

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.12.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27469 of 2005

and

W.P.M.P.No.29903 of 2005

and

W.V.M.P.No.389 of 2007

Thiru.K.M.Arjuna Naidu

(under suspension)

Deputy Director of Agriculture(PP)

O/o.The Joint Director of Agriculture

Vellore.

..Petitioner

vs

1.The Agricultural Production

Commissioner and Secretary to Government,
Fort St.George, Chennai - 9.

2.The Commissioner of Agriculture,

Chepauk, Chennai - 5.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Mandamus, calling for the records relating to the Charge memo issued in Letter No.2585/AA1/05-2 dated 28.07.05 issued by the Agriculture(AA1) Department, Chennai - 9, the 1st respondent herein to quash the same and direct the respondents herein to disburse all the retiral benefits to the petitioner.

For Petitioner : Mr.S.R.Sundaram

For Respondent : M/s.R.Janaki,
Additional Government Pleader

O R D E R

The charge memo issued by the 1st respondent in proceedings dated 28.07.2005 is under challenge in this writ petition.

2.The writ petitioner was holding the Post of Deputy Director of Agriculture and not allowed to retire from service on attaining the age of superannuation on 31.07.2005. The petitioner was placed under suspension and the disciplinary proceedings were initiated against the writ petitioner based on the complaint. The charges against the writ petitioner are extracted hereunder:

"Charge No.1

Thiru.K.M.Arjuna Naidu, Deputy Director of Agriculture(PP) Vellore has harrassed his daughter-in-law Mrs.Vemparala Veena and also caused much humiliation to her. He has received dowry and also harassing her for more dowry. For this criminal misconduct, he has violated Tamil Nadu Government Servants Conduct rule 4 and 20.

Charge No.2

Thiru.K.M.Arjuna Naidu, Deputy Director of Agriculture(PP) Vellore has absconded from his residence in order to escape from the clutches of law and to violate the adopting procedural law. He has absconded and avoided his arrest. Hence Thiru.K.M.Arjuna Naidu, Deputy Director of Agriculture (PP) did not oblige the law.

Charge No.3

The leave applied by Thiru.K.M.Arjuna Naidu, Deputy Director of Agriculture(PP) Vellore has been refused and he was directed to rejoin duty before 20.01.2005 vide Joint Director of Agriculture, Vellore Telegram dated: 17.01.2005 and Endt.Lr.No.A2/20127/2004 dated 17.01.2005. But he has not joined duty. Hence he has violated the orders of the higher official.

Charge No.4

Thiru.K.M.Arjuna Naidu, Deputy Director of Agriculture(PP) Vellore has not mentioned leave address in the leave application dated 19.01.2005 because of avoiding report to the medical board and further communication."

3. Annexure-II to the charge memo provides statement of allegations namely imputation of misconduct or the misbehavior in support of the charges framed against the writ petitioner. Annexure - III enumerates the list of documents relied upon by the disciplinary authority. Thus, there is no infirmity as such in respect of the charge memo framed against the writ petitioner.

4. The learned counsel for the petitioner states that the allegations against the writ petitioner is imaginary and he has not committed any such alleged harassment as stated in the memorandum of charges. This apart, the learned counsel is of an opinion that the allegation of harassment of the daughter-in-law would not fall under the purview of the Tamil Nadu Government Servants Conduct Rules. In other words, the allegations cannot be construed as a misconduct, warranting any action under the provisions of the Discipline and Appeal Rules.

5.It is further contended that the writ petitioner was not allowed to retire on 31.07.2005 and now under suspension. Thus, he has deprived of his terminal and pensionary benefits and he is suffering. The writ petitioner had already submitted his explanations on 07.08.2005, denying the allegations set out in the charge memo. However, no enquiry has been conducted on account of the fact that the petitioner has moved the present writ petition.

6.The learned Additional Government Pleader appearing on behalf of the respondents disputed the grounds raised by the petitioner by stating that the charge memo was issued based on the complaint received by the disciplinary authority and the writ petitioner has to commence the enquiry in order to prove his innocence or otherwise. Thus, the writ petition is liable to be rejected.

7.This Court is of an opinion that the very contentions raised by the writ petitioner that the allegation will not fall under the purview of the Tamil Nadu Government Servants Conduct Rules, deserves no further consideration. Rule 3-A of the Tamil Nadu Government Servants Conduct Rules, reads as follows:

"3A. (1) No Government servant shall -

(i) give or take abet the giving or taking of dowry; or

(ii) demand, directly or indirectly, from the parents or guardian of a bride or bridegroom as the case may be any dowry.

