petitioner. The reason why such lapses have not been taken serious note of prior to 15.02.2016, warranting drawing of any show cause notice for minor penalties, is left to be wondered.

5. However, we are now concerned in the instant case with regard to the validity of the proceedings in Roc.No.1671/A/2016, dated 15.02.2016, for the lapses committed. The following three charges have been framed against the writ petitioner, for which, the disciplinary proceedings under Rule 17 (b) of the Rules have been initiated. The charges read as follows :

"Charge - 1 : That you, Tmt.R.Bagyalakshmi, working as Grade-I Bench Clerk at Principal District Court, Namakkal, have committed the imputation of misconduct or misbehaviour of speaking to Thiru M.Selvaraj, the then Chief Administrative Officer of this court in a raised voice on 19.09.2014 evening, consequent to the issuance of memo for non-submission of the pending list of cases in the respective branches as required by the Presiding Officer and thereby violated Rule 21 of the TNGSC Rules, 1973.

Charge - 2 : That you, Tmt.R.Bagyalakshmi, working as Grade-I Bench Clerk at Principal District Court, Namakkal, have committed the grave lapse of talking disrespectfully towards the Presiding Officer and misbehaved in her chamber on 24.4.2015, while enquiring about the cheque petitions and hence violated Rule 21 of the TNGSC Rules, 1973.

Charge - 3 : That you, Tmt.R.Bagyalakshmi, working as Grade-I Bench Clerk at Principal District Court, Namakkal, have committed the grave lapse of gross negligence and dereliction of duty in not placing the High Court's direction for disposal in OS Nos.50,54 and 130/2011 pending on the

file of this court wherein the Hon'ble High Court, Madras in CMA.3043/2013 dt.12.9.2014 had ordered for disposal of the case in OS.130/2011 within 3 months from the date of receipt of the order and in CRP 1453/2012, dt.19.4.2012, the Hon'ble High Court had directed the petitioner is at liberty to file necessary memo before the Principal District Judge, Namakkal to conduct joint trial of the above three cases, but the three cases were not taken in the open court for joint trial and called on different dates leading to the disobedience of the Hon'ble High Court's directions and also misled the court by wrongly endorsing that the case in OS.50/2011 was stayed by the High Court as per the High Court's order in MP.1/2011 in CMA.1423/2011, dt.8.3.2011 and misled the court leading to pending of the cases for a prolonged time without ascertaining the stay pendency which shows your gross negligence and dereliction of duty hence violated Rule 20 of the TNGSC Rules, 1973."

6. The serious criticism mounted by Sri S.Subbiah, learned counsel for the writ petitioner, against the validity of these proceedings, is that the first charge relates to an incident, said to have taken place on 19.09.2014, where the writ petitioner was alleged to have raised her voice before Thiru M.Selvaraj, the then Chief Administrative Officer of the Court, pursuant to a Memo drawn against the writ petitioner, for non-submission of the pending list of cases in the respective branches, as required by the Presiding Officer. The second charge relates to a conversation, disrespectfully made with the Presiding Officer in the chambers on 24.04.2015. The third charge relates to some misleading note, made on a docket of a case in O.S.No.50 of 2011.

7. It is urged by Sri Subbiah that even if all the three charges are looked into as it is, there is no allegation of dishonesty or lacking in integrity. He would, therefore, urge that the proceedings, drawn under Rule 17 (b) of the Rules, are not sustainable. He places heavy reliance on a judgment rendered earlier by this Court, setting forth that proceedings under Rule 17 (b) cannot be drawn contrary to the guidelines issued by the Government, which clearly bring out that only in cases where dishonesty or lack of integrity is attributed, then proceedings under Rule 17 (b) can be drawn, but not otherwise.

