



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.03.2017

Delivered on : 18.04.2017

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CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) No.5250 of 2017

and

W.M.P. (MD) Nos.4206 and 4207 of 2017

A.M.Seenuvasan

...Petitioner

Vs.

The Chief Executive Officer,
Tamil Nadu Khadi Board,
Kuralagam, Chennai-600 108.

...Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned charge memo of the respondent in Na.Ka.No.1617/2016/E3(2), dated 06.03.2017 quash the same and consequently direct the respondent herein to promote the petitioner as Assistant Director of Khadi & Village Industries Board, on par with his juniors.

For Petitioner : Mr.Veera Kathiravan,
Senior Counsel for
M/s.Veera Associates.

ORDER

The above Writ Petition has been filed challenging the impugned charge memo of the respondent dated 06.03.2017 and consequential direction to the respondent herein to promote the petitioner as Assistant Director of Khadi and Village Industries Board, on par with his juniors.

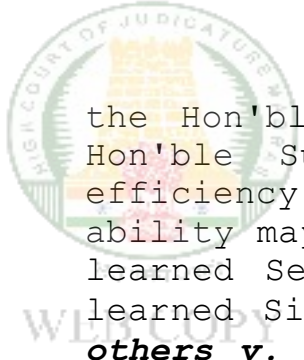
2.The case of the petitioner is that he is a holder of Diploma in Mechanical Engineering and after completion of probation, the petitioner states that his service was duly regularised.



3. It is the further case of the petitioner that there are three posts of mechanic in the respondent Board and the next promotional post is Assistant Director of Khadi and Village Industries Board. It is stated by the petitioner that his immediate seniors and juniors were promoted and the petitioner was expecting promotion as he was eligible. It is contended by the petitioner that while he was legitimately expecting promotion, to his shock and surprise, a charge memo was issued to him alleging that he had not reached the target fixed by the department. He was also subjected to penalty. However, according to the petitioner, as a obedient servant and sole bread winner of his family, he did not appeal. However, his promotion was stopped due to the disciplinary proceedings initiated in 2012 which ended in imposition of penalty. Once again, the petitioner joined in Madurai unit of respondent on 09.06.2013. The respondent board is having a Carpentry and Blacksmith unit at Nagamalai Pudukottai, where the respondent has a production unit. It is also the case of the petitioner that the technical person in charge of production and marketing is the Chargeman and due to non-availability of sub staff and skilled labours, the unit did not get regular orders and there was shortfall in the target fixed for production. Though the petitioner's responsibility is to repair the looms and chakka and other machineries and instruments, he was not responsible in the manufacturing unit. In the said circumstances, when the petitioner was expecting promotion, once again, the respondent issued proceedings under Rule 34(b) of the Khadi and Village Industries Service (Discipline and Appeal) Rules alleging that the petitioner had not reached the target fixed for the year 2016-2017 to the extent of Rs.50,00,000/-. It is the case of the petitioner that the Chargeman who is in charge of the unit for production and marketing alone is responsible and that the petitioner is simply victimised by shifting the charge. It is his further case that the insufficiency of an employee cannot be construed as misconduct.

4. Mr. Veera Kathiravan, learned Senior Counsel appearing for the petitioner brought to the notice of this Court that the Assistant Director of Khadi and Village Industries Board as early as 2005 requested the respondent to shift Madurai unit to any other District for want of orders or production. In such circumstances, the charge memo making the petitioner responsible for non-achievement of target is wholly illegal. Further, it is also argued by the learned Senior Counsel that the impugned charge memo has been issued just to avoid considering the petitioner for promotion and that therefore, the impugned charge memo is motivated and suffers from legal *mala fides*.

5. The learned Senior Counsel relied upon a judgment of the Hon'ble Supreme Court in the case of **State of U.P. and others v. Ramesh Chandra Mangalik** reported in (2002) 3 SCC 443 wherein



the Hon'ble Supreme Court has approved the earlier view of the Hon'ble Supreme Court that an act or omission or lack of efficiency or failure to attain higher standard of administrative ability may not by itself amount to or constitute misconduct. The learned Senior Counsel also relied upon another judgment of the learned Single Judge of this Court in the case of **P. Shaheen and others v. State of Tamil Nadu** reported **2014 (5) CTC 444** wherein this Court after referring to few judgments of the Hon'ble Supreme Court including the judgment reported in **(2002) 3 SCC 443** has held as follows:

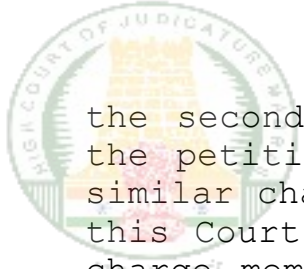
"11. The above Judgments are squarely applicable to the present facts of the case. Even if an employee is found wanting in ability or negligent, the same would not amount to "misconduct"."