Explanation - For the purposes of this rule, dowry has the same meaning as in the Dowry Prohibition Act, 1961 (Central Act 28 of 1961).

8.The Rule unambiguously stipulates that any form of demand directly or indirectly from the parents or guardian of bride or bridegroom as the case may be. Any dowry is also to be construed as misconduct.

9.It is needless to state that the public servants have to maintain an absolute integrity and character, while performing the public duties. A public servant enjoys a special status in the society. By virtue of his status, he has to serve in the interests of public and without reference to the working hours. This being the position of the public servant in the status, certain allegations made against the writ petitioner is to be enquired into by the competent authorities. At no circumstances, a Government servant can never behind unbecoming of a Government servant in all respects.

10.Therefore, the very purpose and object of the Conduct Rules is to ensure that the public servants maintain an expected

level of character, conduct and integrity. Undoubtedly, the allegations set out in the charge memo are serious in nature. The allegation of harassing the daughter-in-law cannot be dealt lightly.

11. The learned counsel for the writ petitioner though states that the petitioner was acquitted from the criminal charges, the same will not have any avail for the purpose of dealing with the departmental disciplinary proceedings. The Hon'ble Supreme Court of India reiterated that mere acquittal in a criminal case cannot be a bar for the departmental proceedings. The standard of proof required for the purpose of conviction before the criminal Court of law is high and the preponderance of probabilities are enough to punish the Government employees under the Discipline and Appeal Rules. Thus, the proceedings under the criminal law and under the departmental proceedings are distinct and different. The disciplinary authorities are empowered to deal with the complaints independently with reference to the nature of allegations and the conduct of the Government servant concerned. This being the principles to be followed, this Court is of an opinion that the very ground raised in this regard in the present writ petition deserves no merit consideration.

12. No writ proceedings can be initiated against the charge memo in a routine manner. Judicial review against the charge memo issued by the disciplinary authority is certainly limited. No writ can be entertained against the charge memo unless the charge memo is issued by an incompetent authority having no jurisdiction or an allegation of mala fides are raised or if the charge memo is in violation of the statutory rules in force. Even in case of raising an allegation of mala fides, the authorities against whom such an allegation is to be impleaded as a party respondent in his personal capacity in the writ petition. In the absence of any one of these legal grounds, no writ petition can be entertained against the charge memo.

13. The writ petitioner has to participate in the process of enquiry and prove his innocence or otherwise by producing evidences and submitting documents, if any. Contrarily, this Court cannot quash the very charge memo on the grounds raised in the present writ petition. The writ petitioner is entitled to produce all necessary, all additional documents, including the judgments of the criminal court of law and other documents in his possession. All those documents submitted by the delinquent officials are to be considered by the disciplinary authority as well as the authority, who conducts the enquiry. However, the departmental disciplinary proceedings are independent and the competent authorities are bound to follow the procedures as contemplated under the Discipline and Appeal Rules.

14. The Hon'ble Supreme Court of India held 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."

15. In view of the fact that the present writ petition is filed, challenging the very charge memo and the allegations set out in the charge memo are serious in nature and the mere acquittal in a criminal case would not be a bar for the disciplinary authority to provide with the departmental proceedings, this Court is of an opinion that the petitioner has

to participate in the process of enquiry and establish his innocence or otherwise by producing documents and by adducing evidences and by availing the opportunities to be provided by the competent authorities with reference to the Discipline and Appeal Rules.

16. In this view of the matter, the respondents are directed to proceed with the enquiry at the earliest possible and conclude the same by providing opportunity to the writ petitioner within a period of five months from the date of receipt of a copy of this order. The writ petitioner is further directed to cooperate with the disciplinary authorities for the disposal of the enquiry proceedings and to pass orders. In the event of any non-cooperation on the part of the writ petitioner, the disciplinary authorities shall record the same in the proceedings.

17. With these observations, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Agricultural Production
Commissioner and Secretary to Government,
Fort St. George, Chennai - 9.

2. The Commissioner of Agriculture,
Chepauk, Chennai - 5.

+1cc to Mr. S. R. Sundaram, Advocate, S. R. No. 84288

W. P. No. 27469 of 2005

rrs 27/12/2018

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