IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-09-2018

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THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.11636 of 2016
and
W.M.P.Nos.10045 and 10046 of 2016

R.Vasudevan ... Petitioner

Vs

1. The Secretary to Government,
   Revenue Department,
   Secretariat,
   chennai - 600 009.

2. The Principal Secretary/
   Commissioner for Revenue Administration,
   Chepauk,
   Chennai - 5.

3. The District Collector,
   Ooty. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, calling records relating to the 2nd respondent dated 24.03.2016 vide proceeding No.Ser.2[1]11264/2016 and to quash the same and consequently direct the respondents to permit the petitioner to retire peacefully with all attendant benefits.

For Petitioner : M/s.N.Rajan

For Respondents : M/s.A.Shrijayanthy
Spl. Government Pleader

O R D E R

The charge memo dated 24.03.2016 issued by the 2nd respondent is under challenge in this writ petition.

2. The learned counsel for the writ petitioner made a submission that, the petitioner was employed as Deputy Collector and on account of certain allegations a charge memo has been issued against the writ petitioner. The details of the charge memos are extracted here:-

"CHARGE 1: The inspection team have verified the bar tender details regarding upset price calculation for the tender period 2013-14, 2014-15 and 2015-2016, interest for delayed payment for he period 2013-14 and 2014-2015 and bar outstanding. While verifying the above subjects, the following discrepancies were found.

1) Bar upset price fixed without taking into account the growth rate of some of the shops. He has caused financial loss as detailed below:

Financial loss due to wrong fixation of Bar upset price (for some of the shops growth rate was not applied)

TENDER	TOTAL FINANCIAL LOSS IN Rs.
2013 - 14	7,47,857
2014 - 15	7,47,697
2015 - 16	72,006
TOTAL	15,67,560

CHARGE 2: As per the minutes of the review meeting conducted by the Managing Director on 24.10.2013 at the Corporate Office, Chennai-8 communicated in Rc.No.Q4/1592/2013 dated 17.12.2013, the entire current month bar demand should be collected by 5th of every month and if there is any balance pending in the current month bar demand 12% penal interest will be collected for the balance from 8th day onwards.

Interest for belated payment of bar demand for the period 2013-14 arrived at for Rs.83,453/- has not been collected. He has caused financial loss as detailed below:

No.of Shops.	Tender Period	Total interest Due in Rs.
58	Nov-13 to June-14	83,453/-

CHARGE 3: Bar demand collection for the periods 2013-14 and 2014-15 are pending has not been collected and thus

he has caused financial loss as detailed below:
Bar demand for the periods 2013-14 and 2014-15.

No.of Shops.	Tender Period	Total outstanding Rs.
15	2013-14	87,781/-
6	2014-15	84,964/-
TOTAL		1,72,745/-

Bar demand collection from the shop supervisors for the period 2007-08 are pending to be collected.

CHARGE 4: While verifying the sales or salary bills for the period form October 2014 to May 2015 with attendance it was detected that a sum of Rs.5,738/- (24564-18826) towards the wrong payment to the absentees and the persons who have indulged in over writing on leave entries made in the attendance.

CHARGE 5: The inspection team verified the payment of incentive files from April 2014 to March 2015 and found that the incentive was paid to the suspended long leave shop personnel through ECS to the tune of Rs.2,84,231/- (114 shop pesonnel) against the norms and he has caused for financial loss.

CHARGE 6: Fixed Travelling charges to the shop supervisors for the period from January 2015 to March 2015 Rs.1,89,000/- for 126 Supervisors have been sanctioned and paid based on the claims obtained from the supervisors. While scrutinizing the claims, it was found that no pass orders have been counter signed by the District Manager. No Bio-Metric attendance details have been taken into account.

"While sanctioning FFTC for the above period As per Head Office Circular No.4/201 dated 21.04.2015, FTC should be given to those who affix their finger prints in the Bio metric attendance system installed in District Manager's office for having submitted indents in DM Office as per the route chart maintained by them"

Thus he has sanctioned Fixed Travelling charges against the instructions of Head Office.

CHARGE 7: In the Nilgiris District, there are 134 Retail vending shops at present. Out of which 108 shops rent have been paid through ECS and 26 shops rent have been paid through Account payee cheque. On verification of files relating to shops rent the following discrepancies have been found,

a) Rental agreement received for only 68 shops.

b) In the Nilgiris District, shop rent is being paid for bar premises also for which 1/3 rd amount is being collected from the bar licensees. In few of the shops, the District Manager Office have collected less than the 1/3rd amount from the bar licensees resulting to a financial loss as detailed below.

2013-2014	Rs.63,534/-
2014-2015	Rs.4,06,134/-
2015-2016	Rs.25,427/-
TOTAL	Rs.1,95,095/-

CHARGE 8: TDS not deducted towards rent payment in respect of shop no.8222 and shop no.8228 for which rent exceeding Rs.15,000/- per month.

