

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2018

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.No.42514 of 2006

and

MP.No.2 of 2006

G.Ponnammal

....Petitioner

-vs-

1. Secretary,
Health & Family Welfare Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 9.
2. Director of Medical & Rural Health Services,
Chennai - 6.
3. Joint Director of Health Services,
Tenkasi, Tirunelveli District.Respondents

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent in Ref.85524/SCII/2/2001 dated 29.12.2001, quash the same and consequently to direct the 2nd respondent to include the name of the petitioner in the appropriate place in the panel for the post of Nursing Superintendent Grade-III for the year 2006-2007 and to promote the petitioner as Nursing Superintendent Grade-III forthwith with all attendant benefits.

For Petitioner : Mr.A.Immanuel

For Respondents : Mrs.R.Janaki,
Addl. Govt.Pleader

O R D E R

The charge memo dated 29.12.2001 issued against the writ petitioner is under challenge in the present writ petition. The consequential prayer is sought for to direct the 2nd respondent to include the name of the writ petitioner in the

appropriate place in the panel for promotion to the post of Nursing Superintendent Grade-II for the year 2006 - 2007 and to promote the writ petitioner as Nursing Superintendent Grade - III.

2. The writ petitioner who was employed as a staff nurse was issued with the charge memo in proceeding dated 29.12.2001. The charges against the writ petitioner are extracted hereunder:-

"Tmt.G.Ponnammal, while working as Staff Nurse at Government Hospital, Cheranmahadevi had administered injection "OTC 2CC" in the left hand of Tmt.Gomathi, who had come to the Government hospital, Cheranmahadevi on 05.09.1994 for treatment of skin problem. Dr.Lakshmi who had treated Tmt.Gomathi had prescribed the above injection to the patient. After the administration of the above injection Tmt.Gomathi had suffered pains and had again approached Dr.Lakshmi on 06.09.1994 for further management and on examination the left hand of Tmt.Gomathi was found to be paralysed due to the wrong administration of injection by Tmt. Ponnammal, Staff Nurse on 05.09.1994."

3. Annexure 2 to the charge memo provides statement of allegations based on which charges are framed against the writ petitioner. Annexure 3 denotes the list of documents relied upon by the Authorities Competent. Annexure 4 of the charge memo enumerates the list of witnesses to be examined with reference to the charges framed against the writ petitioner. Thus, there is no infirmity as such in respect of the charge memorandum issued against the writ petitioner.

4. Undoubtedly, the allegations against the writ petitioner was serious and it states that while the writ petitioner was working as Staff Nurse at Government hospital, Cheranmahadevi, had administered injection "OTC 2CC" in the left hand of one Tmt.Gomathi, who had come to the Government hospital, Cheranmahadevi on 05.09.1994 for treatment of skin problem. Dr.Lakshmi who had treated Tmt.Gomathi had prescribed the above injection to the patient. After the administration of the above injection Tmt.Gomathi had suffered pains and had again approached Dr.Lakshmi on 06.09.1994 for further management and on examination the left hand of Tmt.Gomathi was found to be paralysed due to the wrong administration of injection by Tmt. Ponnammal, Staff Nurse on 05.09.1994 who is the petitioner in the present writ petition.

5. Thus the allegations are certainly serious warranting an enquiry by the Authorities Competent by scrutinizing the records

available and by examining the witnesses listed in the memorandum of charges. Instead of defending the case before the Competent Authority, the writ petitioner has chosen to file the writ petition to quash the very charge memo.

6. No writ proceedings against a charge memo can be entertained in a routine manner. Judicial review against the memorandum of charges are limited. A charge memo can be challenged if the same has been issued by an incompetent Authority having no jurisdiction or if an allegations malafides are raised or if the same is in violation of Statutory rules in force. Even in case of raising the malafides, the Authority against whom such an allegations is raised is to be impleaded as party respondent in his personal capacity in a writ proceedings. In the absence of any one of the legal grounds, no writ proceedings can be entertained against a charge memo.

7. Intermittent intervention in departmental disciplinary proceedings are certainly not desirable. The disciplinary proceedings initiated must reach its logical conclusion. The delinquent officials are at liberty to defend their case in the manner known to law by availing the opportunities to be provided with reference to the rules in force.

8. Thus, the High Court cannot quash the charge memo on merits and with reference to the documents relied on by the Department for the purpose of conducting an enquiry. The grounds raised by the writ petitioner with reference to the merits can never be adjudicated in the present writ petition. Thus, it is left open to the writ petitioner to submit her explanations/objections with reference to the allegations set out in the charge memo and prove her innocence or otherwise by participating in the enquiry proceedings to be conducted by the Authorities Competent.

9. With reference to the challenging of a charge memo, this Court passed an order in WP.No.17151 of 2005 dated 07.12.2017 and the relevant paragraphs are extracted hereunder:-

"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. Prabhakar 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. With reference to the consequential prayer to direct the respondents to include the name of the writ petitioner in the panel, this Court is of an undoubted opinion that, the employee who is facing the charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules is not entitled for promotion during pendency of the charge memo. Only in the event of exoneration from the allegations, the employee can file an application seeking for inclusion of his/her name in the panel in the appropriate place.

11. Thus the said prayer also deserves no consideration. At the outset, the writ petitioner has not establish any acceptable ground for the purpose of considering the relief as such sought for in the present writ petition.

12. Accordingly, the writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pkn

To

1. Secretary,
Health & Family Welfare Department,
Government of Tamil Nadu, Fort St. George, Chennai - 9.
2. Director of Medical & Rurral Health Services,
Chennai - 6.
3. Joint Director of Health Services,
Tenkasi, Tirunelveli District.

+1cc to Mr.A.Immanuel, Advocate, S.R.No.88149

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CP(CO)

CS/24/01/2019