

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.02.2019

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE P.RAJAMANICKAM

W.P.No.2706 of 2019 and
WMP No.2959 of 2019

T.Velmurugan
Superintendent,
District Munsif Court,
Omalur, Salem District

... Petitioner

Vs.

1. The Registrar General,
Madras High Court,
Chennai - 600 104.
2. The Principal District Judge,
Salem.
3. The District Munsif,
Omalur, Salem District.

..Respondents

Prayer: Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari calling for the records pertaining to the Impugned Charge Memo in No.2/2018 dated 20.11.2018 issued by the 3rd Respondent and quash the same.

For Petitioner : Mr.R.Neelakandan

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]
Heard the Learned Counsel for the Petitioner.

2. According to the Petitioner, while he was serving at Sub Court, Mettur, a Memo dated 03.06.2014 was served on him, alleging that he took steps to sanction and draw the benefits in the scale of pay of Rs.9,300/- -Rs.34,800/- - PB2 - Grade Pay - Rs.4,200/- to a retired staff, viz., A.Arthanari. He submitted his explanation on 11.06.2014 [while serving as Head Clerk in the District Munsif cum Judicial Magistrate Court, Omalur]

denying the allegation as untrue and also clearly explained that the 'Fixation of Pay' in the said scale was proper and there was no violation of any Rules or Government Orders. As a matter of fact, the issue was kept pending without any progression for nearly four years.

3. In fact, as per direction of the 2nd Respondent / Principal District Judge, Salem, the Sub Judge, Mettur submitted a report dated 27.04.2018 stating that the fixation in issue was a correct one and also the same was done in accordance with the Government Orders only. Indeed, the report of the Sub Judge, Mettur was ignored and rejecting the said report, the 2nd Respondent / the Principal District Judge, Salem without even properly appreciating his explanation issued proceedings dated 18.09.2018 ordering to frame the charge against him, as per Rule 17(b) of the Tamilnadu Civil Services [Discipline and Appeal] Rules.

4. The version of the Petitioner is that he preferred an 'Appeal' [as an aggrieved person] on 29.10.2018 before the 1st Respondent / Registrar General, High Court, Madras, through proper channel [District Munsif, Omalur, Salem District] which was inturn transmitted to the 2nd Respondent / Principal District Judge, Salem for onward transmission to the 1st Respondent / Appellate Authority. But the 2nd Respondent had returned the Appeal preferred by the Petitioner stating that there was no order passed against him.

5. In the interregnum, the 2nd Respondent / Principal District Judge, Salem issued a proceedings dated 26.10.2018 promoting Junior to the Petitioner and withheld his promotion wrongly stating that enquiry proceedings have been initiated against him and ordered to frame charges. Only to prevent him from securing the promotion, the aforesaid unsustainable order was passed. It transpires that the Petitioner in his Writ Petition has come out with a plea that his Appeal to the 1st Respondent / Registrar General, High Court, Madras is perfectly maintainable, as per Rule 19 of the Tamilnadu Civil Services (Discipline and Appeal) Rules, as there was an adverse order passed against him withholding his promotion and the same is covered under 8(3) of the Tamilnadu Civil Services (Discipline and Appeal) Rules. Indeed, the Petitioner resubmitted his Appeal on 29.10.2018 along with an enclosure. Also, he made further representation on 29.11.2018, without forwarding the Appeal to the concerned Appellate Authority, the 2nd Respondent / Principal District Judge, Salem had passed an order himself by deciding as if the 'Appeal' is not maintainable and returned the same. The wilful denial of forwarding his Appeal to the 1st Respondent by the 2nd Respondent's endorsement order dated 03.01.2019 is an improper, unfair and unjust one both on Facts and on Rules.

6. The Petitioner takes a stand that the 2nd Respondent / Principal District Judge, Salem for reasons best known to him had instructed the 3rd Respondent / District Munsif, Omalur to frame charges against him and further that the 3rd Respondent is an incompetent authority to frame charges against him. The charge memo dated 20.11.2018 was issued to him by the 3rd Respondent wherein it was mentioned that he had wrongly fixed the scale of pay at Rs.4,200/- (instead of Rs.2,800) to a retired Senior Baliff, viz., A. Arthanari and thereby caused Loss to the Government. The Petitioner has filed the present Writ Petition before this Court left with no other option.

7. At this juncture, the Learned Counsel for the Petitioner takes a emphatic plea that the very issuance of Impugned Charge Memo dated 20.11.2018 is contrary to Law and Facts. Further, the same is liable to be quashed, since it is an illegal one.

