

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED :11.10.2018  
CORAM  
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM  
W.P.No. 13170 of 2015

M.Sezhian

... Petitioner

-Vs-

1. The Union of India represented by its  
Secretary to Government,  
Department of Tourism,  
Government of Puducherry,  
Puducherry.

2. Puducherry Tourism Development Corporation Limited,  
represented by its Managing Director  
No.21, Saint Vincent de Paul Street,  
Colas Nagar,  
Puducherry - 605 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of the  
Constitution of India praying to issue a Writ of Certiorari,  
calling for the records on the file of the second respondent  
relating to the impugned charge memorandum dated 17.04.2005  
bearing ref: No.047/PTDC/Admn./2015/382 and quash the same.

For Petitioner : Mr.Kamala Kumar

For Respondents : Mr.J.Kumaran  
Government Advocate (Puducherry)

O R D E R

The charge memo, dated 17.04.2015 issued against the writ  
petitioner is under challenge in this writ petition.

2. The learned counsel for the writ petitioner made a  
submission that the writ petitioner was working as Manager  
(Catering) and was placed under suspension on initiation of  
disciplinary proceedings. The writ petitioner was suspended on  
22.03.2013. He submitted his explanation / objections with  
reference to the allegations set out against him. Considering  
the same, the order of suspension was revoked and he was re-  
instated in service on 21.01.2014. On 02.09.2014, an enquiry  
officer was appointed to conduct the enquiry. At this point of  
time, the impugned charge memo was issued by the respondent in  
proceedings dated 17.04.2015. The charges against the writ  
petitioner are extracted hereunder :-

"Article-I:

That the said Thiru.M.Sezhian, while functioning as Manager (Catering) in the corporate office of the Puducherry Tourism Development Corporation has not guided the Management properly in the tender called for, for the AMC for cleaning of Boats at Chunnambar and Oussudu Boat House. The tenders without EMD should have been rejected in the initial process itself and should not be taken into consideration in the comparative statement and whereas the tenders without EMD has also been taken into consideration in the Comparative Statement.

Article-II:

That the said Thiru.M.Sezhian, while functioning as Manager (Catering) in the corporate office of the Puducherry Tourism Development Corporation has considered two tenders along with the required EMD amount but without all the required documents noted in the tender schedule and thereby violated the tender conditions and thereby misguided the management.

Article-III:

That the said Thiru.M.Sezhian, while functioning as Manager (Catering) in the corporate office of the Puducherry Tourism Development Corporation has constituted a committee for the opening of the tender without any technical person from the watersports wing of this corporation.

Article-IV:

That the said Thiru.M.Sezhian, while functioning as Manager (Catering) in the corporate office of the Puducherry Tourism Development Corporation has not mentioned the value of the AMC in the tender proposal. The value of the AMC is to the tune of Rs.21.93 lakhs per annum. The codal provisions as noted in the vigilance manual for tender procedure has not been followed as the value of the AMC is to the tune of Rs.21.93 lakhs per annum.

Article-V:

That the said Thiru.M.Sezhian, while functioning as Manager (Catering) in the corporate office of the Puducherry Tourism Development Corporation has shown undue hurry in the finalization/issue of work order and the proposal has not included all the relevant documents/details which contravene the provisions contained in Rule 22 of the Puducherry Tourism Development Corporation Limited Employees (Conduct, Discipline and Appeal) Rules 2014".

5 Articles of charges are framed against the writ petitioner. Annexure 2 to the charge memo denotes the list of documents relied upon by the disciplinary authority for the

purpose of establishing the allegations. Thus, there is no infirmity as such in respect of the charge memo issued against the writ petitioner.

3. The learned counsel for the petitioner mainly on the ground that the rules cited in the impugned charge memo was not published in the Government Gazette and therefore, the said rules cannot be a source for issuing the impugned charge memo. In other words, when the rule is not notified and not in force, the very issuance of the charge memo under the said rule is void and accordingly, the impugned is liable to be scrapped.

4. The learned counsel for the respondent fairly admits the fact that the said rule has not been published. Thus, this Court is of an opinion that the said rule ought not to have been cited in the impugned charge memo. However, mere citing of a wrong provision of rules or misquoting of rules will not vitiate the entire disciplinary proceeding, so as to allow a delinquent employee to escape from the clutches of law. An employee, who have alleged to have committed a misconduct must undergo the process of enquiry and it is for him to establish his innocence or otherwise by producing the documents and by adducing evidences before the Enquiry Officer appointed by the disciplinary authority. By citing a wrong quoting of the rules, an employee cannot be allowed to escape from the enquiry proceedings. In view of the said legal principles, the very argument raised on behalf of the writ petitioner deserves no merit consideration.

5. The learned counsel for the respondent is unable to provide reasons for non publishing of the above rules in the Government Gazette. However, the respondents are bound to follow the erstwhile rules which all are in force or any other rules which is in force as of now in respect of the continuance of the disciplinary proceedings in this regard.

6. Undoubtedly, the allegations set out in the impugned charge memo are serious in nature. Thus, it is left open to the writ petitioner to submit his further explanation, if any and participate in the enquiry proceedings and establish his innocence or otherwise. Contrarily on the ground that the rules stated in the impugned order was not published in the Government Gazette, the writ petitioner shall not be allowed to escape from the clutches of the disciplinary proceedings.

7. No writ proceedings can be entertained in a charge memo in the routine manner. The judicial review against the charge memo is certainly limited. A writ proceedings against a charge memo can be entertained, if the same has been issued by an authority having no jurisdiction or competency or if an allegation of malafides are raised or if the same is in

violation of the statutory rules in force. Even in case of raising an allegation of malafides, the authorities against whom such an allegation is raised, to be impleaded as party respondent in his personal capacity in the writ proceedings. In the absence of any one of these legal ground, no writ proceedings can be entertained against the charge memo in a routine manner.

8. Intermedent interventions in disciplinary proceedings are certainly not preferable. The competent authorities on initiation of the disciplinary proceedings must be allowed to conclude the proceedings in all respects only in the event of any gross injustice or violation of the statutory provisions, a writ Court can issue appropriate directions to the competent authorities. Otherwise, the disciplinary proceedings initiated against an employee himself before must be completed in all respects and the same should reach a logical conclusion.

9. Under these circumstances, this Court is of opinion that a mere ground that the provisions of the rules applicable are not in force. The Writ petitioner cannot be allowed to escape from the disciplinary proceedings.

"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:

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".

10. In view of the legal principles settled by the Courts in the matter of entertaining a writ petition against the charge

memo, the writ petitioner has not established any acceptable ground for the purpose of grant of relief as such sought for in the present writ petition. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-  
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

pns/vsi2

To

- 1.The Union of India represented by its  
Secretary to Government,  
Department of Tourism,  
Government of Puducherry,  
Puducherry.
- 2.Puducherry Tourism Development Corporation Limited,  
represented by its Managing Director  
No.21, Saint Vincent de Paul Street,  
Colas Nagar,  
Puducherry - 605 001.

+1cc to Mr.R.Saravanan, Advocate, S.R.No.70663  
+1cc to the Government Pleader, S.R.No.70637

W.P.No. 13170 of 2015

AD(CO)

rrs 13/11/2018

सत्यमेव जयते  
WEB COPY