8. We have given our anxious consideration to the submissions made by Sri Subbiah. We are also surprised that Charge No.1, laid against the petitioner, is sought to be

sustained, on the basis of a representation, said to have been submitted by Thiru M.Selvaraj, the then Chief Administrative Officer, Principal District Court, Namakkal, on 22.09.2014. We have absolutely no doubt in our mind that every civil servant has to bear good and decent conduct at all times. Every civil servant is also required to maintain decency and decorum at workplace. Every civil servant is required to carry out every order issued lawfully by his superiors. The civil servant cannot go on probing as to whether the direction issued for carrying out a particular work is lawful at all or not. If one has got a reasonable doubt about the lawfulness and legitimacy of any such order issued by superior officer, the most appropriate conduct to be exhibited in such circumstances is only to draw a carefully and politely worded representation, calling for the attention of the superior officer, by bringing out the viewpoint as to how the direction can be said as not lawful. It is not open to the civil servant to assume that the direction received by him/her is not lawful and then protest about it or disobey or fail to carry out the same. Seeking confirmation of any such doubtful directions is the most dignified and approved behaviour and conduct warranted to be exhibited while discharging the functions as a civil servant. Assuming that the writ petitioner has not done so, the question, which is raised before us is, when the complaint was said to have been filed by the Chief Administrative Officer on 22.09.2014, why did the Principal District Judge/disciplinary authority take nearly one-and-a-half years' time to frame the charge. The criticism of the writ petitioner is that by the sheer delay whatever the seriousness lies behind the alleged lapses, allegedly committed by her on 22.09.2014, has been diluted. But, however, the same is sought to be resuscitated after a long lapse of time. Subsequent thereto, the petitioner has submitted an application to retire from service voluntarily. The criticism about the sustainability of Charge (1) is not without merit.

9. Disciplinary control is an exercise, warranted to check promptly all such unapproved conduct exhibited by the civil servants. Where any such objectionable conduct has surfaced, immediately, as, in the instant case, as visible from the alleged complaint lodged by the then Chief Administrative Officer on 22.09.2014, any delay in taking the follow-up action would have the effect of diluting the rigor or degree of the misconduct exhibited and the delinquent can draw a reasonable inference, if not a satisfaction that the heat has died down and that it is not viewed too seriously by the disciplinary authority. A different consideration would spring up where the unapproved conduct of a civil servant has come to be detected after carrying out some preliminary investigations/inquiry, but, that is not the case on hand.

10. With regard to the second charge, it is really surprising that the Principal District Judge has not thought it appropriate to initiate disciplinary proceedings against the writ petitioner in the immediate aftermath of 24.04.2015, on which date, at about 05.00 p.m., the writ petitioner was alleged to have disrespectfully replied to the Presiding Officer in the chambers that the information from Sheristadar should have been ascertained in her presence. There is no denying the fact that the Principal District Judge has been apprised of this incident on 24.04.2015 immediately thereafter. Why did the Principal District Judge wait nearly one year i.e., up to 15.02.2016, for initiating disciplinary proceedings ? Is it because the writ petitioner wanted to retire from service by submitting an application, dated 25.11.2015, seeking voluntary retirement ? Much more intriguing is the failure to cite the Presiding Officer as a witness in support of this charge. Whereas, the disciplinary authority has thought it appropriate to establish the charge by examining Sri C.Kumar, Sheristadar, who can vouch for the alleged disrespectful conversation that has taken place between the writ petitioner on one hand and the Presiding Officer on the other, in the chambers of the Presiding Officer. At the time when the alleged disrespectful conversation took place, it is obvious and clear, that Sri C.Kumar, Sheristadar of the Court, was not present. Therefore, one fails to understand as to why the Presiding Officer has not been examined or cited as a witness in support of the said charge. Thus, a feeling has been left behind in our mind that the disciplinary proceedings, particularly, Charges 1 and 2, have been brought forth at this distant point of time, only for the purpose of delaying the settlement and terminal benefits of the writ petitioner, upon her retirement voluntarily on the afternoon of 29.02.2016. The disciplinary proceedings are not meant for achieving any such collateral objective. The disciplinary proceedings are intended not only to check indiscipline and/or associated misconduct on the part of a civil servant, but every such conduct has to be dealt with sternly and must be nipped in the bud. It cannot be allowed, all by lapse of time, to blossom into some kind of a practice. More importantly, indiscipline on the part of a civil servant, if at all tolerated, would send a wrong message across. It would also lead to the rot setting in, in the rank and file. Above all, no tolerance should be shown towards the indiscipline and also lapse of time in tackling the same effectively. Any such delay would lead to the dilution of the rigor and impact thereof. That is what had happened in this case.

