IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :07.02.2019

CORAM

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

W.P.No.3101 of 2018
and
W.M.P.No.3797 of 2018

N.Maheswaran .. Petitioner

--vs--

1.The Secretary to Government,
Revenue and Disaster Management Department,
Secretariat,
Chennai - 600 009.

2.The Principal Secretary
Commissioner of Revenue Administration
& Disaster Management,
& Mitigation Department,
Chepauk, Chennai - 600 005.

3.The Managing Director,
Tamil Nadu State Marketing
Corporation Limited,
CMDA Building, Tower II,
Gandhi Irwin Road,
Egmore, Chennai - 600 008. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the first respondent in G.O.(2D) No.27 Revenue and Disaster Management Department Services Wing Service 2(2) Section dated 29.01.2018 and Charge Memo issued under Section 2(1)/40983/2015, Revenue Administration, Disaster Management and Mitigation Department, Chepauk, Chennai dated 29.01.2018 issued by the second respondent herein and quash the same.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.A.N.Thambidurai
Special Government Pleader
for R1 & R2

Mr.M.John Kennady for R3

O R D E R

The Government Order issued in G.O.(2D)No.27 dated 29.01.2018 granting sanction for the Institution of Departmental Disciplinary Proceedings under Tamil Nadu Pension Rules, as well as the consequential charge memo issued under Rule 9(2)(b)(i) of the Tamil Nadu Pension Rules 1978 dated 29.01.2018 are under challenge in the present writ petition.

2.The learned counsel for the writ petitioner states that the writ petitioner was initially appointed as Junior Assistant and he was serving in the post of Deputy Collector at the time of his retirement on 31.01.2014. The learned counsel for the petitioner raised two grounds for the purpose of quashing the initiation disciplinary proceedings and the charge memo issued against the writ petitioner:

(i)The initiation of disciplinary proceedings by invoking the power under Rule 9 of Tamil Nadu Pension Rules is not within the time limit prescribed and not as per the manner provided. Thus, the initiation of disciplinary proceedings and the sanction accorded by the Government in G.O.(2D)No.27 dated 29.01.2018 are liable to be scraped, as the very initiation was beyond the period of limitation granted under Rule 9(2)(b)(i) of the Tamil Nadu Pension Rules 1978.

(ii)The nature of the charges set out in the impugned charge memo are vague in nature and, therefore, on that ground also it is to be set aside and the specific dates and events are not provided in the impugned charge memo is untenable.

3.To substantiate the said two grounds, the learned counsel for the petitioner referred Rule 9(2)(b)(i) & (ii) and the same are extracted hereunder:

"(i) shall not be instituted save with the sanction of the Government.

(ii) shall not be in respect of any event which took place more than four years before such institution."

4.The learned counsel for the petitioner, to substantiate with regard to the Sub Clause 2 stated above and said that the Departmental Proceedings shall not be instituted in respect of any incident, which took place beyond four years.

5.The petitioner states that even as per the charge memo dated 29.01.2018, the allegations are vaguely stated as January

2013 to September 2013 and, therefore, the allegations are not falling within a period of 4 years from the date of institution and accordingly, the charge memo is liable to be scraped. Referring to the nature of the allegation, the learned counsel for the petitioner states that the charges are vague as well as beyond the period of limitation prescribed under the Tamil Nadu Pension Rules cited supra and, therefore, in any event charges are untenable.

6.The learned Special Government Pleader appearing on behalf of the respondents disputed the entire contentions raised on behalf of the writ petitioner. It is contended that the lapses committed by writ petitioner were in relation to the period from 2007 to the date of retirement i.e., 31.01.2014. The allegations are relating to the revenue loss and, therefore, the charges are serious in nature. The writ

petitioner was allowed to retire from service on 31.01.2014 and the Government invoked the provisions of the Tamil Nadu Pension Rules 1978, more specifically Rule 9 by issuing G.O.(2D)No.27 dated 29.01.2018. Thus, there is no delay and in fact the initiation of Departmental Proceedings and the charge memo were issued within a period of four years from the date of retirement and the allegation also falls up to the date of retirement of the writ petitioner on 31.01.2014 and accordingly, there is no irregularity or infirmity in respect of the impugned order and the writ petition is liable to be rejected.

7.Let us now look into the provision of Pension Rules. Undoubtedly, Rule 9(2)(b)(ii) states that departmental proceedings if not instituted while the Government servant was in service, whether before his retirement or during his re-employment shall not be in respect of any event which took place more than four years before such institution.

8.Undoubtedly, the initiation of disciplinary proceedings was done within a period of four years as well as the Government accorded sanction thus, Rule 9(2)(b)(i) is satisfied. In respect of the Sub Clause 2, this Court is of an opinion that the charges framed against the writ petitioner more specifically charge - 3, reads as under:

Charge - 3:

That Thiru N.Maheswaran Deputy Collector (Retired)/Formerly District Manager, TASMAC, Cuddalore, while working as District Manager, TASMAC, Cuddalore, paid incentive to the tune of Rs.400670/- to the shop personnel without proper calculation and also failed to recover the excess amount till his retirement on 31.01.2014 and thus caused loss to the Corporation.

9.When the charge itself states that while the writ petitioner was working as District Manager, TASMAC, Cuddalore, paid incentive to the tune of Rs.400670/- to the shop personnel without proper calculation and also failed to recover the excess amount till his retirement on 31.01.2014 and thus caused loss to the Corporation. Thus, there was an opportunity for the writ petitioner to recover the loss or to initiate appropriate proceedings for recovery of the revenue loss up to the date of his retirement. When there is a possibility and opportunity was made available to the writ petitioner to initiate appropriate action to make good the revenue loss, then it is to be construed that up to 31.01.2014 the cause remains, when the cause remains up to 31.01.2014, the period of four years is to be reckoned from 01.02.2014 onwards. When the period is reckoned from 01.02.2014, the time limit of four years prescribed under Rule 9 (2)(b)(ii) is also satisfied.

