

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.04.2019

CORAM

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

W.P.No.3117 of 2019
and
W.M.P.No.3377 of 2019

S.Muthukumaraswamy

... Petitioner

...vs...

1.M/s.Neyveli Lignite Corporation India Ltd.,
Rep.by its Managing Director,
Corporate Office, Block No.1,
Neyveli - 607 801, Cuddalore District.

2.The Deputy General Manager / Civil,
Thermal Station - II (Disciplinary Authority),
DGM/CIVIL/TPS - II (NLC India Ltd.,)
Neyveli Lignite Corporation India Ltd.,
Neyveli - 607 807, Cuddalore District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the issuance of proceedings in Memo No.TPS-II/HR/DA/7350/353/2018 - 1, dated 19.03.2018 issued by the 2nd respondent quash the same and consequently direct the respondents to reinstate the petitioner in service by revoking the petitioner's suspension issued vide proceedings No.TPS.II/HR/DA/7350/353/2018-1, dated 05.03.2018 issued by the 2nd respondent.

For Petitioner : Mr.B.Ravi

For Respondents : Mr.N.Nithianandan

O R D E R

The charge memo dated 19.03.2018, is under challenge in the present writ petition.

2.The learned counsel for the writ petitioner states that in respect of the same allegation, earlier the respondents had issued a memo and writ petitioner had submitted his explanations

and accordingly, an order of warning was issued in proceedings dated 17.02.2018. Thus, initiation of charges in respect of the same allegations are impermissible.

3.The learned counsel for the writ petitioner states that the allegations earlier given by way of a memo is also one of the same and the same authority has issued an order of warning and therefore, they are estopped from initiation of disciplinary proceedings by issuing a charge memo in proceedings dated 19.03.2018, in respect of the same allegations.

4.The learned counsel for the respondents states that the warning was issued in respect of the allegations that the writ petitioner has lended money to a higher official and subsequently the dispute arises and the matter went to Vigilance Department at the instance of the writ petitioner. Therefore, the Competent Authority had conducted an enquiry and subsequently found that the writ petitioner was doing the private business on money lending to various other employees working in the same department. When the management found that the writ petitioner was doing money lending as a private business, the Competent Authorities have initiated action by issuing a charge memo dated 19.03.2018.

5. The charges against the writ petitioner was extracted hereunder:

"Shri S.Muthukumarasamy, CPF No.37712 working in Civil Division, TPS-II has involved in Money lending activities with his co-employees in NLCIL. He has not obtained permission/intimation with the Management about the lending money as private business. It has also come to known that Shri S.Muthukumarsamy, CPF No.37712 had also filed complaint against shi.U.Meganathan, DGM/TPS.I for non-payment/return of money borrowed from him. On enquiry the involvement of lending business has been accepted by them and he was already issued waining for the similar misconduct."

6.The charge says that the writ petitioner has involved in lending money activities with his co-employees in NLCIL. He has not obtained permission with the Management for his money lending activities. It is further stated that lending business has been accepted by them and he was already issued warning for the similar misconduct.

7.Thus, it is clear that the writ petitioner has involved in money lending business in respect of the many co-employees and warranted the authorities to initiate further actions under the Discipline and Appeal Rules. However, This Court is not inclined to consider the merits and demerits of the case, which

should complete based on the only materials available. Thus, the decision to be taken by the Authorities, must be independent and based on the enquiry conducted and based on the materials available on record, for the purpose of quashing the charge memo.

8.The learned counsel for the writ petitioner states that earlier warning issued in respect of the same allegation is final and therefore, the Competent Authorities cannot initiate any further actions in respect of the similar allegation.

9.This Court is of the considered opinion that in the impugned order dated 19.03.2018 itself the Competent Authority has issued warning to the writ petitioner in respect of the similar misconduct. Thus, the warning is to be confined only in respect of the cases of one higher official and as far as the money lending business as a whole. A private business conducted by the writ petitioner deserves to be enquired into in the larger interest of the management and in accordance with the Discipline and Appeal Rules. A warning issued in respect of the one case would not proclude the Disciplinary Authority, in respect of the misconduct committed by the writ petitioner regarding the money lending as private business.

