

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.10.2018

CORAM

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

W.P.No. 2363 of 2015

and

MP.No.1 of 2015

R.Venkatachalam

..Petitioner

vs

The Regional Deputy Commissioner, (Central)
Regional office, Corporation of Chennai,
Amajikarai, Chennai.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for records on the file of the Respondent relating to Charge Memo in M.A.10.Na.Ka.No.A7/2294/2009 dated 01.12.2014 on the file of the respondent here in and to quash the same as illegal.

For Petitioner : Mr.S.Arokia Maniraj

For Respondent : No appearance

O R D E R

The charge memo dated 01.12.2014 issued by the respondent is under challenge in this writ petition. The charges against the writ petitioner are in relation to the payment and acceptance of the bribe amount of Rs.1,000/- and criminal case was also registered against the writ petitioner under the Prevention of Corruption Act by the Department of Vigilance and anti corruption. Undoubtedly, the charges against the writ petitioner are serious in nature.

2. However, it is brought to the notice of this Court that the criminal case registered against the writ petitioner has ended with an order of acquittal and the prosecution filed an appeal and the appeal preferred by the State also dismissed and the order of acquittal was confirmed by the appellate Court. However, the charge memo has to be proceeded with by the disciplinary authority by following the procedures contemplated under the law.

3. This Court is of an opinion that the disposal of the criminal case or an order of acquittal will not be bar for the disciplinary authority to continue the disciplinary proceedings. To convict the person under the criminal law, high standard of proof is required. Therefore to punish the Government employee under the Discipline and Appeal Rules, moral turpitude or preponderance of probability are sufficient to impose punishments. This being the difference between the departmental disciplinary proceedings and criminal case, this Court is of an opinion that there is no bar for the disciplinary authority to continue the disciplinary proceedings based on the records available and conclude the same by taking an independent decision.

4. It is brought to the notice of this Court that in view of the pendency of the writ petition, the disciplinary proceedings are kept in abeyance. Thus, the respondents are bound to continue the disciplinary proceedings initiated in the impugned charge memo and conclude the same by conducting an enquiry and by providing opportunity to the writ petitioner to defend his case. The writ petitioner is also at liberty to submit his explanation / objection and prove his innocence by producing documents and by adducing evidence before the Enquiry Officer to be appointed by the disciplinary authority. The disciplinary proceedings can be conducted independently and by following the Discipline and Appeal Rules.

5. 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.

6. 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.

7. 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."

8. 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.

9. 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. This being the factum of the case, the respondents are directed to continue the departmental disciplinary proceedings and conclude the same without causing any undue delay and by providing reasonable opportunity to the writ petitioner.

11. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently connected miscellaneous petition is closed.
Sk

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Regional Deputy Commissioner, (Central)
Regional office, Corporation of Chennai,
Amajikarai, Chennai.

KR/25/10/18

W.P.No.2363 of 2015

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