11. So far as the third charge is concerned, undoubtedly, it reflects lack of proper application of mind on the part of the writ petitioner. No misleading note could have been put up, which is capable of delaying or denying justice to

any party. But, however, even that misleading note appears to have been put up somewhere around September, 2014. The material on record, including the annexures to the charge memo, does not make out that the misleading note put up by the writ petitioner came to be detected only just about the time the chargesheet has been drawn against her.

12. In the above background, learned counsel for the writ petitioner has placed strong reliance upon a judgment rendered by a Division Bench of this Court in W.P.No.19144 of 2004, on 07.12.2004. The Division Bench, in paragraph 6 of the said judgment, had referred to the guidelines issued by the Government for deciding when charges may be framed under Rule 17 (b) of the Rules and, thereafter, the issue has been dealt with in paragraph 7. Hence, paragraphs 6 and 7 are quoted hereunder :

"6. A perusal of the order of the Tribunal shows that the Tribunal is of the considered opinion that the allegations do not warrant the initiation of the proceedings under Rule 17 (b) of the Rules, which contemplates imposition of major penalties. The Tribunal was fully convinced keeping in mind the nature of the allegations that the charge should have been framed under Rule 17 (a) as the charges were not serious in nature. In this connection, it may be pointed out, that even though the Tribunal has not referred to the guidelines issued by the Government for deciding whether the charges could be framed under Rule 17 (a) or under 17 (b), it is quite obvious that the Tribunal had kept in mind those guidelines. The guidelines are to the following effect:

GUIDELINES FOR DECIDING WHETHER CHARGES MAY BE FRAMED UNDER RULE 17 (b)

(1) Cases in which there is reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a Court of law, e.g.,

(a) possession of assets disproportionate to the known sources of income;

(b) obtaining or attempting to obtain illegal gratification ;

(c) misappropriation of Government property, money or shares;

(d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate etc.,

(2) Falsification of Government records.

(3) Irregularity or negligence in the discharge of official duties with a dishonest motive.

7. It is not in disputed that the charges framed against the petitioner do not come under (1) and (2) of the aforesaid Guidelines. Learned counsel for the petitioner has submitted that the charges framed against the petitioner come under paragraph 3 of the guidelines. We are unable to accept this submission. Even if the action of the respondent No.1 may amount to irregularity or negligence in the discharge of his official duties, there is no whisper in the charge memo or to the effect that it was with any dishonest motive. Moreover, it is not the contention of the counsel for the petitioner that there was any dishonesty on the part of respondent No.1 in the discharge of his official duties."

13. Learned counsel for the petitioner has then relied upon a judgment of another Division Bench rendered on 05.09.2006 in W.P.No.3558 of 2004. Therein also, the Division Bench considered the above quoted guidelines and arrived at the conclusion that the charges under Rule 17 (b) ought not to have been framed. Learned counsel for the petitioner has also pointed out that a learned single Judge, in his judgment rendered on 07.09.2009 in W.P.No.17652 of 2006 in S.Kannan v. State of Tamil Nadu, (2009) 8 MLJ 217, had subscribed to the same view that charges under Rule 17 (b) cannot be framed against the civil servant, for want of allegations, touching upon integrity or irregularity or negligence in discharge of official duties with a dishonest motive. Learned counsel for the petitioner has also pressed into service the judgment rendered by the Supreme Court in State of U.P. v. Gobardhan Lal, (2004) 11 SCC 402, wherein, in paragraph 7, it has been held as under :

"7..... Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying

the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

14. Learned counsel for the petitioner has also drawn our attention to another judgment of the Supreme Court in National Hydro Electric Power Corporation Ltd. v. Shri Bhagwan and another, (2001) 8 SCC 574.