CHARGE 9: Rent revised for 5 shops for more than 15% without formation of Committee and Senior Regional Manager's approval for the period 2013-2014 resulting a financial loss of Rs.1,41,240/-

CHARGE 10: In Nilgiris District, Electricity consumption bills are being paid to shop personnel at 40% of the Bill amount for common meter and full amount for separate meter. During verification, the inspection team found that excess payment has been paid to the shop personnel towards electricity bills for the period April 2004 to April 2005 resulting a financial loss of Rs.14,404/- He has caused financial loss.

CHARGE 11: In Nilgiris District, the audit shortage and PV shortage for the period from April 2015 to August 2015 for 133 shops was verified and found that a sum of Rs.2,58,035/- was not collected towards penalty interest at 24% per annum and thus he has caused financial loss.

CHARGE 12: That he has failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming of a Government Servant and violated rule 20(1) of the Tamilnadu Government Servant Conduct Rules 1973."

3. On a perusal of the impugned charge memo, annexure-II provides the statement of allegations, namely imputations of misconduct or misbehavior in support of each charge. Annexure-III provides list of documents relied upon and therefore there

is no infirmity as such in respect of the charge memo issued to the writ petitioner. The writ petitioner instead of submitting an explanation / objections in respect of the allegations set out in the charge memo has chosen to file the present writ petition challenge in the very charge memo. This Court has already passed an order in W.P.No.17151 of 2005 and relevant paragraphs are extracted hereunder:-

> "3.Therefore, this Court is of the opinion that there is no infirmity in the charge memorandum framed against the writ petitioner. A charge memo can be challenged on a limited ground and a judicial review against the charge memo is certainly limited. A charge memo can be challenged on limited grounds and the Court can entertain a writ petition on exceptional circumstances. A charge memo can be challenged if the same was issued by an incompetent authority having no jurisdiction, an allegation of mala fides is raised if the same is in violation of statutory rules. Even in case of raising the allegation of mala fides, the authority against whom such an allegation is raised, has to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any such legal grounds, no charge memo can be entertained by way of writ petition.
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> 4.Intermittent intervention in the disciplinary proceedings is not preferable. However, only on exceptional circumstances, this Court can issue a direction against the proceedings and not in a routine manner. Mere issuance of a call letter to the writ petitioner directing him to participate in the domestic enquiry will not give any cause of action to move this writ petition under Article 226 of the Constitution of India. Thus, the writ petition is absolutely misconceived and the grounds raised in this writ petition cannot be considered.
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> 5. The Honourable Supreme Court of India in the case of Union of India and others Vs. Upendra Singh, reported in (1994) 3 SCC 357 and the paragraph 6 which is extracted hereunder:
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> "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. 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."

6.In the case of Secretary, Ministry of Defence and Others Vs. Prabhash Chandra Mirdha [Civil Appeal No.2333 of 2007, Decided on May 29, 2012], the Apex Court of India held that normally, a Charge sheet is not liable to be quashed as it does not adversely affect the rights of an employee and does not give rise to any cause of action. A writ lies only when some right of a party is infringed. The charge sheet does not infringe the right of a party. It is only when a final order imposing punishment or otherwise, it may have a cause of action. Hence, writ petition challenging charge sheet by itself is not maintainable. However, it can be quashed on the ground that issuing authority being not competent to issue the same.

7.In the case of Union of India vs. Kunishetty Satyanarayana [(2006) 12 SCC 28], it was held that writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not be ordinarily exercised by quashing a charge sheet. No doubt, in some very rare and exceptional cases, the High Court can quash a charge sheet if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal.”

4. The learned counsel for the petitioner contends that, the amount involved in the allegations had already been recovered and there is no financial loss to the State in this regard. However, all these grounds raised on merits are to be adjudicated before the Enquiry Officer to be appointed in the disciplinary proceedings. However, this Court at this stage, cannot consider the merits and demerits of the allegations set out in the impugned charge memo. Thus it is left open to the writ petitioner to submit his explanation in respect of the charges and defend his case before the enquiry proceedings to be conducted by the Competent Authorities by following the procedure and by affording opportunity to the writ petitioner.

5. In this view of the matter, this Court is of an opinion that, the writ petitioner has not made out any legally acceptable grounds for the purpose of quashing charge memo. Accordingly the writ petition is devoid of merits and stands dismissed.

6. It is needless to state that, on initiation of disciplinary proceedings, the authorities are bound to conclude the same as early as possible without causing any undue delay. The learned Special Government Pleader contended that on account of the interim stay granted by this Court, the authorities are unable to proceed with the disciplinary proceedings. However, the respondents are directed to proceed with the Enquiry proceedings, conclude the same and pass final orders without causing undue delay.

7. Accordingly the writ petition stands dismissed. No Costs. Consequently connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To
1. The Secretary to Government,
Revenue Department,
Secretariat,
chennai - 600 009.

2. The Principal Secretary/
Commissioner for Revenue Administration,
Chepauk,
Chennai - 5.

3.The District Collector,
Ooty.

+1 cc to The Government Pleader, SR.No.67429

W.P.No.11636 of 2016
and
W.M.P.Nos.10045 and 10046 of 2016

RSV(CO)
CSL/24.10.2018