

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :04.10.2018
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No. 13977 of 2013
M.P.No.1 of 2013

Tmt.Vanitha ..Petitioner

vs

1. The District Collector/Inspector of Panchayats,
Nilgiris District,
Uthankamandalam.

2. The Block Development Officer,
Uthankamandalam Panchayat Union,
Nilgiris District. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for records of the first respondent in connection with the impugned charge memo passed by him bearing No.Oo3/1830/2011 dated 10.04.2013 and quash the same and grant such other further relief as this Hon'ble Court may deem fit and proper under the circumstances arising out of this case.

For Petitioner : Mr.S.Siva Kumar

For Respondents : Mr.R.S.Selvam
Government Advocate for R1
Mr.R.Rajeshwaran for R2

O R D E R

The charge memo issued against the writ petitioner in proceedings dated 10.04.2013 is under challenge in this writ petition.

2. The writ petitioner was elected as President of Kundha Village, Uthakamandalam Taluk, Nilgiris District during the year 2011. The petitioner claims that she was performing her duties and responsibilities in accordance with the provisions of the Act and as per the Government orders in force. On account of certain allegations, complaints were filed against the writ petitioner and on receipt of the complaint, the first respondent issued a show cause notice dated 05.09.2012 and on receipt of the same, the writ petitioner had submitted her explanation on 17.09.2012 stating that she discharged her duties without any dereliction and there is no irregularities in her performance. On receipt of the explanation, the first respondent issued the impugned charge memo notice to the writ petitioner dated 18.09.2012, suspending the petitioner's cheque signing power without any valid reason. It is contended that the first respondent has no jurisdiction to issue the impugned charge memo, since the petitioner had already submitted her explanation and thereafter, the first respondent had suspended the cheque signing power of the writ petitioner for a period of six months. Thus, for the very same reason, the charge memo impugned cannot be issued.

3. The grounds raised by the writ petitioner is that she had submitted her explanations to the first respondent denying the allegations and therefore, subsequent charge memo can be suspended.
4. The grounds raised in this regard deserves no consideration, in view of the fact that the show cause notice was issued to the writ petitioner and the writ petitioner had submitted explanations to the show cause notice. Not satisfying with the explanations submitted by the writ petitioner, the first respondent District Collector/ Inspector of Panchayats had framed charges against the writ petitioner under Section 205 of the Tamil Nadu Panchayats Act, 1994. Eight (8) charges are framed against the writ petitioner and the charges are relating to the financial implications and loss to the Panchayats. Thus, the allegations enumerated in the impugned charge memo are certainly serious in nature and warranting enquiry. The writ petitioner instead of submitting explanations/objections in order to defend her case, moved the present writ petition, challenging the very charge memo.
5. This Court is of an opinion that there is no infirmity as such in respect of the charge memo issued and the first respondent is the competent authority to issue the charge memo under the provisions of the Tamil Nadu Panchayat Act, 1994.
6. A charge memo can be challenged on the limited grounds and the judicial review against the charge memo is to be exercised cautiously. The writ petition against the charge memo can be entertained, if the same has been issued by an incompetent authority having no jurisdiction or an allegation of malafides are raised or if the same is in violation of the statutory rules in force. Even in case of raising allegation of malafides, the authority against whom such an allegations are 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.
7. 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.
8. 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."

9. 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.

10. 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.

11. In view of the legal principles settled in the matter of entertaining the writ petition against the charge memo, this Court is of an opinion that the writ petitioner is at liberty to submit her explanations/objections in respect of the allegations set out in the charge memo and defend her case in the manner known to law and by participating in the enquiry to be conducted by the first respondent by following the procedures contemplated under law. The first respondent is directed to conduct an enquiry at the earliest possible and conclude the proceedings without causing any undue delay.

12. Accordingly, the writ petition is devoid of merits and stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

04.10.2018

pns/sk

Internet:Yes

Index : Yes

Speaking order

To

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Nilgiris District,
Uthankamandalam.

2. The Block Development Officer,
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Nilgiris District.

S.M.SUBRAMANIAM, J.
pns

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