



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.3685 of 2011

and

M.P.(MD).No.1 of 2011

V.Karuppiah

... Petitioner

Vs.

1. The State of Tamilnadu
represented by its Agricultural Production
Commissioner and Secretary to Government,
Agriculture (AA II) Department,
Chennai -9.
2. The Commissioner of Agriculture,
Chepauk,
Chennai.
3. The Joint Director of Agriculture,
Pudukottai,
Pudukottai District.

... Respondents

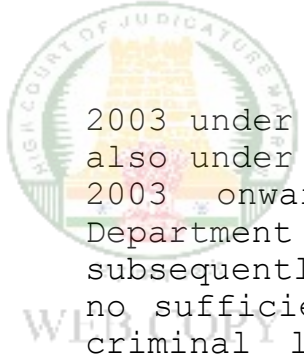
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned charge memo issued by the first respondent in his proceedings Lr.No.651/AA-2/2007-10, dated 20.12.2010 and quash the same as illegal and consequently direct the respondents to allow the petitioner to retire from service and grant all retirement benefits to him.

For Petitioner : Mr.E.Ilango
For Respondents : Mr.R.Sethuraman
Special Government Pleader

O R D E R

The charge memo issued by the first respondent in proceedings dated 20.12.2010 is under challenge in this writ petition.

2. The writ petitioner was employed as Deputy Director of Agriculture in the Agricultural Department and retired from service on 31.05.2006. On account of certain allegations, initially, a criminal case by the Department of Vigilance and Anti Corruption, Madurai was registered against the writ petitioner in Crime No.4 of



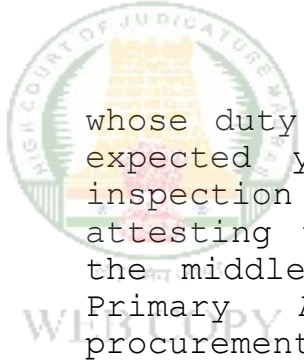
2003 under the provisions of Prevention of Corruption Act, 1988, and also under the Indian Penal Code. The criminal case was pending from 2003 onwards. After the completion of investigation by the Department of Vigilance and Anti Corruption, the case was subsequently withdrawn on 09.10.2009, on the ground that there are no sufficient evidences to prosecute the writ petitioner under the criminal law. However, the Department of Vigilance and Anti - Corruption recommended the case for departmental disciplinary action in respect of the negligence, lapse / misconduct under the Discipline and Appeal Rules. Under such circumstances, the respondents have initiated the departmental disciplinary proceedings by issuing a charge memo in proceedings dated 20.12.2010. The charge against the writ petitioner is extracted as under:

Charge

When Thiru V.Karuppaiah, worked as Assistant Director of Agriculture, Nilakottai, Dindigul District, whose duty is to visit assess the area of coconut cultivation, expected yield, etc., had issued identity cards without field inspection and without verifying the ownership of land and without attesting the photos affixed in the I.D. Cards, which facilitated the middlemen and traders to sell copra in DD.110, Veerapandi Primary Agricultural Cooperative Bank, Veerapandi, during procurement of copra between December, 2000 and June 2001 and thereby he violated Rule 20 91) of Tamil Nadu Government Servants' Conduct Rules, 1973.

3. Annexure - II to the charge memo provides statement of allegations viz., imputation of misconduct or misbehaviour. Annexure - III provides list of documents and Annexure - III provides list of witnesses.

4. The core allegation against the writ petitioner was that during the year 2000, the Government of India, with a view to give benefit to the farmers, announced the scheme of procurement of copra under Minimum Price Support Scheme, since the market price of copra and its allied products are very low at that time. The Government of India appointed NAFED as its Central Agency by an agreement. NAFED in turn entered into an agreement with TANFED to implement the scheme as its State Agency. TANFED again in turn entered into an agreement with DD.110, Veerapandi Primary Agricultural Cooperative Bank, Veerapandi, which is a registered society and has jurisdiction over the area of Veerapandi, Vayalpatti, Chitrapatti, Muthuthevanpatti, Mariammankovilpatti, Uppukottai, Manickapuram, Kadendapuram and Renganathapuram Villages in Theni District. The main object of PACB, Veerapandi is to arrange for the procurement and sale of agricultural products from its registered numbers, who reside within the area of operation of the PACB, Veerapandi. The main condition is that procurement of copra made only from the farmers, who reside within the area of operation of PACB, Veerapandi. Farmers Identity Cards must be attested by the officials of Agricultural Department. When Thiru V.Karuppaiah, worked as Assistant Director of Agriculture, Nilakottai, Dindigul District,



whose duty is to visit and assess the area of coconut cultivation, expected yield, etc., had issued identity cards without field inspection and without verifying the ownership of land and without attesting the photos affixed in the I.D. Cards, which facilitated the middlemen and traders to sell copra in DD, 110, Veerapandi Primary Agricultural Cooperative Bank, Veerapandi, during procurement of copra between December, 2000 and June 2001 and thereby he violated Rule 20(1) of Tamil Nadu Government Servants' Conduct Rules, 1973.