15. The Government guidelines adverted to by two different Division Benches of this Court earlier have been reproduced by us, a little earlier. At the outset, it is apt to recall the legal principles governing the issue of enforceability of administrative instructions/executive orders/non-statutory guidelines. It is beyond any pale of doubt, that the aforementioned categories of instructions do not have any statutory backup or flavour. They are purely intended for regulating the business of the Government, to be carried out in a most effective manner. If a field is already occupied by a statutory provision or the rules made under a statute, administrative instructions or guidelines can never supplant the same. At best, such instructions or guidelines can only supplement the rule or the statutory provision. The administrative instructions or guidelines, therefore, have no enforceability. (see AIR 1982 SC 917, (2001) 3 SCALE 289, (1979) 2 SCC 491).

16. Administrative instructions or guidelines also confer no rights on any individual. (see Union of India v. K.P. Joseph, 1973 SCJ 1, (2001) 2 SLJ 258).

17. It is a settled principle of law that administrative instructions or guidelines should not be inconsistent with the statutory provisions or the rules made thereunder, which are meant for giving effect to the provisions of a statute. (see District Registrar v. M.B. Kutti, AIR 1979 SC 1060). Giving effect to the guidelines or instructions, which are inconsistent with a statutory provision or rule, would tantamount to an abuse. (see (1979) 2 SCC 491).

18. When we look at the guidelines in question, the first guideline sets out cases, in which there is reasonable ground to believe that a penal offence has been committed by a Government servant, but the evidence forthcoming is not sufficient for prosecuting in a Court of law, and the examples cited in respect thereof relate to (1) (a) possession of assets disproportionate to the known sources of income; (b) obtaining or attempt to obtain illegal gratification; (c) misappropriation of Government property, money or shares; (d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration, which is not adequate; (2) Falsification of Government records; (3) Irregularity or negligence in the discharge of official duties with a dishonest motive. When we critically examine these guidelines, which give freedom to the competent disciplinary authority to proceed further under Rule 17 (a), but not to frame charges under Rule 17 (b), we are wonder struck. Rule 17 (a) is put in place only for the purpose of imposition of minor penalties. The necessary procedure to be followed has been provided and contemplated in that regard.

19. As is normally understood, imposition of minor penalty is warranted where the attributable misconduct is on a minor scale. For certain lapses in discharge of functions by a civil servant, which may not be so serious enough to warrant imposition of major punishment, such as removal or dismissal or compulsory retirement from service or even reduction in rank (reversion) or in status etc., but only a minor penalty is required to be imposed, then the procedure under Rule 17 (a) is required to be followed. Minor penalties commence from censure/warning, which will have a limited period of shelf life, say, six months or one year and other punishments, such as, stoppage of annual grade increment (s) for a specified period, which will impact the employee concerned in monetary terms for a specified period. This gradation of punishments has been attempted by the rule making authority more for the purpose of regulating the exercise of discretion. For every minor misconduct, the gravest of the punishments is not supposed to be inflicted, in the name of exercising disciplinary control. A harsh or disproportionate punishment would produce the opposite of the desired result of disciplinary control. It will demoralise the cadre concerned. It would also put them off for rendering services efficiently and productively too. On every occasion, he would be tempted to indulge in 'safety first' norms, so that he cannot be penalised for any reason. The net result would be the slowing down of the operating machine of the entire civil services. The Governance of the State would get impaired in that process. To ensure freedom of mind amongst the civil servants, a gradation of punishments has been prescribed with an inbuilt direction to the competent disciplinary

authority to choose the most appropriate one amongst them. In choosing the punishment to be inflicted, the alleged degree of misconduct, the manner in which such misconduct is exhibited, the level/grade of the civil servant and the stage of his service life at which the punishment is sought to be inflicted are all relevant factors, which are required to be taken into consideration, while exercising the discretion.

