IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :09.10.2018
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No. 6628 of 2015
M.P.Nos.1 & 2 of 2015

D.Muruganandam ..Petitioner

vs

1. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat, Fort. St.George,
Chennai 600 009.

2. The Commissioner of Municipal Administration,
Chepauk, Chennai 600 005.

3. The Commissioner,
Salem City Municipality Corporation,
Salem. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the impugned charge memo issued by the third respondent in Na.Ka.No.C6/7723/2012 dated 30.01.2015 and quash the same and consequently direct the first respondent to allow the petitioner to retire from service as on 31.01.2012 and to sanction the pension and DCRG within a reasonable period as may be fixed by this Hon'ble Court.

For Petitioner : Mr.T.Ranganathan
For Respondents : Mrs.A.Shrijayanthy
Special Government Pleader for R1 & R2
Mrs.K.Bhuvaneshwari for R3

O R D E R

The charge memo dated 30.01.2015 issued by the respondents against the writ petitioner is under challenge in this writ petition.

2. The learned counsel for the writ petitioner made a submission that the writ petitioner was holding the post of Executive Engineer in Salem City Municipality Corporation and not allowed to retire from services on account of the initiation of disciplinary proceedings. The petitioner is continuing under suspension and now the present writ petition has been filed, challenging the charge memo issued against the writ petitioner in proceedings dated 30.01.2015. The writ petitioner was placed under suspension by the order of the Government in G.O.(D) No.117 Municipal Administration and Water Supply Department dated 29.10.2012.

3. The learned counsel appearing on behalf of the writ petitioner states that the impugned charge

memo has been issued by an incompetent authorities and further after a lapse of many years from the date of alleged incident. This apart, the allegations are relating to the audit objections and the said audit objections cannot constitute a cause of action for issuing a charge memo warranting major penalty under Discipline and Appeal Rules Thus, the very initiation of disciplinary proceedings and issuance of charge memo is in violation of the Discipline and Appeal Rules itself.

4. The learned counsel for the writ petitioner mainly relied on the ground that the charge memo was issued by an incompetent authority namely the Commissioner, Salem City Municipality Corporation. In this regard, the learned counsel referred the Coimbatore City Municipality Corporation Services, Discipline and Appeal Rules, 1986 which states that The authority competent to impose the penalties specified in clauses (3), (7) to (9) of rule 3 on the members holding Class I and Class II posts shall be the Government''.

5. Relying on the said rules, it is contended that the Government is the competent authority for imposing major penalties, in respect of the cadre in which the writ petitioner was working. Thus, the issuance of the charge memo by the Commissioner, Salem City Municipal Corporation is without jurisdiction.

6. The Hon'ble Supreme Court of India reiterated principles in number of cases held that the initiation of the disciplinary proceedings including placing an employee under suspension and framing of the charge memo can be done by the subordinate officials and the superior officials to the delinquent officials. Thus, it is the settled position of law that the immediate superior can place an employees under suspension and frame the charges to conduct an enquiry and the final orders alone can be passed by the disciplinary authorities under the provisions of the Rules. The Rule states that the authority competent to impose the penalties, is the Government. Therefore, in respect of the imposition of penalty alone, the files are to be communicated for consideration and for passing final orders. The process of disciplinary proceedings shall be conducted by the superior authorities to the delinquent and there is no impediment.

7. This being the legal principles settled by the Apex Court of India, this Court is of an opinion that the writ petitioner has not established a legal ground in relation to the jurisdiction or the authority of the respondent who issued the charge memo.

8. Secondly, the learned counsel appearing on behalf of the writ petitioner raised a ground of delay. The learned counsel is of an opinion that there is a long delay of about 20 years in issuing the charge memo in respect of the allegations set out in the impugned charge memo. The charge memo dated 30.01.2015, stipulates the audit objections raised by the audit parties. The audit objections raised involved certain financial implications. Even on a perusal of the said charges, it relates to various financial years, more specifically, 2005-2006, 2006-2007, 2007-2008, 2008-2009. Therefore, the audit objections raised subsequently, after the year 2010 and constituted a reason for framing of the charges. Therefore, it is not as if there is a delay of 20 years in respect of the framing of the charges. The writ petitioner was due to retire from services in the year 2012 and on the date of the retirement, the departmental disciplinary proceedings were initiated against the writ petitioner by placing him under the suspension. In view of the fact that the audit objections relate to various financial years, this Court is able to presume that the same will take some more time for framing of the charges. The charges may be framed with specific set of allegations. Vague allegations cannot be a ground for framing of the charges.

