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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 26.02.2018
CORAM:
THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**
W.P(MD)No.3803 of 2013
and
M.P.(MD) Nos.1, 2 and 3 of 2013

R.Sridhar ... Petitioner

Vs.

Bharathidasan University,
Trichy
represented by its Secretary. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records pertaining to the proceedings in R.C.No.LC/PRO/19375/2012 dated 22.02.2013 on the file of the first respondent herein, quash the same.

For Petitioner : Mr.C.Jeganathan
For Respondent : Mr.V.R.Shanmuganathan

ORDER

The charge memo dated 22.02.2013 is under challenge in this writ petition.

2.The writ petitioner was working as an Assistant Section Officer. On account of certain allegations, the charge memo was issued against the writ petitioner in proceedings dated 22.02.2013 and the charges framed against the writ petitioner are extracted hereunder:

> Statement of charges framed against Thiru.Sridhar, Assistant Section Officer (Special Grade), Department of Physical Education, Bharathidasan University, Thiruchirappalli – 620 024.
>
> **Charge – 1:**
>
> That the said Thiru.R.Sridhar, Assistant Section Officer, (Special Grade), Department of Physical Education, Bharadhidasan University, Thiruchirappalli – 620 024, has agreed to have received sum of Rs.10,00,000/- (Rupees Ten Lakhs only) from the complainant but has denied that he had not assured to offer any employment in this university to the complainant. He has also admitted that his action is against the Act Code of Conduct of the University employees. Thus, his action is considered both misuse of power as well as cheating.

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Charge – 2:

That the said Thiru.R.Sridhar, Assistant Section Officer, (Special Grade), Department of Physical Education, Bharadhidasan University, Thiruchirappalli – 620 024, has admitted his act of guilty of misuse the names of University higher officials, viz., the Vice – Chancellor and the Registrar before the complainant. Thus he is found guilty of dereliction of duty.

Charge – 3:

That the said Thiru.R.Sridhar, Assistant Section Officer, (Special Grade), Department of Physical Education, Bharadhidasan University, Thiruchirappalli – 620 024, has agreed to have received a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) from the complainant promising to offer higher rate of interest through a finance company, namely, M/s. Valampuri Finance, Tiruchirappalli, and has denied that he has not assured to offer any employment to the complainant in the University. But he has not produced any documentary evidence to this effect. Thus he is found guilty of forgery.

3.Annexure II of the charge memo provides that the statement of the allegations namely allegations namely imputation of misconduct or misbehaviour in support of the charge framed against the writ petitioner.

4.Annexure III of the charge sheet provided that the list of documents.

5.On a perusal of the entire charge memo, this Court is of an opinion that the charges are serious in nature. The allegations are that the writ petitioner has received a sum of Rs.10,00,000/- from the complainant for the purpose of securing the employment in the University. Such an allegations ought to be enquired into and a full-fledged enquiry in respect of the allegations are certainly required. The writ petitioner had already submitted his explanations on 20.01.2013. However, even before the commencement of enquiry proceedings, the writ petitioner filed the present writ petition, challenging the charge memo.

6.The learned counsel for the writ petitioner states that the complainant himself is now providing different statement and therefore, the original charge memo issued against the writ petitioner is to be quashed. This factual detailed merits and the demerits of the allegations set out in the charge memo cannot be enquired into by this Court, more specifically, under Article 226 of the Constitution of India. The charge memo cannot be entertained for adjudication of merits and demerits. A writ against the charge memo can be entertained only if the charge memo was issued without having any jurisdiction.

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7.However, this Court is of an opinion that the merits set out in the present writ petition cannot be adjudicated nor a finding can be provided in this regard. It is left open to the writ petitioner to participate in the enquiry proceedings and prove his innocence by availing opportunities provided under the rules in force.

8. No writ can be entertained challenging a charge memo in a routine manner. Judicial review in this regard is certainly limited and the constitutional Courts are to be cautious, while entertaining a writ petition against a charge memo.

9. A charge memo *per se* cannot constitute any cause of action to entertain a writ petition. A writ petition can be entertained against a charge memo, if the same is issued by the authority having no jurisdiction or competency or if any *mala fide* allegations are raised or if the same is in violation of the Statutory Rules in force. Even in case, raising allegations on *mala fides,* the authority against whom allegation is raised to be impleaded as party respondent in his personal capacity. In the absence of any one of these legal grounds, no writ petition can be entertained against a charge memo and it is left open to the writ petitioner to prove his innocence before the enquiry officer by providing evidence, documents, etc.,. Intermittent intervention in the departmental disciplinary proceedings are certainly not desirable.

10.On initiation of the disciplinary proceedings the authorities competent shall ensure that the enquiry proceedings are concluded at the earliest possible without causing any unnecessary delay. The disciplinary proceedings initiated against a public servant should be allowed to be concluded within a reasonable period of time and the same should reach its logical conclusion. The authorities competent on initiation of the disciplinary proceedings cannot keep the same pending for long years. Long pendency of the disciplinary proceedings would cause prejudice to the delinquent employees.

11.For instance, pending disciplinary proceedings is a bar for promotion, so also for retiring employee. He will be deprived of his pensionary benefits during the pendency of the disciplinary proceedings. Thus the disciplinary authority once initiated the proceedings under the Discipline and Appeal Rules, should conclude the same without any delay.

12. A direction issued by the Government for speedy disposal of the disciplinary proceedings, though is directory in nature, the authorities competent have to keep in mind that this is temporary and prescribed only to avoid further complication and to see that the said disciplinary proceedings are concluded within a reasonable time.

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13. Even writ proceedings are filed under the Article 226 of the Constitution of India by the delinquent officials, challenging a charge memo in order to prolong and protract the disciplinary proceedings. In some cases, the Courts are witnessing that repeated writ petitions are filed at each and every stage of the disciplinary proceedings with an idea to escape from the clutches of the disciplinary proceedings. Such an attitude of the delinquent officials cannot be encouraged. Entertaining such a writ petition itself to be curtailed in view of the fact that long pendency of the writ petition in High Court would not cause any undue advantage to the delinquent officials, and would pave way to escape from the clutches of disciplinary proceedings on account of the long delay.

14. 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*

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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."

15. ***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.

16. ***In the case of Union of India vs. Kunishetty Satyanarayana [(2006) 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.

17.With these observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To
The Secretary
Bharathidasan University,
Trichy.

+1cc to M/s. Veera Associates, Advocate Sr.No.51369

MM
VB/KKR/SAR1/06.04.2018/5P/3C

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