In the same judgment, the paragraph 7 of the judgment refers to the charge memo issued in that case. For convenience, paragraph 7 is extracted as follows:

"7. A perusal of the charge memo clearly illustrates that the basis for framing the charges is the pass percentage. The question is whether the petitioners who were the lecturers in different subjects could be solely responsible for the poor pass percentage?. This Court is of the firm view that the petitioners alone cannot be solely responsible for the poor pass percentage as at the end of the day, it is only the students who write the examinations. Therefore, the basis of the charges are misdirected and in fact the charges are very vague. Further, as rightly contended by the Counsel for the petitioners, the objections furnished by the petitioners have been ignored and a new explanation has been quoted in the charge memo as if the same was given by the petitioners to the 6th respondent. There is nothing on record to show that such statements were made by the petitioners. Therefore, this Court is also of the view that the charges have been framed in haste and without application of mind."

6. Both the cases referred to above are distinguishable on facts. It is also pertinent to mention that the judgment of the Hon'ble Supreme Court is not a case where charge memo is challenged. It is only the outcome of the charge memo that was the subject matter of dispute. However, in the judgment reported in **2014 (5) CTC 444** the prayer in the writ petition was to quash the charge memo on the ground of being vague and without application

7. Having regard to the facts in the present case where the petitioner has been subjected to disciplinary proceedings for



the second time and the petitioner himself admitted that earlier the petitioner had suffered an order of punishment pursuant to a similar charge memo which was issued in the year 2012, *prima facie* this Court is of the view that there is no inherent defect in the charge memo. It is also admitted by the petitioner that he did not challenge the penalty imposed earlier. Hence, the contentions of the petitioner in the present petition cannot be accepted to quash the charge memo without an enquiry.

8.The legal position can be examined by considering the following judgments of the Hon'ble Supreme Court:

9.In the case of **State of Uttar Pradesh v. Shri Brahm Datt Sharma and another** reported in **AIR 1987 SC 943** it has been held as follows:

"9.The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a Government servant under a statutory provision calling upon him to show cause, ordinarily the Government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the Government servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the Government servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature. The High Court in our opinion ought not have interfered with the show cause notice."

10.In the case of **Union of India v. Kunisetty Satyanarayana** reported in **AIR 2007 SC 906**, the Hon'ble Supreme Court has held as follows:

"13.It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide *Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others* JT 1995 (8) SC 331, *Special Director and another vs. Mohd. Ghulam Ghouse and another* AIR 2004 SC 1467, *Ulagappa and others vs. Divisional Commissioner, Mysore and others* 2001(10) SCC 639, *State of U.P. vs. Brahm Datt Sharma and another* AIR 1987 SC 943 etc.

14.The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-



cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

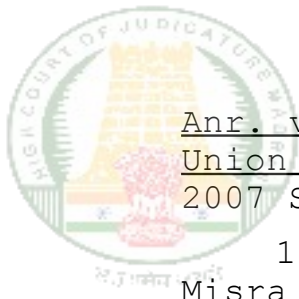
15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

Therefore, only in exceptional cases where the charge memo is found to be wholly illegal or wholly without jurisdiction, this Court can entertain a Writ Petition questioning the charge memo.

11. In the case of **Ministry of Defence v. Prabhush Chandra Mirdha** reported in **(2012) 11 SCC 565** the Hon'ble Supreme Court expressed its view in the manner extracted below:

"10. Ordinarily a writ application does not lie against a chargesheet or show cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, chargesheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a chargesheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. (Vide : State of U.P. v. Brahm Datt Sharma, AIR 1987 SC 943; Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh & Ors., (1996) 1 SCC 327; Ulagappa & Ors. v. Div. Commr., Mysore & Ors., AIR 2000 SC 3603 (2); Special Director &



Anr. v. Mohd. Ghulam Ghouse & Anr., AIR 2004 SC 1467; and Union of India & Anr. v. Kunisetty Satyanarayana, AIR 2007 SC 906).

11. In State of Orissa & Anr. v. Sangram Keshari Misra & Anr., (2010) 13 SCC 311, this Court held that normally a chargesheet is not quashed prior to the conclusion of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that correctness or truth of the charge is the function of the disciplinary authority. (See also: Union of India & Ors. v. Upendra Singh, (1994) 3 SCC 357).

12. Thus, the law on the issue can be summarised to the effect that chargesheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the chargesheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings."

