

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2017

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

Writ Petition No.43230 of 2016

and

W.M.P.No.37074 of 2016

V.Selvakumar

...Petitioner

Vs.

The District Collector
Kanchipuram District
Kanchipuram.

...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari calling for the records pertaining to the order of the respondent framing and issuing charge memo on the eve of the petitioner's retirement from service on attainment of superannuation on 30.11.2016 in R.C.No.7290/2008/PA3, dated 30.11.2016 and quash the same as is against all cannons of law.

For Petitioner : Mr.J.Nagarajan

For Respondent : Mr.R.S.Selvam
Government Advocate

ORDER

The charge memo issued against the writ petitioner in proceeding R.C.No.7290/2008/PA3 dated 30.11.2016, is under challenge in this writ petition.

2. Charges against the writ petitioner are extracted hereunder:-

"Charge No.1 While working as Accountant in Thiruporur Panchayat Union, he was caught red-handed by Inspector of Police, Vigilance and Anti-Corruption, City II Detachment, Chennai - 600 020 on 21.04.2005 while accepting the bribe amount of Rs.6000/-

from Thiru M.Jothi, S/o.Thiru.Manjini, Public Relation Officer, Medicione Biotech Private Limited, Perungudi, Chennai-96., he was arrested on 21.04.2005 at 14.30 hours., an unaccounted money of Rs.4860/- was seized from his possession on the same day., a portion of bribe amount of Rs.4000/- was also seized from his residence., he was remanded before the Hon'ble Chief Judicial Magistrate and Special Judge, Chengalpattu and he was lodged at Central Prison, Chennai., and thereby he caused embarrassment to the District Administration.

Charge No.2 As he had failed to maintain the probity of the District Administration, he had failed to maintain the integrity of the Government Servant and he had failed to maintain the devotion to duty to Government Service and thereby he had violated the rule 20 of TNCS Rules 1973."

3. On perusal of the allegations set out in the charge memos, the same relates to alleged acceptance of bribe by the writ petitioner. Thus, the nature of the charges are serious and in this regard, criminal case was registered against the writ petitioner by the Inspector of Police, Vigilance and Anti-Corruption and the learned counsel made a submission that the writ petitioner was discharged from the criminal case. However, the order of discharge was passed, considering the technical grounds pleaded before criminal Court. After discharging the writ petitioner from the criminal case, the Department had initiated disciplinary proceedings under Rule 17 (b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules, and issued charge memo on 30.11.2016.

4. The learned counsel for the writ petitioner strenuously contended that the writ petitioner was already discharged from the criminal case and therefore, the Departmental proceedings cannot be sustained. Further the learned counsel pleaded that there is a delay in framing the charges under the Tamil Nadu Civil Service (Discipline and Appeal) Rules, and thus the charges are liable to be quashed.

5. In respect of discharge from the criminal case, there was no fulfilled criminal trial in this case and even before the commencement of trial, the writ petitioner was discharged from the criminal case, registered by the Department of Vigilance and Anti-Corruption. In respect of delay in initiating Departmental disciplinary proceeding, this Court is of the view that the Department possibly have waited for the final outcome of the criminal case. However it is stated that the writ petitioner was discharged from the criminal case in the year 2009 and the charge memo was issued in the year 2016. The Hon'ble Supreme Court, time and again emphasized that the charges relating to corruption cannot

be quashed merely on the ground of delay and all the cases of corruption are to be dealt with iron hand and no leniency can be shown on corruption allegations. Thus, this Court is of the opinion that the allegations against the writ petitioner is relating to the receiving of bribe and the charges cannot be quashed on the ground of delay and therefore it is for the petitioner to submit his explanation / objections on the charge memo and prove his innocence before the departmental disciplinary proceedings.

6. Initiation of disciplinary proceedings by the disciplinary authorities in accordance with the Tamil Nadu Civil Services (Discipline and Appeal) Rules, cannot be challenged at this stage of charge memo and this Court can entertain the writ petition, challenging the charge memo, only on exceptional circumstances. The charge memo can be challenged, if the same is issued by an incompetent authority, having no jurisdiction or allegations of malafide are raised or if the charge memo is in violation of the statutory rules. Even in case of raising allegations of malafide, 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 ground, no writ can be issued against the charge memo. Further, the disciplinary proceedings initiated against the public servant is to be allowed to continue, to reach its logical conclusion. Intermittent intervention in disciplinary proceedings are certainly not preferable. Thus, this Court is of the firm view that at the stage of charge memo, the High Court cannot go into the merits and demerits of the matter and adjudicate the same in a writ petition filed under Article 226 of the Constitution of India. It is for the competent authority concerned to consider the merits and demerits of the allegations and take a final decision on the disciplinary proceedings.

7. In this view of the matter, the grounds raised in this writ petition cannot be considered on merits at this point of time. Accordingly writ petition stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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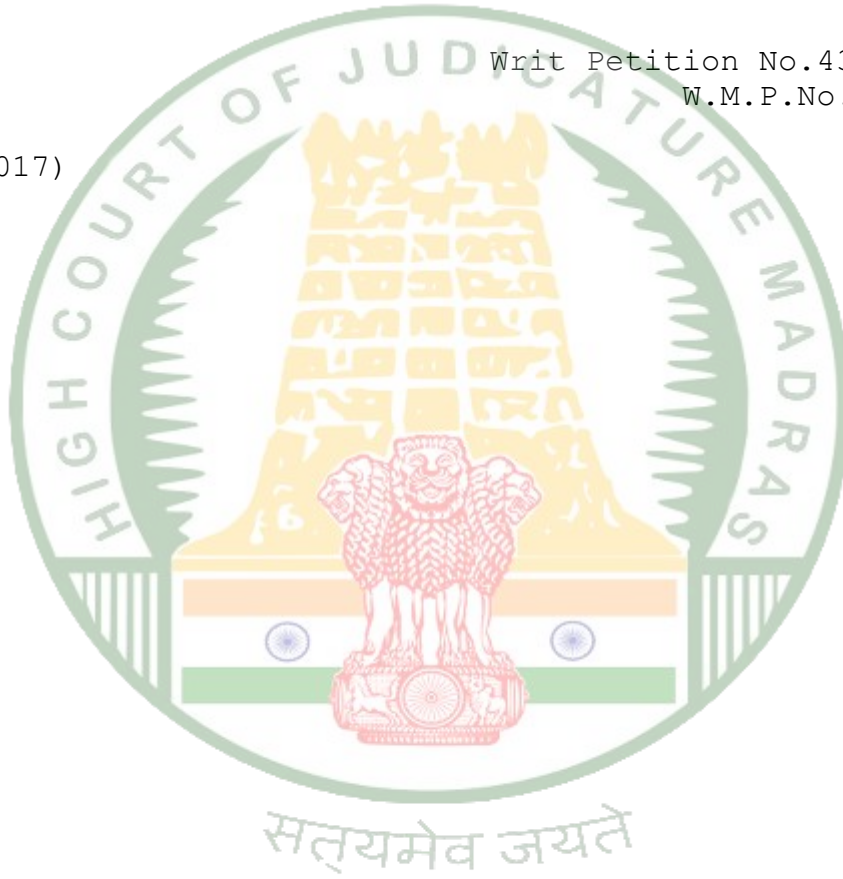
To

The District Collector
Kanchipuram District
Kanchipuram.

+1 CC to The Government Pleader Sr.No.67798

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KP(10.10.2017)



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