20. The guidelines, as they appear, in our opinion, are inconsistent with the very theme behind the disciplinary control, which is vested in every appointing authority/competent disciplinary authority. In this context, it is appropriate to bear in mind that conscious effort is required certainly to protect the rights of the civil servants, who are expected to honestly and fearlessly perform their duties and functions without buckling under any pressures or succumbing to temptations, encountered by them or likely to be encountered by them, during their service tenure. That was the reason, why valuable rights/obligations have been contemplated and provided for in the form of Article 311 by our constitutional makers. While doing so, designedly, protection has been insulated as against the punishments of dismissal, removal or reduction in rank only. It does not mean that there is no protection to a civil servant available against rest of the punishments. A fair procedure, which accords with the principles of natural justice, has to be followed. The insulation contemplated and provided for by Article 311 is to create the necessary sense of security in the mind of the civil servant. Against any unjust or arbitrary disciplinary control, the remedies of getting such actions corrected is always available to the civil servants. That was the very reason why, to regulate the discretion conferred upon competent disciplinary authority for inflicting punishments on erring civil servants, a graded scale of punishment is put in place. The guidelines talk of, not subjecting a civil servant to the disciplinary control, leading to possible infliction of major punishments under Rule 17 (b), even in such cases where the civil servant is stated to be in possession of assets disproportionate to his known sources of income or obtaining or attempting to obtain illegal gratification.

21. The precious plea put forth behind the guidelines was that if the disciplinary authority were to find that the evidence was not forthcoming, which is sufficient for prosecution in a Court of law, no major penalty proceeding should be drawn under Rule 17(b) of the Rules. Who has to determine, whether there is sufficient evidence for one to be prosecuted in a Court of law ? Is it dependent upon the will, the pleasure or the lack of it on the part of the disciplinary authority ? Then, what is meant by sufficiency of evidence ? What kind of evidence, that can be considered sufficient for

prosecuting a civil servant, who is in possession of disproportionate assets to his known sources of income or for his obtaining or attempting to obtain illegal gratification ? What objective standards can be applied for determining the sufficiency of evidence in such cases ? If such grave misdemeanour exhibited by civil servants as possessing disproportionate assets is to be condoned, including cases like misappropriation of Government property, money or shares, one wonders as to for whose benefit these guidelines are intended. Surely, the guidelines are not meant to protect the wrongdoers, who are in possession of disproportionate assets to his known sources of income or persons, who made an attempt to obtain illegal gratification or did obtain illegal gratification and persons, who have misappropriated Government money, property or shares or a civil servant, who has obtained or attempted to obtain a valuable thing or pecuniary advantage without consideration or for inadequate consideration. Such conduct, by no stretch of imagination, on the part of the civil servant, is liable to be countenanced. Any such act of seeking to condone the conduct of civil servants of the above referred nature would tantamount to holding a protective umbrella over the heads of certain civil servants, who treat or take it for granted, that they are beyond the reach of law. In this process, the very principles enshrined behind the Prevention of Corruption Act, to the extent of the civil servants are concerned, can never be allowed to be diluted. Any such attempt will pollute the purity of the stream of the civil services. Civil services have been constituted not only for the sake of providing employment to adequate numbers under the Government hold, but, it is essentially meant for delivery of services, which the State is required to render to its citizens. Therefore, the stream of civil services is required to maintain its purity at all times, lest the civil servants would tend to use the opportunity of their position or placement as such, to indulge in profiteering for themselves. They would be doing so at the cost of the State as well as its citizens. A person, who has obtained or attempted to obtain illegal gratification for performing services, for which he is recruited, is simply doing violence to the very nature of his employment. The State has been providing for adequate remuneration for each civil servant in return, commensurate to their services and the economic capacity, permitting the State to do so. It fixes the scales of pay, which contain periodical incremental growth. That was meant to ensure that the civil servants get paid adequate remuneration proportionate to the nature of duties and responsibilities discharged by them. Scales of pay are also revised periodically to offset the inflation that has set in in the meantime between last revision of pay scales. They are getting paid allowances as well for undertaking any travel beyond their headquartered place. All these are put in place by the State, as a package of adequate remuneration, for rewarding the civil servants, who are