12. In the case of **LIC v. A.Masilamani** reported in (2013) 6 SCC 530 the Hon'ble Supreme Court has held as follows:

"18. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limitation of judicial review. In the event that, the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable, in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question, have to be examined, taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration, all relevant facts and to balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated, only on the ground of delay in their conclusion."



13. In the case of ***State of Orissa v. Sangram Keshari Misra*** reported in (2010) 13 SCC 311 the Hon'ble Supreme Court has observed as follows:

"10. Though there appears to be some merit in the said contentions of the first respondent, it is unnecessary to examine the correctness of these contentions as normally a charge sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous. It is well settled that the correctness or truth of the charge is the function of the disciplinary authority. (vide *Union of India vs. Upendra Singh* - 1994(3) SCC page 357). Therefore we reject the contention that the charge to have been quashed without reserving to the State to proceed in accordance with law."

14. In the case of ***Union of India v. Upendra Singh*** reported in (1994) 3 SCC 357 the Hon'ble Supreme Court has held as follows:

"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, Kamal v. Gopi Nath & Sons*⁵. 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 authorized 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."

15. In the case of **Executive Engineer, B.S.H.B. v. Ramesh Kumar Singh** reported in **(1996) 1 SCC 327** the Hon'ble Supreme Court has held as follows:-

"10. We are concerned in this case, with the entertainment of the Writ Petition against a show cause notice issued by a competent statutory authority. It should be borne in mind that there is not attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext. P-4 notice is ex facie a "nullity" or totally "without jurisdiction" in the traditional sense of that expression -- that is to say even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorised. In such a case, for entertaining a Writ Petition under Article 226 of the Constitution of India against a show-cause notice, at power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and taken up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him, to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India."

16. In the case of **Secretary, Ministry of Defence v. Prabhash Chandra Mirdha** reported in **AIR 2012 12 SC 2250**, the Hon'ble Supreme Court after referring to several judgments of the Hon'ble Supreme Court earlier summarised the position as follows:

"13. Thus, the law on the issue can be summarised to the effect that charge sheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that

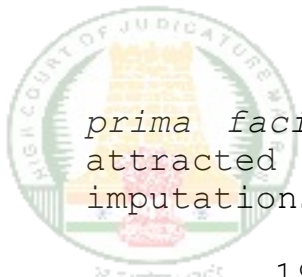


the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the chargesheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.

17. In the case of **Special Director v. Mohd. Ghulam Ghouse** reported in **AIR 2004 SC 1467** the Hon'ble Supreme Court has expressed serious concern for entertaining a Writ Petition against show cause notice and granting interim order. The relevant portion of the judgment reads as follows:

"5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court. Further, when the Court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is accorded to the writ petitioner even at the threshold by the interim protection, granted."

18. Going by the principles enunciated by the Hon'ble Supreme Court in the judgments above referred to, the position is settled that in a Writ Petition challenging charge memo issue is not whether the charge can ultimately be sustained. When there is



prima facie material to maintain the charge and the charge is attracted upon reading the allegations made in the statement of imputations there is no scope for entertaining the Writ Petition.

19. The petitioner has not alleged any *mala fide* against any officer and none has been impleaded as respondent. It would be premature for this Court to express any view on the materials on the basis of which the charge sheet has been issued.

20. As it has been reiterated by the Hon'ble Supreme Court in several binding precedents, charge memo cannot generally be a subject matter of challenge in a Writ Petition as it does not adversely affect the right of delinquent. The present case does not fall within the exceptions carved out in any of the judgments for maintaining the writ petition challenging the charge memo. It is not the case of the petitioner that the charge memo has been issued by an authority not competent to initiate disciplinary proceedings. It is also not the case here that the charge memo has been issued after a long unexplained delay creating prejudice to the petitioner. It cannot be said that the statement of allegation does not constitute the charge. Charges framed are not demonstrated to be wholly illegal. Taking into consideration the nature of charge and other circumstances, this Court is not convinced that this Writ Petition is maintainable. Hence, this Writ Petition is dismissed. However, there is no orders as to costs. Consequently, the connected W.M.P.(MD) Nos.4206 and 4207 of 2017 closed.

Sd/-

Assistant Registrar(Cs-I)

/True Copy/

Sub Assistant Registrar

To

The Chief Executive Officer,
Tamil Nadu Khadi Board,
Kuralagam, Chennai-600 108.

+1cc to M/s. Veera Associates, Sr.No.52539

srm

vb/rsk/sar3/02.05.2017/10p/3c

Delivery Order made in
W.P.(MD) No.5250 of 2017
18.04.2017