

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.18590 of 2013 & 33083 of 2016
and
MP No.1 of 2013 & WMP No.28565 & 28566 of 2016

S.Sridharan

.. Petitioner
in both WPs

.Vs.

1.The Principal Secretary to Government,
Home (Tr-II) Department,
Secretariat,
Fort St.George, Chennai-600 009.

2.The Transport Commissioner,
State Transport Authority,
Ezhilagam, Chennai-600 005.

3.The Deputy Transport Commissioner,
Office of the Deputy Transport Commissioner,
Salem Zone, Salem-5.

.. Respondents
in both WPs

PRAYER in WP.No.18590 of 2013: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records in Memo R.No.1917/A2/2012 dated 18.06.2013 on the file of the 3rd respondent and all further proceedings in pursuance thereof and quash the same.

PRAYER in WP.No.33083 of 2016: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records in Memo G.O.(2D).No.332 Home (Tr-II) Department dated 09.10.2012, on the file of the 1st respondent and all further proceedings in pursuance thereof and quash the same.

For Petitioner :Mr.A.Thiyagarajan, Senior Counsel
(both WP) for M/s.S.Ramesh Kumar

For Respondents: Ms.A.Shrijayanthi
(both WP) Special Government Pleader

COMMON ORDER

The instant writ petitions are for a Writ of Certiorari, challenging the records in Memo R.No.1917/A2/2012 dated 18.06.2013 on the file of the 3rd respondent and quash the same.

2.The facts in brief are that the petitioner was working as Regional Transport Officer, Chennai (Central) and he was working as Motor Vehicle Inspector, Grade-I, Regional Transport Office (North East), Chennai for the period between 14.07.2008 and 01.12.2010. The Officials of the Chennai District, Inspection Committee and the Directorate of Vigilance and Anti corruption, Chennai City Branch-1, a sum of Rs.3240 was recovered from the petitioner. The Charge memo was issued to the petitioner for the following charges.

CHARGE-1

While you (Accused Officer-2) Thiru.S.Sridharan was working as Motor Vehicle Inspector, Grade-I, in the Office of the Regional Transport Office (North East), Chennai, during the surprise check on 21.04.2010, a sum of Rs.3240/- was recovered from you and you were in possession of not properly accounted for the above amount. Hence, the amount was suspected to be bribe amount. Thus, you had committed a grave official misconduct and failed to maintain absolute integrity and devotion to duty, and thereby, you had contravened Rule 20(1) of Tamil Nadu Government Servant conduct Rule 1973. Hence charge No.2 as in Annexure-I is framed.

3.It is this Charge Memo dated 18.06.2013, which is being challenged by the petitioner. It is now well established and settled law that High Court, under Article 226 of the Constitution of India must not quash charge memo.

4. The Hon'ble Supreme Court in *Ministry of Defence v. Prabhash Chandra Mirdha* reported in (2012) 11 SCC 565 has observed as under:

"8. The law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon. In case the charge-sheet is challenged before a court/tribunal on the ground of delay in initiation of disciplinary proceedings or delay in concluding the proceedings, the court/tribunal may quash the charge-sheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstance.

10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court.

11. In *State of Orissa v. Sangram Keshari Misra*, this Court held that normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority.

12. Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.

5. In view of the same, writ petitions are not entertained at this stage. Since it is an incident of the year 2010, and nine years have already passed, the respondents are directed to conduct the enquiry within a period of three months from the date of receipt of copy of this order. No costs. Consequently connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

KP
To

1. The Principal Secretary to Government,
Home (Tr-II) Department,
Secretariat,
Fort St. George, Chennai-600 009.

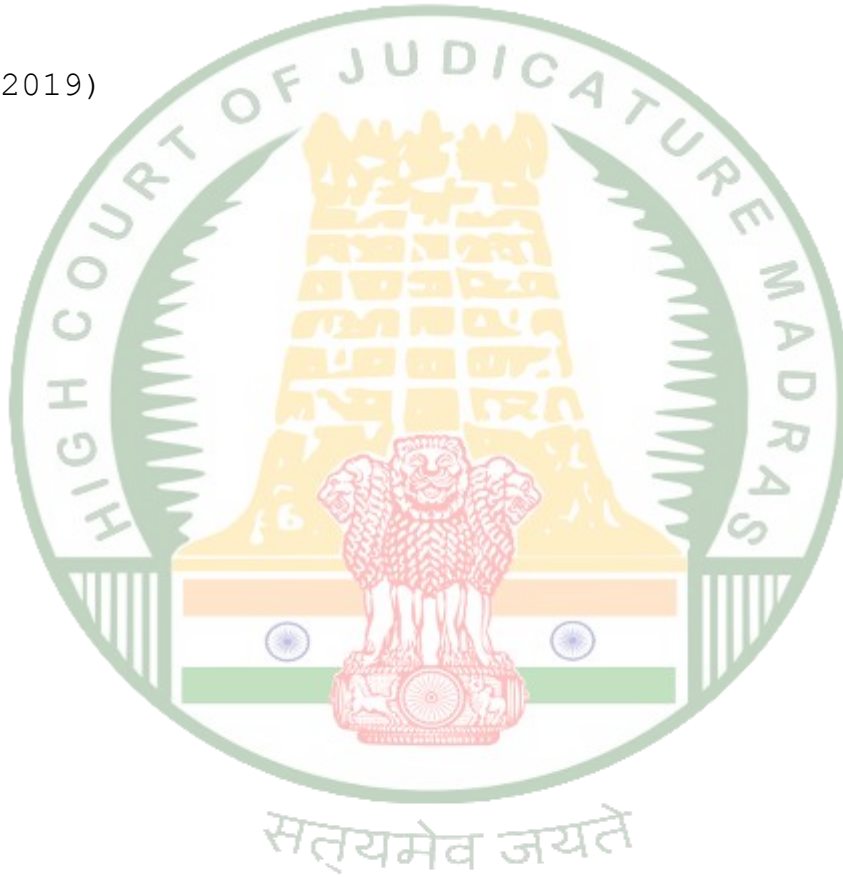
2. The Transport Commissioner,
State Transport Authority,
Ezhilagam, Chennai-600 005.

3.The Deputy Transport Commissioner,
Office of the Deputy Transport Commissioner,
Salem Zone, Salem-5.

+2 CCS to Mr.S. Ramesh Kumar, Advocate sr 86418.

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SAI (CO)
SP(18/11/2019)



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