5. The allegations set out against the writ petitioner is that he has violated the procedures, while issuing Identity Cards to the farmers. Further, it is paved way to the middleman for unlawful gain. Such being the allegation, a full-fledged enquiry wants to cull out the truth. It is left open to the writ petitioner to submit his explanation / objection and prove his innocence. Thus, quashing of the charge memo cannot be granted in respect of the allegations set out in the charge memo which is certainly serious in nature.

6. The learned counsel for the petitioner made a submission that in respect of the same charges, this Court has quashed the charges in W.P.(MD).Nos.8924 of 2006 and 6508 of 2009, dated 17.03.2010. Therefore, the case of the writ petitioner also to be considered. Further, the learned counsel for the petitioner states that the said judgment was confirmed by the Honourable Division Bench also.

7. The learned Special Government Pleader appearing for the respondents states that the allegations set out against the writ petitioner is wide in nature and similar misconducts and lapse were committed by many officials through out the State in the matter of purchase of copra. There are allegations against the Officials of the Agricultural Department and Co-operative Department, so also the Village Administrative Officer and the Employees of some Cooperative Societies. Such being the wider nature of the misconducts and the incident, there is no reason to compare the case with the other cases and in respect of the writ petitioner, the allegations are relating to the Co-operative Society at Nilakottai, Dindigul District and therefore, there cannot be any comparison in respect of quashing of charges.

8. Admittedly, the writ petitioner is not a co-delinquent and an independent charge memo was issued to the writ petitioner. Thus, an independent enquiry has to be conducted to find out the truth behind the incident. The similar circumstances cannot be conferred in respect of the charge memo, in view of the fact that there are large scale of allegations in respect of purchase of copra by various Co-operative Societies in the State. This being the factum, the learned Special Government Pleader is of an opinion that the case of the writ petitioner is to be decided independently and the Department shall be permitted to continue the departmental disciplinary proceedings and arrive at a conclusion.



9. Considering the arguments as advanced by the learned counsel for the petitioner and the learned Special Government Pleader, this Court is of an opinion that the charges framed against the writ petitioner are certainly serious. There were large scale of irregularities, misconducts and corrupt activities in respect of the procurement of copra from the farmers through the Co-operative Societies in the State. This being the nature of the allegations, the charge memo cannot be quashed in a routine manner. If the charges are quashed, then it will create a chain of action and all the Officials, who are responsible for the lapse and allegations will make an attempt to escape from the clutches of law. The Honourable Supreme Court of India, time and again, emphasised that each case to be decided on its own merits and demerits. Comparison or similar cases can be considered only on circumstances and that cannot be the sole criteria while contesting the case, more specifically in relation to the initiation of disciplinary proceedings and the charge memo. A charge memo per se will not create a cause of action. Thus, the writ petitioner has to undergo the enquiry proceedings.

10. Therefore, this Court is of an 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 in para-6, it is stated as follows:

"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. Thus, this Court is of an opinion that there is no infirmity in respect of the initiation of the charge memo and as per the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the superior authorities are entitled to initiate disciplinary proceedings, if they receive any complaint or otherwise.

16. It is for the petitioner to submit his explanation/objection to the charge memo and participated in the departmental disciplinary proceedings and prove his innocence. Therefore, this Court is not inclined to consider the grounds raised in this writ petition and if the disciplinary proceedings have not already completed, it is for the respondents to proceed with the enquiry proceedings, conclude the same and pass final orders without any further delay. Accordingly, this writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To

1. The Agricultural Production Commissioner and Secretary to
Government, State of Tamilnadu
Agriculture (AA II) Department,
Chennai -9.

2. The Commissioner of Agriculture,
Chepauk,
Chennai.

3. The Joint Director of Agriculture,
Pudukottai,
Pudukottai District.

+1CC to M/s.Ajmal Associates, SR.No. 46661

+1CC to the Special Government Pleader SR.No.46920

W.P. (MD) No.3685 of 2011
06.02.2018

akv

AM/KKR/SAR 1/26.03.2018/6P/6C