8. The Learned Counsel for the Petitioner projects an argument that the 3rd Respondent / District Munsif, Omalur is not the Competent Authority to issue charge memo against the Petitioner inasmuch as the 2nd Respondent / Principal District Judge, Salem is the Appointing Authority. Therefore, the Impugned Charge Memo is liable to be quashed on this score alone.

9. The Learned Counsel for the Petitioner proceeds to point out that the 2nd Respondent / Principal District Judge, Salem without properly considering the Petitioner's explanation, in which he had explained in clear terms that the 'Fixation of Pay' was made in accordance with the Orders and as per the clarification issued by the Principal Accountant General, A&E, Tamilnadu. Further, with a view to prevent the Petitioner from securing his promotion, the Impugned Proceedings has been initiated with an ulterior motive for obvious reasons.

10. The Learned Counsel for the Petitioner brings it to the notice of this Court that the Petitioner's promotion was purposely and illegally withheld when there was no Charge or Disciplinary Proceeding pending on the crucial date for promotion, i.e., 01.07.2018.

11. Lastly, it is the submission of the Learned Counsel for the Petitioner that the 2nd Respondent / Principal District Judge, Salem had rejected the report of Sub Judge, Mettur and instructed the Judicial Officer to issue Charge Memo.

12. It is to be noted that the 2nd Respondent / Principal District Judge, Salem in R.O.C.No.5585/2018/Inq. dated 18.09.2018 had interalia observed as under:

'Further the Government Letter No.41262/Cts-V/2014-4, dated 30.09.2015 clarified that the Selection

Grade / Special Grade Scales of Pay is more than the first level and second level of promotion post then in such cases it should be restricted to the level of first and second level promotion in their Selection Grade / Special Grade Scales of Pay. Thus the individual Thiru.T.Velumurugan ignoring the restrictions mentioned above wrongly refixed the pay of Thiru.Arthanari. The contention of Thiru.Velmurugan since pay fixed by him is Ordered by the Accountant General, the same is final. This contention is not acceptable because the appointing authority is final authority in re-fixing the pay; so he cannot take shelter under Accountant General's Letter.

The Subordinate Judge, Mettur observed in her report, the first level of promotion post of Senior Bailiff to be deemed as Assistant and second level of promotion post as Head Clerk. This is not acceptable because it is very categorically stated in Government Letter No.84482/cts.-V/2004-14, dated 07.01.2009 that the Senior Bailiff Post is feeder category, the first level of Promotion is Junior Assistant and Second Level of Promotion is Assistant, so contrary to that it cannot be presumed the first level of promotion of Senior Bailiff is Assistant. The Learned Subordinate Judge, Mettur without adverting the matter in depth and without discussing the existing G.O.'s and letters submitted her report dated 27.04.2018, the same is unsustainable.'

and ultimately, came to the conclusion that the reply furnished by the Petitioner was not satisfactory and in consequence, ordered to frame charges for wrong Fixation of pay under Rule 17 (b) of Tamilnadu Civil Services [Discipline and Appeal] Rules, 1955.

13. The 2nd Respondent / Principal District Judge, Salem in Official Memorandum in D.No.63/2018/Gr.I.Enq. dated 04.01.2019 had sent a copy of the rejected order of the Appeal Petition of the Petitioner / Superintendent District Munsif Court, Omalur to the individual under intimation to this Court. As a matter of fact, on 03.01.2019, the 2nd Respondent / Principal District Judge, Salem had rejected the request of the Petitioner on the ground that no adverse order was passed or punishment imposed in the supra order dated 18.09.2018 and hence observed that preferring an Appeal under the Tamilnadu Civil Services (Discipline and Appeal) Rules, does not arise at all.

14. At the outset, it is to be pointed out that the Tamilnadu Rules do not specify who is to frame and to issue the Charge Sheet to the Deviant / Delinquent person except to refer to the Concerned Authority for the purpose, as opined by this Court.

15. Further, Rule 19 of the Tamilnadu Civil Services [Discipline and Appeal] Rules, 1955 reads as under:

'19. Every Government servant including a person who has ceased to be in Government service shall be entitled to appeal as hereinafter provided, from an order passed by an Authority:

(a) imposing upon him any of the penalties specified in Rule 8 or 9;

(b) discharging him in accordance with the terms of his contract, if he has been engaged on a contract for a fixed or for an indefinite period and has rendered under either form of contract continuous service for a period exceeding five years at the time when his services are terminated; and

(c) reducing or withholding the maximum pension, including an additional pension, admissible to him under the Rules governing pensions.

