

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.07.2018

CORAM

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

W.P.No.25553 of 2016 and WMP.No.21928 of 2016

R.Chandran

..Petitioner

vs

1.The Commissioner of Municipal Administration,
Chepauk, Chennai-600 005.

2.The Commissioner,
Salem City Municipal 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 of the second respondent relating to charge memo in ROC.No.C4/14801/2008 dated 28.08.2008, to quash the same and issue consequential directions to the first respondent to consider empanelment of the petitioner for promotion to the post of Sanitary officer and promote him as such with restrospective effect from the date of promotion of his immediate junior with consequential benefits.

For Petitioner : Mr.M.Ravi

For Respondents:Mr.D.Raghu, Government Advocate for R1

Mrs.K.Bhuvaneshwari
Government Advocate for R2

O R D E R

The charge memo dated 28.08.2008, issued to the writ petitioner by the 2nd respondent is under challenge in this writ petition.

2. The writ petitioner was initially appointed as Sanitary Inspector on 05.07.1989 and was continuing as such in Salem State Municipal Corporation. The Inspector of Police, Vigilance and Anticorruption at Salem in Letter dated 09.06.2006 informed the writ petitioner that an

enquiry was conducted against him regarding the allegation of acquisition of disproportionate assets worth about Rs.23,47,973/-. On account of an information that the writ petitioner has incurred wealth disproportionate to the known source of his income, a charge memo was issued by the 2nd respondent in proceedings dated 28.08.2008 and charge against the writ petitioner is extracted below:

ANNEXURE-I

Statement of the substances of allegations, namely imputations of misconduct or misbehaviour based on which charges are proposed to be framed against Tr.R.Chandran, Sanitary Inspector, Salem City Municipality Coporation (SCMC) Salem.

Charge I

That you Tr.R.Chandran, while serving as Sanitary Inspector, Kondalampatty Zone Salem City Municipal Corporation, Salem during the period from 01.01.1999 to 31.12.2003 being a public servant, by abusing your official position, had acquired immovable and movable assets jointly in your name and name of your family members which are disproportionate to his known sources of income to the tune of Rs.9,05,275/- and thereby you have failed to maintain absolute and devotion to duty in course of discharging your official duty.

3. Annexure-2 to the charge memo provides statement of allegations namely imputation of misconduct and misbehaviour in support of the charges.

4. Annexure-3 provides list of documents relied on by the authorities.

5. Annexure-4 provides list of witnesses to be examined for the purpose of establishing the charges set out against the writ petitioner.

6. Instead of proving the innocence before the enquiry authority, the writ petitioner has chosen to file the present writ petition, challenging the very charge memo. on perusal of the entire charge memo, this Court is of an opinion that there is no infirmity as such. Thus, the authorities competent are bound to conduct enquiry in accordance with the procedures and conclude the same as early as possible.

7. Undoubtedly, the allegations set out against the writ petitioner are serious in nature. The grievances of the writ petitioner is that though the charge memo was

issued on 28.08.2008, there is long delay in concluding the disciplinary proceedings. Therefore, he is constrained to file this writ petition to quash the charge memo.

8. This Court is of an opinion that the competent authorities, on initiation of disciplinary proceedings against a public servant should conclude the same at the earliest possible, without causing any undue delay. Long pendency of the disciplinary proceedings will cause prejudice to the service rights of the employees also. Thus, the competent authorities are bound to conclude the disciplinary proceedings as early as possible without causing any undue delay. Undoubtedly there is a delay in the present case. However there is an enquiry which is in progress by the Department of Vigilance and Anticorruption for the purpose of concluding the investigation.

9. This being the factum of the case, this Court is of an opinion that such cases of corrupt activities cannot be quashed merely on the ground of delay. The Hon'ble Supreme Court of India, time and again emphasize that corruption cases cannot be quashed merely on the ground of delay. Consequently, the competent authority shall be directed to conclude the same at the earliest possible based on the records and materials available. Such being the legal principles to be followed, the present charge memo cannot be quashed on the ground of delay alone. The writ petitioner is also liable for such a long delay, on account of various reasons that the allegations are in relation to the accumulation of wealth disproportionate to the known source of his income. Such being the nature of allegation, this Court is of an opinion that it is difficult for the authorities to conclude the proceedings in this regard. Under these circumstances, certain amount of delay is unavoidable. Hence, this Court is not inclined to quash the charge memo merely on the ground of delay.

10. Therefore, this Court is of the opinion that there is no infirmity in the charge memorandum framed against the writ petitioner. A charge memo can be challenged on a limited ground and a judicial review against the charge memo is certainly limited. A charge memo can be challenged on limited grounds and the Court can entertain a writ petition on exceptional circumstances. A charge memo can be challenged if the same was issued by an incompetent authority having no jurisdiction, an allegation of mala fides is raised if the same is in violation of statutory rules. Even in case of raising the allegation of mala fides, the authority against whom such an allegation is raised, has to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence

of any such legal grounds, no charge memo can be entertained by way of writ petition.

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. Under these circumstances, it is for the writ petitioner to submit his explanation / objections to the charge memo and participate in the Departmental disciplinary proceedings to prove his innocence. Thus, this Court is not inclined to consider the grounds raised in this writ petition for the purpose of quashing the charge memo.

16. The writ petition stands dismissed with the above observations. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

sk

To

- 1.The Secretary to Government,
Home (Courts IIA) Department,
Fort St.George,
Chennai 600 009.
- 2.The Competent Authority and
Special Commissioner,
Commissioner Land Administration,
Chepauk, Chennai-600 005.
- 3.The Collector of Chennai City
Rajaji Salai, Chennai 600 001.
- 4.The District Revenue Officer,
Chennai District,
Chennai-600 001.
- 5.The Tahsildar,
Purasawakkam-Perambur Taluk,
chennai-600 006.
- 6.The Inspector of Police,
Economic Offences Wing,
Chennai.

+1 CC TO MR.M.RAVI Advocate SR.NO. 51564

ASK(16/08/2018)

W.P.No.25553 of 2016