

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:21.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.No.298 of 2018
and
CMP.No.2223 of 2018

V.Elumalai

... Appellant

-vs-

The Inspector General of Registration,
Santhome High Road,
Chennai-4.

... Respondent

Writ Appeal filed under Section 15 of Letters of Patent Appeal, against the dismissal order dated 24.08.2017 passed in W.P.No.9058 of 2015 Petition presented under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records in impugned charge memo No.13554/A7/2002 dated 7.3.2002 on the file of the respondent and quash the same.

WP.NO.9058/2015:Petition under Article 226 of the Constitution of India praying for the issue of a writ of certiorari, to call for the records in impugned charge memo.No.13554/A7/2002 dated 07/03/2002 issued by the respondent and quash the same and grant such further or other reliefs.

For Appellant : Mr.C.R.Rukmani

For Respondent : Mr.P.Rose Kamalan
Government Advocate.

JUDGMENT

[Judgment of the Court delivered by N.SATHISH KUMAR, J.]

This writ appeal challenges the order dated 24.08.2017 passed by learned single Judge in WP No.9058 of 2015, seeking quash of respondent's charge memo No.13554/A7/2002 dated 7.3.2002 on the file of the respondent.

2. The brief facts of the case is that the writ petitioner was appointed to the post of Junior Binder and thereafter promoted as Junior Assistant in the year 1980.

Further, the writ petitioner was promoted as Assistant in the year 1992 and to the post of Sub Registrar Grade-II in the year 1996. On account of the complaint given by one Smt.Rukmani stating that the writ petitioner has married another woman, viz., Smt.Sabitha and living as husband and wife, the respondent had initiated departmental disciplinary proceedings and issued a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules in memo dated 7.3.2002. The writ petitioner filed O.A.No.2697 of 2002 before the Tamil Nadu Administrative Tribunal questioning the validity of the very charge memo dated 7.3.2002. Interim stay was granted by the Tribunal on 30.4.2002 and the stay granted was extended from time to time by the Tribunal. The Tamil Nadu Administrative Tribunal was abolished and thereafter all the cases pending before the Tribunal were transferred to the High Court of Madras and renumbered as writ petitions. However, the learned counsel for the writ petitioner states that the bundle in O.A.No.2697 of 2002 was misplaced and the same was unable to be traced by the Registry of this Court. Thus, the writ petitioner was constrained to file the writ Petition No.9058 of 2015 with the same prayer to challenge the charge memo dated 7.3.2002 issued by the respondent and the same was dismissed by this Court on 24.08.2017. Challenging the same, the present writ appeal has been filed by the appellant.

3. Heard the learned counsel for the appellant and the learned Government Advocate appearing for the respondent.

4. The learned single Judge, while dismissing the writ petition has observed as follows:-

"3. This Court is of the firm opinion that a charge memo can be challenged and, writ petition can be entertained against the charge memo only on exceptional circumstances and not in a routine manner. A writ can be issued against the charge memo if the memo was issued by an authority having no jurisdiction or competency or the allegation of mala fides are raised. Even in case of raising the allegation of mala fides, the authority against whom such an allegation is raised is to be impleaded as party respondent in writ proceedings in his personal capacity. If any charge was framed contrary to the statutory rules, then also a writ can be issued. In the absence of any one of these legal grounds, no writ proceedings can be instituted challenging the charge memo on merits. On initiation of disciplinary proceedings, delinquent officer has to submit his explanation/objections on the charge memo and prove his innocence before the enquiry officer by submitting all the evidences. Instead of participating in the enquiry, the writ petitioner has moved this writ petition

challenging the charge memo and the averments set out in this writ petition are mostly relating to the merits of the case. The learned counsel for the writ petitioner states that the writ petitioner has solemnized the second marriage after getting divorce from the first wife. Such facts are to be adjudicated on merits before the enquiry officer appointed for the purpose of conducting the disciplinary proceedings. This Court under Article 226 cannot consider the merits at this stage when the enquiry proceedings are pending before the department for disposal. The disciplinary proceedings initiated against the public officials are to be allowed to be concluded and the same should reach its logical conclusion. Intermittent intervention in disciplinary proceedings are certainly not preferable. The writ petitioner has filed this writ petition questioning the charge memo only with a view to prolong and protract the proceedings. Such attitude of the petitioner is to be deprecated.