10.This being the nature of the allegations raised against the writ petitioner, there is no impediment for the Competent Authorities to proceed with the charge memo and to conclude the same by providing opportunity to the writ petitioner.

11. The Hon'ble Supreme Court of India in the case of Secretary, Ministry of Defence vs. Prabhash Chandra Mirdha reported in (2012) 11 SCC 565 Supreme Court held as follows:

"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. (Vide State of U.P. v. Brahm Datt Sharma[(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327] , Ulagappa v. Commr. [(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)] , Special

Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] and Union of India v. Kunisetty Satyanarayana [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304]

11. In State of Orissa v. Sangram Keshari Misra [(2010) 13 SCC 311 : (2011) 1 SCC (L&S) 380] (SCC pp. 315-16, para 10) 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. (See also Union of India v. Upendra Singh [(1994) 3 SCC 357 : 1994 SCC (L&S) 768 : (1994) 27 ATC 200])

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".

12. In the case of Union of India vs. Kunisetty Satyanarayana reported in (2006) 12 SCC 28 Apex Court held as follows:

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327 : JT (1995) 8 SC 331], Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467], Ulagaappa v. Divisional Commr., Mysore [(2001) 10 SCC 639], State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943], etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause

notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance."

13. Thus, the writ petitioner has not established any acceptable legal ground for the purpose of quashing the charge memo and therefore, it is left open to the writ petitioner to participate in the disciplinary proceedings. It is informed before this Court that the enquiry officer has already concluded the proceedings and however, further proceedings are to be continued by following the procedures under the Discipline and Appeal Rules by the Disciplinary Authorities.

14. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

To

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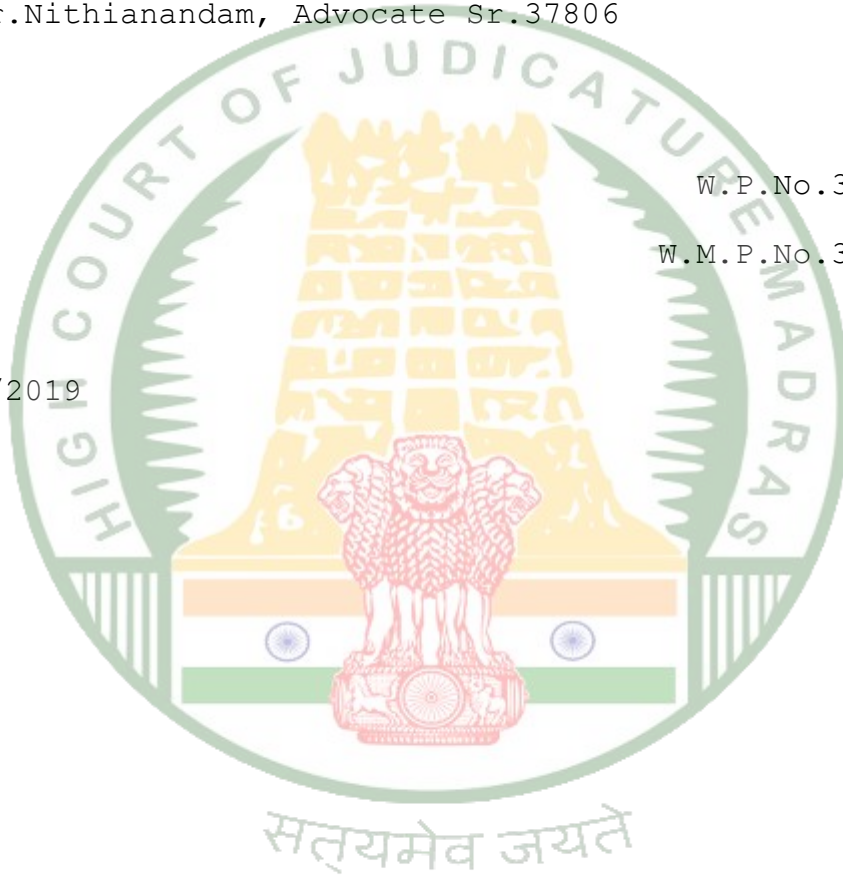
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+lcc to Mr.Subramanian, Advocate Sr.37990
+lcc to Mr.Nithianandam, Advocate Sr.37806

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