9. Thus, it is made clear that the audit objections raised till the financial year 2009 is the ground for framing of the charges. The writ petitioner was placed under suspension in the year 2012 and the

disciplinary proceedings were initiated. Thereafter in the year 2015, the charge memo has been issued. In respect of such audit objections, scrutinization of voluminousness of files and other references are to be made before framing of the charges. Thus, the delay cannot be a ground for quashing of the entire charge memo. Thus, the writ petitioner has to submit his explanation/objections, by participating in the enquiry and prove his innocence by producing documents and by adducing evidences by availing the opportunities to be provided.

10. A charge memo can be challenged on the limited grounds and the judicial revenue 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 allegaions 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.

11. 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.

12. 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."

13. 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.

14. 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.

15. In view of the fact that the scope of entertaining the writ petition against the charge memo is limited and the point of jurisdiction raised by the writ petitioner has no legal ground and the ground of delay is already been substantiated to the satisfaction of this Court. This Court is of an opinion that the writ petitioner has to participate in the process of enquiry and prove his innocence and otherwise in the manner known to law.

16. The learned counsel for the writ petitioner made a valuable argument that the audit parties are not pointing out the objections then and there which causes greater mental agony and harassment to the officials and more specifically, such objections are placed during the fag end of their retirement. Such employees are unable to even rectify such mistakes in spite of the fact that the same can be rectified by following certain procedures. It is submitted that the delay in raising the audit objections are causing not only mental agony, it is also a harassment to the officials who are going to retire within a shot span of service. Thus, the respondents are bound to initiate actions then and there, in respect of all such audit objections. They are not supposed to keep the files pending for long so as to place an employee under suspension. The employees who served for 20 to 30 years and during the fag end of their service / retirement facing disciplinary proceedings is certainly a mental agony and the authorities are duty bound to ensure that all such objections are to be dealt within the time limit and without causing any undue delay.

17. This being principles to be followed, this Court records the manner in which the audit objections are kept pending for years together and a charge memo has been framed, after the retirement of the employees. Undoubtedly, the financial implications / loss caused to the state exchequer must be taken care of and the employees who have committed misconduct or otherwise is liable to be punished. Equally the rights of the employee to get a speedy trial is also to be ensured. Under these circumstances, the respondents must ensure that the actions are taken within a reasonable period of time and disciplinary proceedings initiated are concluded without causing any undue delay. All these principles are to be followed scrupulously. It is pertinent to note that the Government already issued guidelines to conclude the proceedings within the time stipulated. Thus, the guidelines are to be strictly followed by the subordinate officials. It is made clear that the disciplinary proceedings initiated must be concluded within a reasonable period of time and by providing opportunity to the delinquent officials concerned. In view of the fact that the writ petitioner is already due for retirement in the year 2012 and is under suspension, this Court is inclined to pass the following orders:

1. The relief as such sought for in the present writ petition stands rejected and the charge memo dated 30.11.2015, has been confirmed.

2. The respondents are directed to proceed with the enquiry and conclude the departmental disciplinary proceedings by passing the final orders within a period of four months from the date of

receipt of a copy of this order.

3. The writ petitioner is directed to cooperate for the completion of the enquiry proceedings and for passing final orders in the departmental proceedings. In the event of non-cooperation on the part of the writ petitioner, the disciplinary authority is entitled to record the same in the order and pass final orders on merits and in accordance with law.

18. With the above directions, writ petition stands disposed of. Consequently, connected miscellaneous petitions are closed.

09.10.2018
sk/pns
Internet:Yes/No
Index : Yes/No
Speaking/Non speaking order

To

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S.M.SUBRAMANIAM, J. sk

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