



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.02.2018

CORAM

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

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W.P.(MD) No.640 of 2013
and
M.P(MD)Nos.1,2 and 3 of 2013

M.Neelamegam

... Petitioner

-vs-

1.The Secretary to Government,
Home Department,
Fort St.George,
Chennai.

2.The Director General of Police,
Chennai-4.

3.The Superintendent of Police,
Thanjavur,
Thanjavur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the third respondent in proceedings in C.No.K4/39187/2005,dated 27.09.2011 and also the impugned charge memo passed by the third respondent in P.R.No.03 of 2013, dated 09.01.2013 and to quash the same and to direct the respondents to allow the Petitioner to retire with all monetary and other attendant benefits from the date of retirement dated 30.09.2011, with costs.

(Prayer amended as per order of this Court made in M.P(MD)No.4 of 2013, dated 11.3.2014)

For Petitioner : Mr.C.Jegannathan
for M/s.Veerakathiravan
Senior Counsel

For Respondents : Mr.R.Sethuraman
1 to 3 Sp.1 Government Pleader

O R D E R

The order not allowing the Writ Petitioner to retire from service and retention of his service and also the charge-memo issued in proceeding, dated 09.01.2013, are under challenge in this Writ Petition.



Petitioner was placed under suspension in proceeding, dated 17.10.2005 on account of the complaint made by one Smt.Revathi in respect of the allegation of payment and acceptance of bribe of Rs.1,000/- for registering a criminal complaint. Consequent to the order of suspension, the service of the Writ Petitioner was retained under 53C(1) of the Fundamental Rules. A criminal case was registered by the Vigilance and Anti-Corruption Wing in Special C.C.No.57 of 2012. The learned counsel for the Petitioner states that the criminal case ended with an order of acquittal on 4.4.2012. Therefore, the respondents ought to have allowed the Writ Petitioner to retire from service. This apart, another disciplinary proceedings before the Tribunal for Disciplinary Proceedings was also arising in T.D.P.No.22 of 2009. The charges before the Tribunal for Disciplinary Proceedings are in respect of allegation of disproportionate wealth acquired by the Writ Petitioner during the relevant period. However, in respect of the present Writ Petition, the order of suspension and the charge-memo are under challenge. The learned counsel for the Writ Petitioner states that the charge-memo was issued belatedly and therefore, the same is to be quashed. In other words, the allegation was pertaining to the year 2005 and the charge-memo was issued in the year 2013 and therefore, there is a delay of about 7 ½ years and on that ground also, the charges are to be quashed. Relying on the ground of delay, the learned counsel for the Petitioner states that even after retirement, the authorities had taken time to issue charge-memo.

3.The learned Special Government Pleader appearing on behalf of the respondents opposed the contention by stating that the Writ Petitioner was not allowed to retire from service on attaining the age of superannuation and he was placed under suspension in proceeding dated 27.09.2011. Further, a criminal case was registered in Crime No.10 of 2005 under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act. No doubt, the criminal case ended with an order of acquittal. However, mere acquittal on benefit of doubt cannot constitute a ground for the Writ Petitioner to escape from the departmental disciplinary proceedings. In other words, acquittal is not a bar for proceeding with the departmental disciplinary proceedings. Departmental Disciplinary proceedings and criminal case are different and distinct. The standard of proof required for the criminal case is high and the person can be acquitted if the offence is not proved beyond reasonable doubt. However, no such strong proof is required for the purpose of punishing an employee under the Discipline and Appeal Rules. Preponderance of probabilities are enough to punish an employee under the Discipline and Appeal Rules. This being the distinctive characters of the criminal case and disciplinary proceedings, this Court is also of an opinion that mere an order of acquittal will not exonerate a Government employee from the departmental disciplinary proceedings.

4.In respect of delay, the learned counsel for the petitioner states that there is an enormous delay on the part of the respondents in framing of the charges. However, this Court has to



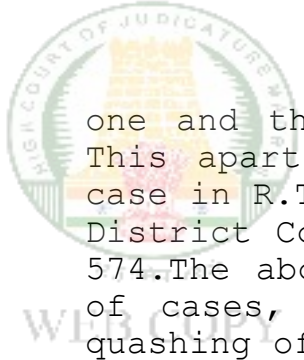
consider the facts, the nature of allegations and other circumstances arose in this case. The charges against the Writ Petitioner is extracted hereunder:

'Gross dereliction of duty, misconduct and reprehensible conduct in having demanded an illegal gratification of Rs.1000/- from one Selvamoorthy, Son of Ayyavoo, Layam Pudu Theru, Athichamangalam Post, Valangaiman Taluk, one week after 14.09.2005 for taking action against Tmt.Rajammal and four others on the complaint given by his wife Revathy on 01.0-8.2005 for assaulting her with sticks and hands on the evening of 31.7.2005 and reiterated the earlier demand on 12.10.2005 and again demanded and accepted Rs.1000/- on 14.10.2005 at about 09.10 hours at Valangaiman PS and thereby failed to maintain absolute integrity and devotion to duty and violated Rule 24 of Tamil Nadu Subordinate Police Officers Conduct Rules 1994.'

5. Annexure-II to the charge-memo provides the statement of allegations in respect of the charges framed against the Writ petitioner. Annexure-II provides list of documents relied upon by the authorities. 15 documents are listed. Annexure-IV provides list of witnesses to be examined. Five witnesses are listed out. Thus this Court is of an opinion that there is no infirmity as such in respect of the charge-memo. The charge-memo is capable of proceeding with and a full-fledged enquiry is warranted. The allegation against the Writ Petitioner are relating to the payment and acceptance of illegal gratification for the purpose of registering a complaint. The allegations of corruption cannot be dealt with leniently.

