IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.10.2018

CORAM

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

W.P.No. 26557 of 2014
M.P.No.1 of 2014

Tmt. T.Geetha ..Petitioner

vs

1. The Additional Chief Secretary/
Commissioner of Revenue Administration,
Chepauk, Chennai - 600 005.

2. The District Collector,
Vellore District,
Vellore.

3. The Revenue Divisional Officer,
Ranipet,
Vellore District.

4. The Tahsildar,
Arcot Taluk,
Arcot,
Vellore District. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the entire records in pursuant to the proceedings of the first respondent vide Ser.5 (3)/20440/2014 dated 18.06.2014 and consequential charge memo issued to the petitioner by third respondent vide Na.Ka.A1.3411/2014 dated 28.06.2014 and quash the same.

For Petitioner : Mr.T.P.Prabakaran

For Respondents : Mrs.A.Shrijayanthy
Special Government Pleader

O R D E R

The proceedings of the first respondent dated 18.06.2014 and the consequential charge memo issued to the writ petitioner by the third respondent in proceeding dated 28.06.2014, are under challenge in this writ petition.

2. The writ petitioner was employed as Village Administrative Officer at Vazhavanoor Village, Arcot Taluk. The writ petitioner served as Village Administrative Officer and on attaining the age of superannuation, he has retired from services on 31.05.2011. The authorities based on certain allegations instituted the disciplinary proceedings by invoking the provisions of Tamil Nadu Pensions Rules, 1978. Thereafter, the charge memo was issued against the writ petitioner in proceedings dated 28.06.2014.

3. The learned counsel appearing for the petitioner states that the writ petitioner is no way connected with the allegations set out in the charge memo and the statements recorded from the Revenue Inspector namely Mr.M.Gopala Krishnan, G.Palani and also from the President, Kalavai Construction Labour Union and its members clearly reveal that the encroachment by the persons in the Gramanatham land took place during the year 2009 and the charge memo was issued on 28.06.2014 and therefore, the proceedings issued by the first respondent is in violation of the Rules, as well as contrary to the facts and circumstances.

4. This Court is of an opinion that under Rule 9 of the Tamil Nadu Pensions Rules, 1978, the authorities are competent to institute disciplinary proceedings against the retired service men within a period of four (4) years from the date of retirement. In the present case, the writ petitioner retired from services on 31.05.2011 and the disciplinary proceedings were instituted by the competent authority in proceedings dated 18.06.2014, it is within a period of four (4) years.

5. Thus, there is no infirmity in respect of the initiation of disciplinary proceedings against the writ petitioner and consequential charge memo issued against the writ petitioner is also in accordance with the Rules in force. It is left open to the writ petitioner to submit his explanations/objections on the allegations set out in the impugned charge memo by defending his case by availing an opportunities before the authorities competent and undertaking the process of enquiry.

6. 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.

7.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.

8. The Honourable Supreme Court of India in the case of Union of India and others Vs. Upendra Singh, reported in (1994) 3 SCC 357 held that the charge memo cannot be challenged and Paragraph No.6 of the Judgement 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."

9. 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.

10. 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.

11. In view of the fact that the writ petitioner has not made out any legally acceptable ground for considering the relief as such sought for in the present writ petition, the impugned orders passed by the respondents stands confirmed and accordingly, writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

pns/sk

To
1. The Additional Chief Secretary/

Commissioner of Revenue Administration,
Chepauk, Chennai - 600 005.

2. The District Collector,
Vellore District,
Vellore.

3. The Revenue Divisional Officer,
Ranipet,
Vellore District.

4. The Tahsildar,
Arcot Taluk,
Arcot,
Vellore District.

+1cc to M/s.T.P.Prabakaran, Advocate SR.No.98262

+1cc to Government Pleader SR.No.68831

W.P.No. 26557 of 2014

RK(CO)
GMY(02/11/2018)