16. The ingredients of Rule 27 of the Tamilnadu Civil Services [Discipline and Appeal] Rules enjoin as follows:

'27. An appeal may be withheld by an Authority not lower than the Authority from whose order it is preferred, if -

(1) it is an appeal in a case in which under these Rules no appeal lies, or

(2) it does not comply with the provisions of Rule 26, or

(3) it is not preferred within two months after the date on which the appellant was informed of the order appealed against, and no reasonable cause is shown for the delay, or

(4) it is a repetition of a previous appeal and is made to the same Appellate Authority by which such appeal has been decided and no new facts or circumstances are adduced which afford ground for a reconsideration of the case, or

(5) it is addressed to an Authority to which no appeal lies under these Rules:

Provided that in every case in which an appeal is withheld, the appellant shall be informed of the fact and the reasons for it:

Provided further than an appeal withheld on account only of failure to comply with the provisions of Rule 26 may be resubmitted at any time within one month of the date on which the appellant has been informed of the withholding of the appeal, and, if resubmitted in a form which complies with those provisions, shall not be withheld.'

17. As a matter of fact, an individual ought to know as to why he is issued with a Charge Memo relating to his act of omission / commission / deviant conduct etc. There is no set form for issuing a 'Charge Memo', but the Appropriate / Competent Authority is to draw the same by following the enunciated well settled legal principles coupled with the facts of a given case. No wonder, without any mist, cloud or shroud or without any ambiguity the charge / charges is / are should be drawn.

18. At this stage, this Court aptly points out the decision of Hon'ble Supreme Court in Union of India V. Upendra Singh 1994 1 LLJ 808 wherein it is observed that Interference by Writ can be made only, if no misconduct or other alleged irregularity can be said to have been made out or the charges are made contrary to Law.

19. In the instant case, it is not in dispute that the Petitioner was issued with the Memorandum No.2/2018 dated 20.11.2018 by the 3rd Respondent / District Munsif, Omalur, Salem, whereby and whereunder a charge memo was issued imputing certain allegations against the Petitioner. For the said charge memo dated 20.11.2018, it is for the Petitioner to submit a reply by raising all factual and legal pleas (including the competency of Authority to frame charges) and there is no fetter in Law for him to take all available defences at his command, of course, in the manner known to Law and in accordance with Law. If such factual and legal pleas are taken / raised by the Petitioner before the 3rd Respondent, then, it is for the Concerned Authority to look into the same with all seriousness and earnestness and to arrive at a decision by exercising his sound thinking judicial discretion strictly in accordance with Law, Rules and Regulations that are in force. The Petitioner is not prevented by any one to furnish his reply to Impugned charge memo dated 20.11.2018. If the Petitioner requires any further time to submit his explanation before the 3rd Respondent, then, he is at liberty to make such a request and if such a request is made by the Petitioner, then, 3rd Respondent shall consider the same in a humane and sympathetic manner. Furthermore, if any time limit is granted by the 3rd Respondent for the Petitioner to submit his explanation, then, within the said time limit, it is for the Petitioner to submit his explanation for the Impugned Charge Memo and to seek further remedy in accordance with Law. Without furnishing reply to the Impugned Charge memo, the Petitioner has approached this Court, which in the considered opinion of this Court is not permissible in the eye of Law. In short, without exhausting his remedy of submitting his Reply before the 3rd Respondent, the Petitioner filing the present Writ Petition seeking to quash the charge memo is a Premature and

OTIOSE one. Viewed in that perspective, the Writ Petition fails.

In fine, the Writ Petition is dismissed leaving the parties to bear their own costs. The Petitioner is directed to submit his Reply to the charge memo dated 20.11.2018 within two weeks from the date of receipt of copy of this Order. If the Petitioner submits his reply / written representation to the Impugned Charge Memo dated 20.11.2018, then, the 3rd Respondent / the District Munsif, Salem District shall pass necessary orders by advertng to the factual and legal pleas raised by the Petitioner and is to pass a reasoned speaking order in a qualitative and quantitative terms within a period of four weeks thereafter. The Petitioner is directed to offer his unstinted co-operation and assistance to the 3rd Respondent in passing the orders within the time adumbrated by this Court. If any adverse orders is passed by the 3rd Respondent, then, it is always open to the Petitioner to assail the same, of course, before the appropriate forum as per Law. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Registrar General,
Madras High Court,
Chennai - 600 104
2. The Principal District Judge,
Salem.
3. The District Munsif,
Omalur, Salem District

+1cc to Mr.R.Neelakandan, Advocate, S.R.No.9910

W.P.No.2706 of 2019 and
WMP No.2959 of 2019

KJI (CO)
GSP(25/02/2019)