6. The Honourable Supreme Court time and again emphasised that the corruption cases cannot be quashed or an order of exoneration can be passed merely on the ground of delay. Corruption cases are to be tried by conducting a full-fledged enquiry and a logical conclusion to be arrived at. Thus, this Court is of an opinion that the allegations against the Writ Petitioner is of corruption and therefore, a full-fledged enquiry is to be conducted for the purpose of culling out the truth in respect of the allegations. Undoubtedly, the charge-memo remains only as an allegation and therefore, it is left open to the Writ Petitioner to participate in the enquiry proceedings and prove his innocence by producing documents or by adducing evidence.

7. The learned counsel for the Writ Petitioner cites a judgement rendered in the case of G.M.Tank .vs. State of Gujarat and others reported in (2006) 5 SCC 446. The case relating to the order of dismissal issued against an employee. The Apex Court held that the departmental proceedings and criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are



one and the same. Then the charge memo cannot be proceeded with. This apart, the learned counsel for the Writ Petitioner cites a case in R.Thirupathy and others .vs. The District Collector, Madurai District Collectorate, Madurai-2 and others reported in 2006(2) CTC 574. The above order passed in W.P.Nos.966 to 969 of 2005 and batch of cases, wherein, the delay was considered as a ground for quashing of the charges. This Court is of an opinion that in respect of the judgement of the Honourable Supreme Court rendered in the case of G.M.Tank .vs. State of Gujarat and others reported in (2006) 5 SCC 446, it was a case of dismissal and the Court considered the various factual aspects of that particular case and granted the relief, as that the facts in the criminal case and disciplinary proceedings are one and the same and therefore the same is quashed. However, in respect of the present Writ Petitioner, the charge-memo itself is under challenge and no enquiry is conducted. The allegations are relating to corruption. Thus, there cannot be any comparison. The subsequent Supreme Court judgement are also says that the charges cannot be quashed merely on the ground of delay or on the ground that the facts are similar. Each case has to be considered on its own facts and circumstances.

8.This being the factum, the present case is one that of corruption allegation. Therefore, this Court cannot show any leniency in respect of proceeding with the departmental disciplinary proceedings. Once the charges are issued, the authorities competent shall be allowed to conclude the same. Undoubtedly, in certain circumstances, the Honourable Supreme Court as well as the High Court quashed the charge-memo on the ground of delay. However, the said principle cannot be applied in all the corruption cases, in view of the fact that the facts and circumstances in each case are different and distinct. In the present Writ Petition, the Writ Petitioner has involved in many allegations including that one of the accumulation of disproportionate wealth. The Tribunal for Disciplinary Proceedings are proceeding with the enquiry in respect of T.D.P.No.22 of 2009. The assets and Check period between 1.1.2009 to 14.10.2005 furnished in the statement enclosed along with T.D.P.No.22 of 2009. The charge-memo shows that the Writ Petitioner had purchased number of immovable properties and the details provided in the statement are shocking to the conscious of this Court. The Writ Petitioner was employed as Head Constable, has purchased so much of immovable properties and that being so, this Court is of an opinion that no leniency in respect of the present corruption allegations can be shown against the writ Petitioner. Thus the judgements cited by the learned counsel for the Writ Petitioner cannot be applied in respect of the present facts and circumstances.

9.This Court in W.P.No.17151 of 2005, dated 7.2.2017 has dealt with case of similar nature and the relevant paragraphs are extracted hereunder:

<https://hcservices.ecourts.gov.in/hcservices/>

3. 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.

4. 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.

5. 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

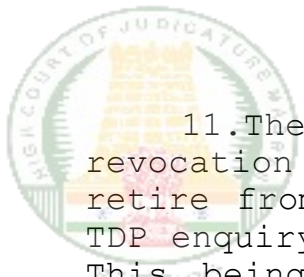
Authority, Kamal v. Gopi Nath & Sons. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p.317, para 8)

"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."

6. 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.

7. 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.

10. The learned Special Government Pleader has also produced the details in respect of the pending cases against the Writ Petitioner before the Tribunal for Disciplinary Proceedings and enquiry in T.D.P.No.22 of 2009 is still pending. The Government is taking action for passing final orders. Passing final order in P.R.No.3 of 2013 u/r 3(b) is deferred for want of order from the Government. Final order in P.R.No.61 of 2014 u/r 3(b) is deferred for want of order from the Government.



11.The learned Special Government Pleader states that the revocation of the suspension and allowing the Writ Petitioner to retire from service will be considered only on disposal of the TDP enquiry and other charges pending against the Writ Petitioner. This being the details in relation to the charge-memo pending against the Writ Petitioner, this Court is of an opinion that the department has to expedite all the charge-memos and dispose of the same as early as possible. In respect of the present charge-memo, this Court is of an opinion that already there is delay in initiation of charges. Therefore, a direction to dispose of the disciplinary proceedings is certainly necessary. The Charge-memo consists of independent documents, witnesses and other statement of imputations. This being the position, the respondents are bound to conduct the disciplinary proceedings at the earliest possible.

12.Accordingly, the respondents are directed to proceed with the enquiry proceedings, conclude the same and pass final orders in the departmental disciplinary proceedings within a period of six months from the date of receipt of a copy of this order. The Writ Petitioner is also directed to co-operate for the early disposal of the enquiry proceedings. If any non-cooperation on the part of the Writ Petitioner is found, the competent authority is at liberty to record the same in the enquiry proceedings.

13.Accordingly, the Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Home Department,
Fort St.George, Chennai.
- 2.The Director General of Police, Chennai-4.
- 3.The Superintendent of Police,
Thanjavur, Thanjavur District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Special Government Pleader, SR.No. 50590

+1cc to M/S.Veera Associates, Advocate SR.No. 50416

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and

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