4. In this view of the matter, it is left open to the writ petitioner to submit his explanation/objections on the charge memo and participate in the enquiry proceedings and accordingly prove his innocence before the competent authorities. No further adjudication needs to be undertaken on merits in this writ petition, since the very prayer is questioning the validity of the charge memo and no other legal ground is raised in order to consider the case for issuing writ proceedings. Accordingly, the writ petition stands dismissed. Consequently, M.P.No.1 of 2015 is also dismissed. However, no order as to costs."

5. We have also gone through the writ petition as well as the order passed by the learned single Judge. We are also of the view that writ petition can be entertained against the charge memo only on exceptional circumstances. We find no exceptional circumstances in the instant case and hence there is no infirmity in the order passed by the learned Single Judge.

6. The Writ Appeal is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(Audit)

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Sub Assistant Registrar

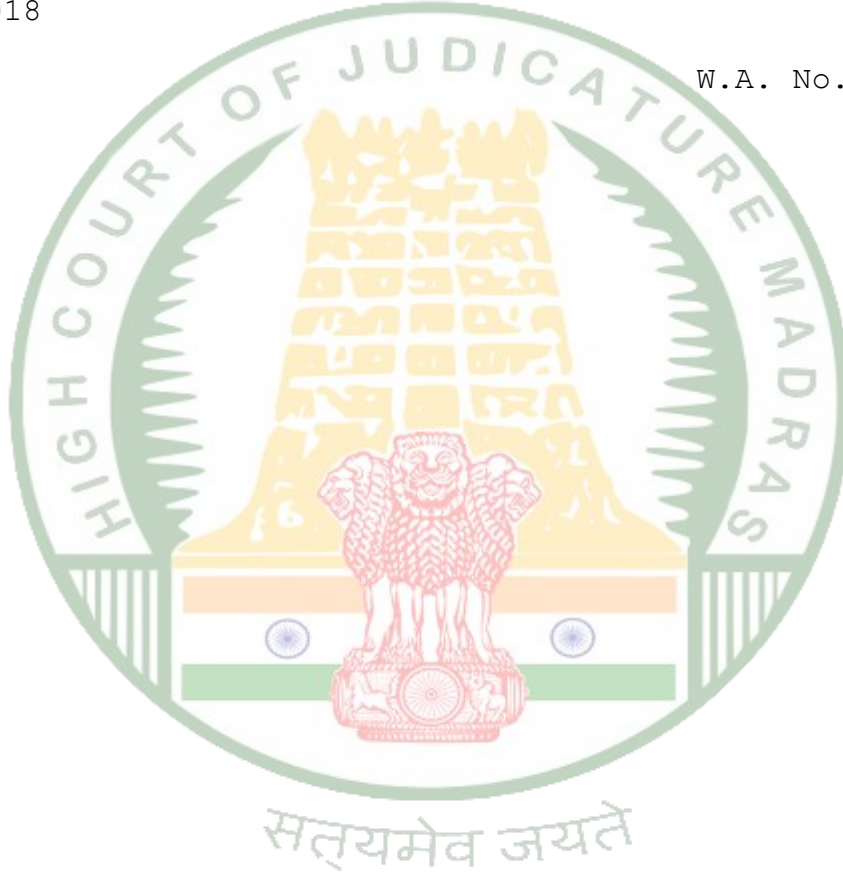
kmi

To
The Inspector General of Registration,
Santhome High Road,
Chennai-4.

+1cc to Government Pleader Sr.No.14036
+1cc to Mrs.C.R.Rukmani, Advocate Sr.No.13332

LRS (CO)
sm:19.3.2018

W.A. No.298 of 2018



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