effectively, efficiently and honestly discharging their duties and responsibilities attached to their post. In spite of such reasonably attractive packages and, above all, the status of a civil servant which he enjoys all through his tenure as a civil servant if he were to indulge recklessly in dishonesty by acquiring assets disproportionate to his known sources of income or attempting to obtain illegal grantification or misappropriate the Government property or money for obtaining pecuniary advantage without consideration or for inadequate consideration, such misconduct cannot be tolerated at all. Any such attempt to deal with such men with velvet gloves would bring out clear inconsistency between the very concept of security of service, the disciplinary control and the fundamental obligation of every civil servant to maintain integrity and honesty throughout his tenure of employment. For these reasons, we are clearly of the view that the guidelines framed by the State Government for the purpose of determining whether charges, leading to imposition of major penalties, are to be framed under Rule 17 (b) or not, is an unsustainable exercise, indulged in by the State.

22. Even in cases where falsification of Government records by a civil servant is sought to be protected by these guidelines which declare that charges need not be framed under Rule 17 (b). After all, the Government records are required to be maintained properly, accurately and diligently. If the Government records were to be falsified, would it be very difficult for one to imagine the disastrous consequences that can flow, sometimes, from any such falsification. Above all, can a State suffer the ignominy of doubting the accuracy of its own record. We fail to comprehend as to what purpose the guidelines framed by the Government are intended to achieve? The third of the kind of misconducts which is aimed to be insulated by these guidelines is with regard to irregularity or the negligence in discharge of official duties with a dishonest motive. While it is time that the State is reminded that motive is absolutely irrelevant in the matter of disciplinary control, the essential test, which is to be determined is, whether the misconduct is a mere motive or is the very foundation for chargesheeting the employee. Long years ago, it has been pointed out by the Supreme Court in *State of Bihar v. Gopi Krisore Prasad* (AIR 1960 SC 689) that the motive fades itself into insignificance when the foundational facts behind the charge are laid properly. This principle has been consistently followed subsequently in *State of Bihar v. Shiva Bhikshuk Misra* (AIR 1971 SC 1011); *ONGC v. Dr.M.Iskander Ali* (AIR 1980 SC 1242) and *Nepal Singh v. State of U.P.* (AIR 1980 SC 1459). In the face of this legal regime and also in view of the fact that no guidelines are enforceable, the guidelines framed, we are of the opinion, are only trying to help the wrongdoers to escape from the net of being proceeded against, to the extent of avoiding infliction of major punishments.

23. Hence, we take this opportunity to direct the State Government to reconsider the matter and withdraw these guidelines or frame appropriate guidelines, which will not result in sufferance of the dishonest employees in its services.

24. In the instant case, as we have pointed out, the charges framed against the writ petitioner lack any teeth to bite at her, all due to the very laxity exhibited from the time the alleged misconduct is exhibited by her and, hence, we are of the opinion that the chargesheet deserves to be set aside, in view of the peculiar facts and circumstances prevailing in the case, and the same is, accordingly, set aside.

25. Writ Petition stands disposed of accordingly. No costs. Consequently, the connected W.M.P.No.31832 of 2016 is closed.

26. Registry is directed to communicate a copy of this order to the Chief Secretary to the Government of Tamil Nadu, Secretariat, Fort St.George, Chennai, to enable a review and reconsideration of the guidelines framed for exercise under Rule 17 (b) of the Rules.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

dixit

To

1.The Principal District Judge/
Disciplinary Authority,
Namakkal - 637 001.

2.The Subordinate Judge/
Enquiry Officer,
Tiruchengode - 637 211.

Copy to:

The Chief Secretary to Government of Tamilnadu,
Secretariate, Fort St.George, Chennai-9.

+1cc to M/s.Elezebeth Rani, Advocate sr.24786

W.P.No.37023 OF 2016

vgII(co)

ss(15/6/2017)