

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :04.10.2018
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No. 23028 of 2013
M.P.No.1 of 2013

S.Raja ..Petitioner

vs

Puducherry Power Corporation Limited,
Rep.by its Managing Director
No.10, II Cross, Jawahar Nagar,
Boomianpet,
Puducherry - 605 005. .. Respondent

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 respondent relating to the impugned charge memorandum dated 20.10.2012 bearing Ref. No.1160/PPCL/MD/2012-13

For Petitioner : Mr.Kamala Kumar

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

O R D E R

The charge memo dated 20.10.2012 issued against the writ petitioner is under challenge in this writ petition.

2. The writ petitioner is now working as Upper Division Clerk in the respondent Corporation. On account of certain allegations, a charge memo has been issued against the writ petitioner in proceedings dated 20.10.2012. The charges against the writ petitioner are extracted here under:
Article-1:

That the said Thiru S.Raja, while functioning as Lower Division Clerk in the Corporate Office, Puducherry Power Corporation Limited, Puducherry during the period from 17.02.1999 to 31.12.2004 was directed to produce Typewriting (English) Certificate issued by the appropriate Government in support of his possessing the requisite technical qualification vide Memorandum No.1150/PPCL/MD/Estt/99-2000 dt.07.12.1999 of the Managing Director, PPCL, Puducherry. In response to that, the said Thiru S.Raja, Lower Division Clerk submitted a photocopy of a fake Typewriting (English) Certificate No.684872 dated 6th May 2000 purported to have been issued by the Directorate of Technical Education, Chennai vide his letter no.nil dated 19.10.2000. That the said act of Thiru S.Raja, LDC amounts to grave misconduct under Rule 3(1)(i) (ii) and (iii) of CCS (Conduct) Rules, 1964.

Article-2:

By providing the fake Junior Grade Typewriting (English) Certificate no.684872 dated 6th May 2000 that the said Thiru S.Raja became qualified to fulfil recruitment rules to the post of Lower Division

Clerk in the Puducherry Power Corporation Limited and was appointed to the post of Lower Division Clerk in the PPCL w.e.f 17.02.1999. That during the aforesaid period and while functioning in the aforesaid office, the said Thiru S.Raja subsequently got promoted to the post of Upper Division Clerk on 31.12.2004 and thus he is guilty of grave misconduct under Rule 3(i) and (iii) of CCS (Conduct) Rules, 1964.

Article-3:

That during the aforesaid period and while functioning in the aforesaid office, the said Thiru S.Raja, UDC, who was instructed to furnish the original Junior Gr. Typewriting (English) Certificate for verification and to ascertain the genuineness vide this office memorandum no.1417/PPCL/MD/Estt/2011-12 dt 19.11.2011, did not furnish the certification till now for verification. So, it is clear that he did not appear for Government Technical Examination for Junior Gr. Typewriting (English) Certificate during Feb 2000 and did not pass the examination and hence could not produce the certificate sought for by the PPCL, Puducherry and thus the act of Thiru S.Raja is so grossly immoral and amounts to misconduct violating Rule 3 (1) (i), (ii) and (iii) of the CCS (Conduct) Rules 1964.

3. Annexure-II to the charge memo provides Statement of Imputation of Misconduct or Misbehavior in support of the articles of charges framed against the petitioner.

4. Annexure-III provides a list of documents relied upon by the disciplinary authority for framing of the charges.

5. Annexure-IV to the charge memo denotes the list of the witnesses to be examined. Thus, there is no infirmity as such in respect of the charge memo framed against the writ petitioner. On perusal of the allegations, set out in the impugned charge memo, this Court is of an opinion that the allegations are certainly serious and warranting enquiry. The writ petitioner instead of submitting explanation/objection, has chosen to file the writ petition, challenging the very charge memo itself.

6. The learned counsel appearing on behalf of the writ petitioner raised a ground by stating that the Central Government disciplinary Rules are not applicable to the writ petitioner. The respondent is a Corporation and an Industry and the writ petitioner is a work man and therefore, the Central Government Rules are not applicable in respect of the services of the writ petitioner.

7. The said contention has been rebutted by the learned counsel appearing on behalf of the respondent with reference to the counter affidavit filed by the respondents. The respondent in their affidavit states that they have adopted the Central Government Discipline and Appeal Rules for the purpose of disciplinary proceedings and there is no separate set of rules for initiation and conclusion of the disciplinary proceedings against the employees of the Corporation. This apart, the writ petitioner is working in the cadre of Upper Division Clerk and therefore, he is not a work man within the meaning of Industrial Dispute Act. The writ petitioner is a clerical staff working in the cadre of Upper Division Clerk and therefore, the Central Government Rules adopted by the Corporation will be applicable to the writ petitioner, more specifically, in respect of initiation of disciplinary proceedings.

8. This Court is of an opinion that when the respondent Corporation adopted the Central Government Discipline and Appeal Rules, the writ petitioner cannot escape from the clutches of the disciplinary proceedings by stating that the Central Government Rules are inapplicable. Such flimsy grounds cannot be entertained for the purpose of quashing the charge memo. Once, the allegations are set out against the writ petitioner in a charge memo, the writ petitioner has to establish his innocence by availing the opportunities to be provided by the disciplinary authority at the time of conducting enquiry. On account of filing of the present writ petition, the disciplinary authority is

unable to conclude the enquiry. However it is made clear that the authorities competent are bound to proceed with the enquiry and conclude the same, without causing any undue delay.

9. 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.

10. 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.

11. 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."

12. 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.

13. 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.

14. Accordingly, writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

04.10.2018

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Internet:Yes

Index : Yes

Speaking order

S.M.SUBRAMANIAM, J.

pns

To

Puducherry Power Corporation Limited,
Rep.by its Managing Director
No.10, II Cross, Jawahar Nagar,
Boomianpet,
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