

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.15421 of 2018
and
W.M.P.No.18297 of 2018

M.Jothi Lakshmi ... Petitioner
vs

- 1.State of Tamil Nadu
Rep. by its Secretary to Government,
Tourism & Tamil Development and Culture Department,
Fort St. George,
Chennai - 600 009.
 - 2.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Uthamar Gandthi Salai,
(Nungambakkam High Road),
Nungambakkam,
Chennai - 600 034.
- ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari calling for the records of the impugned communications as made in Se.Mu.Na.Ka.No.48283/2017/B1, dated 28.02.2018 on the file of the second respondent and the consequential charge memo issued in Na.Ka.No.48283/2017-2/B1, dated 28.02.2018 on the file of the second respondent, quash the same.

For Petitioner : Ms.Dakshayani Reddy
For Respondents: Mr.M.Maharaja
Special Government Pleader

O R D E R

This Writ Petition has been filed challenging the proceedings in Se.Mu.Na.Ka.No.48283/2017/B1, dated 28.02.2018, on the file of the second respondent and the consequential charge memo issued vide Na.Ka.No.48283/2017-2/B1, dated 28.02.2018, on the ground that the same being without any foundational facts is illegal and as such liable to be quashed.

2. However, during the course of admission learned counsel appearing for the petitioner submits that though he has filed the writ petition challenging the proceeding on the ground stated but now seeks the quashment of the charge memo on the ground that the same has been initiated in utter disregard to Rule 9 A of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules. According to her, since co-delinquent of the petitioner who is higher in rank, cannot be proceeded with by the second respondent as he is not competent authority of the co-delinquent public servant of the petitioner, the proceeding therefore initiated by the second respondent cannot be sustained. Hence, the charge memo is liable to be quashed, moreso when he is incompetent to appoint an enquiry officer to conduct the enquiry.

3. Learned counsel appearing for the respondent submits that no doubt when more than one public servant are involved under the aforesaid Rule, the Authority competent to proceed against the delinquent higher in position can only initiate the disciplinary proceeding. But here in this case it being not in dispute that the second respondent though not the competent authority / disciplinary authority of the delinquent higher in rank, however he is higher in rank to such a delinquent and competent to proceed against him under Rule 17(a) of the aforesaid Rule. Therefore he is also competent to initiate the charge under Rule 17(b). It is only in the circumstances when he issue a charge memo in the proceeding under Rule 17 (b), he has to enquire himself but cannot delegate the same to any other enquiry officer. If he wants the matter to be enquired into by any other person, the same has to be with the order of the competent Authority / disciplinary Authority of the delinquent higher in rank. The proceeding in question having not reached the aforesaid stage as the second respondent has taken no decision on the charge memo issued in this regard the contention advanced is without any substance. It is also submitted by him that the disciplinary proceeding shall be conducted in accordance with the law.

4. Notice of this court has also been drawn by the counsel for the parties to Rule 9 (A).

"9A. In any case where more than one Government servant of the same Department are jointly involved or whose cases are interconnected, the authority competent to institute disciplinary proceedings shall be the immediate higher authority in that Department in respect of the Government servant who holds the highest post among such Government servants and the disciplinary proceedings against all of

them shall be taken together.

Where inquiry is to be conducted in terms of Rule 17(b), the said authority may either himself conduct the inquiry or get the inquiry conducted by an Inquiring Officer appointed by the authority competent to impose major penalty in respect of the Government servant who holds the highest post among such Government servants. The said authority shall remit the case, at the appropriate stage, to the authority competent to impose any of the penalties specified in Rule 8 in respect of the Government servant who holds the highest post among such Government servants in that Department for passing final orders."

5. A perusal of the statutory rules quoted supra, indicates that when more than one public servants are jointly involved in a disciplinary proceeding or the cases of such public servants are inter-connected, the authority competent to issue a charge memo / initiate a disciplinary proceeding even in respect of proceeding under Rule 17 (b) of the aforesaid Rule, is the immediate authority of such delinquents who is higher in rank / holding the higher post. However, when such immediate authority is not the competent authority of that delinquent holding the highest post, but initiate the disciplinary proceeding, he cannot entrust the charge to another for conducting the enquiry. In such a situation, he has to conduct the enquiry himself and furnish the report on completion of such enquiry to the competent authority of the public servant highest in rank facing such disciplinary enquiry. But somehow or other if he is of the opinion that the enquiry has to be conducted by another, then the same can only be by the order of the competent authority of such delinquent public servant holding the higher post. Admittedly in this case, the second respondent though not the competent authority of the public servant who is stated to be a co-delinquent of the present petitioner for the misconduct alleged but it is not disputed that he is the immediate higher authority of said delinquent public servant and as such competent to issue the charge memo in a 17 (b) proceeding and conduct the enquiry himself. He has also not taken any decision to entrust the enquiry to another in such proceeding. Therefore, the contention advanced to quash the charge memo against the petitioner on the ground stated appears to be without any substance inasmuch as no infraction of any statutory mandate has been brought to notice of this court in issuing such charge memo to the petitioner and consequential initiation of

disciplinary proceeding. Accordingly, this writ petition being devoid of merit stands dismissed. However, the dismissal of the writ petition at this stage shall not preclude the writ petitioner to challenge the proceeding, if in a subsequent stage the facts and situations gives rise to a cause of action to challenge the said proceeding. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

arr/lok
To

1. The Secretary to Government,
State of Tamil Nadu
Tourism & Tamil Development and Culture Department,
Fort St. George,
Chennai - 600 009.
 2. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Uthamar Gandthi Salai,
(Nungambakkam High Road),
Nungambakkam,
Chennai - 600 034.
- +1 CC to M/s. Dakshayani Reddy, Advocate sr 55525.
+1 CC to Govt. Pleader sr 55465.

सत्यमेव जयते

WP.No.15421 of 2018

SP(24/09/2018)

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