

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WRIT PETITION No.43245 of 2016
and
W.M.P.Nos.37097 & 37098 of 2017

Karunakar K Menon
FA & CAO (Construction-I)
Southern Railway,
Egmore, Poonamallee High Road,
Chennai.

... Petitioner

Vs.

1. Government of India,
Rep by its Secretary,
Ministry of Culture,
Room No.502 - C,
Shastri Bhavan,
New Delhi - 110 001.

2. The Director,
Kalakshetra Foundation,
Thiruvannamiyur,
Chennai - 41.

3. Chief Vigilance Officer,
Ministry of Culture, Room No.219 C.Wing
Shastri Bhavan,
New Delhi - 110 115.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records to the Memorandum of the respondent KF/Vig/2016 dated 12.09.2016, quash the same.

For Petitioner : Mr.R.Parthiban

For Respondents : M/s.S.Meenakumari
Central Government Standing Counsel
for R1
Mr.Karthik mukundan
for R2
Mr.P.Saravanan
for R3

O R D E R

The Memorandum calling for explanations from the writ petitioner in proceedings dated 12th September, 2016 by the 2nd respondent is under challenge in this writ petition.

2. The learned counsel appearing for the writ petitioner contended that he was deputed to the office of the 2nd respondent in the year, 2010 and therefore, the parent department has no jurisdiction to issue any such Memorandum to the writ petitioner. The very proposition mooted out by the learned counsel is to be rejected at the outset, in view of the fact that even when an employee is on deputation, the department borrowed can very well initiate its action and thereafter, refer the same to the parent department for passing final orders. Rebutting the contentions, the learned counsel appearing for the respondent submitted that the Rule 20, CCA(CCS) Rules, deals with provisions regarding the office lent to State Government etc., there is a decision in this regard, which is extracted hereunder:

Procedure to be followed when deputation comes to an end-Rule 20 is not applicable, for the purpose of instituting departmental proceedings, to a State Government servant whose services were borrowed by the Central Government and have since been replaced at the disposal of the State Government. The Ministry/Department of the Central Government concerned may, in such a case complete such preliminary enquiry as they may consider necessary and forward the relevant records to the State Government for instituting departmental proceedings and further necessary action.

3. Thus, it is clear that an employee who was deputed and reverted back to the parent department, the borrowed Department can conduct a preliminary enquiry initiate appropriate action and thereafter, send the file for final decision to be taken by the Parent Department. In view of these rules, the contentions raised by the learned counsel for the petitioner needs to be rejected. In view of the affidavit filed by the 2nd respondent, in paragraph 20 of the affidavit, the position regarding the memorandum is clarified which is extracted hereunder:

"20. The allegations contained in paragraph 10 are denied as false. It is reiterated that the impugned Memorandum is only in the form of a show cause notice, calling for explanation regarding the various commissions

and omissions pertaining to the Koothambalam Project and it is not a disciplinary proceeding/enquiry as contended by the Petitioner. It is not the case of the Foundation it has authority to initiate disciplinary proceedings against the Petitioner who is no longer on deputation in the Foundation and who has been repatriated to his parent department(i.e)Railways. It is the case of the Respondent that it has the power to conduct a preliminary enquiry as considered necessary by it by enquiring such persons it deems necessary and if satisfied that grounds are available for taking disciplinary action, forward the relevant records to the Railways for instituting such departmental proceedings.

4. No writ petition is to be entertained against a show cause notice except on the ground of Jurisdiction, incompetency or on mala fides. Even in case of raising the allegations of mala fides, the authority against whom, the allegation is raised is to be impleaded as a party in writ proceedings, in his personal capacity. In the absence of any of these legal grounds, no writ will lie against a show cause notice under Article 226 of the Constitution of India. The writ petition against a show cause notice shall be entertained only under exceptional circumstances and not in a routine manner.

5. All such disciplinary proceedings initiated against public servants has to be proceeded in accordance with the rules and a logical conclusion has to be arrived at. Intermittent intervention in disciplinary proceedings are not preferable.

6. The learned counsel for the respondents states that the disciplinary proceedings have not even commenced and before initiation of disciplinary proceedings, the respondents thought it fit to issue the impugned memorandum to get explanation from the writ petitioner, so as to take a decision whether any disciplinary proceedings can be initiated or not. Thus, the memorandum was issued only with an idea to provide an opportunity to the writ petitioner to explain his stand on the set of allegations stated in the memorandum.

7. Such being the legal factum of this case, the filing of the writ petition challenging the memorandum, is absolutely misconceived and no further adjudication is required in this writ petition.

8. Accordingly, the writ petition stands dismissed.

However, there is no order as to costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

kak

To

1. The Secretary,
Government of India,
Ministry of Culture,
Room No.502 - C,
Shastri Bhavan,
New Delhi - 110 001.
2. The Director,
Kalakshetra Foundation,
Thiruvannamiyur,
Chennai - 41.
3. Chief Vigilance Officer,
Ministry of Culture, Room No.219 C-Wing
Shastri Bhavan,
New Delhi - 110 115.

+1cc to Mr.S.Meena Kumari, Advocate, S.R.No.55532
+1cc to Mr.Karthick Mukundan, Advocate, S.R.No.55640
+1cc to Mr.R.Parthiban, Advocate, S.R.No.55771

सत्यमेव जयते

W.P.No.43245 of 2016

PVS (CO)
GN(03/10/2017)

WEB COPY