10.The allegations of revenue loss is raised by the disciplinary authorities, it cannot be confined to a particular date or month. When it runs to several months and the charge itself specifically states that the writ petitioner failed to recover the excess amount till his retirement on 31.01.2014. This Court is of an undoubted opinion that the period of four years contemplated under Sub Clause 2 is also fulfilled and there is no delay as such, in respect of the initiation of disciplinary proceedings based on the sanction accorded by the Government in G.O.(2D).No.27 dated 29.01.2018.

11.As far as the vagueness of the charges are concerned, this Court would like to peruse the charges framed against the writ petitioner and the same are extracted hereunder:

> "Charge - 1:
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> That Thiru N.Maheswaran Deputy Collector (Retired)/Formerly District Manager, TASMAC, Cuddalore, while working as District Manager, TASMAC, Cuddalore, failed to follow the instructions issued in the circular of Managing Director, Tamil Nadu State Marketing Corporation in D1/1347/2008 dt 22.11.2011 and failed to collect the Bar License Fee before 5th of every month and thus caused interest loss of Rs.6,30,866/- due to delayed collection to the Corporation.
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> Charge - 2:
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> That Thiru N.Maheswaran Deputy Collector (Retired)/Formerly District Manager, TASMAC, Cuddalore, while working as District Manager, TASMAC, Cuddalore, claimed Travel expenses for engaging car for inspection

of shops, SRM office, and corporate office to the tune of Rs.2,81,937/- based on Trip sheets and in some cases without the connected Travel Bills, name of Travel agency etc., and thus caused loss to the Corporation.

Charge - 3:

That Thiru N.Maheswaran Deputy Collector (Retired)/Formerly District Manager, TASMAC, Cuddalore, while working as District Manager, TASMAC, Cuddalore, paid incentive to the tune of Rs.400670/- to the shop personnel without proper calculation and also failed to recover the excess amount till his retirement on 31.01.2014 and thus caused loss to the Corporation.

Charge - 4:

That Thiru N.Maheswaran Deputy Collector (Retired)/Formerly District Manager, TASMAC, Cuddalore, while working as District Manager, TASMAC, Cuddalore, failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming of a Government Servant and violated rule 20(1) of the Tamil Nadu Government Servant Conduct Rules 1973."

Annexure-2 of the charge memo provides statement of allegations namely imputations of misconduct or misbehaviour.
Annexure-3 provides with list of documents.
Annexure-4 list of witnesses to be examined.

12.Thus, there is no infirmity as such in respect of the charge memo framed against the writ petitioner. Undoubtedly, the charges are enumerated in clear terms, there is no ambiguity in respect of the charges framed against the writ petitioner and all the four charges are in relation to certain irregularities and the financial loss to the state exchequer. The statement of allegations are also provides details regarding the loss identified and the documents denoted in Annexure-3 is also in relation to the inspection report of the Flying Squad dated 23.09.2014 and other letters.

13.This being the factum of the case, this Court is of a considered opinion that the writ petitioner has to participate in the enquiry proceedings and establish his innocence or otherwise by defending his case, instead of defending case the petitioner cannot attempt to escape from the clutches of law on technical grounds, in view of the fact that the allegations in relations to misappropriation of public funds.

14.The Constitutional Courts can never be lenient in relation to the allegations of corruption and misappropriation of public funds. Thus, the allegations are undoubtedly serious and effecting the public interest and public administration. Leniency or misplaced sympathy can never be shown in the cases of corruption as well as the misappropriation of public funds. All those cases must be tried and all the officials must establish their innocence or otherwise by participating in the enquiry personally by submitting their defence statement or by producing the relevant documents.

15.The principles in this regard are considered by this Court in W.P.No.1715 of 2015 dated 07.02.20117 and the relevant paragraphs are extracted here under:

> "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.
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> 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.
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> 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:
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> "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."

16.In view of the fact that the grounds raised by the writ petitioner are not established with reference to the Pension Rules in force and the procedures followed by the respondents in according to sanction and framing of the charges against the writ petitioner is within the time limit prescribed under the Rules. This Court is of an opinion that the writ petitioner has to submit his explanations/objections on the allegations set out in the charge memo

to defend his case by availing the opportunities to be provided by the authorities competent and for the purpose of establishing his innocence or otherwise.

17.It is made clear that the charge memo itself has issued after the retirement of the writ petitioner. Thus, the respondents should avoid any further delay in concluding the departmental disciplinary proceedings, long pendency of departmental disciplinary proceedings also would cause prejudice to the employees as they are not eligible to get all their retirement and pensionary benefits. Taking note of the fact that the initiation itself is done after the retirement of the writ petitioner, the authorities competent should avoid undue delay in departmental disciplinary proceedings and conclude the same at the earliest possible and by following the procedures. The writ petitioner is also bound to co-operate for the earlier disposal of the departmental disciplinary proceedings enabling him to get all his terminal and retirement benefits without any delay. Any non-cooperation would be viewed seriously and the authorities competent is empowered to record the non-cooperation of the writ petitioner, if any. Under these circumstances, the respondents are also directed to proceed with the enquiry and conclude the same as expeditiously as possible and without causing any undue delay.

18.With these directions, the present writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pns

To

1.The Secretary to Government,
Revenue and Disaster Management Department,
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Chennai - 600 009.

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+1 cc to Mr.John Kennady, Advocate SR.No.11923
+1 cc to Mr.M.Ravi, Advocate SR.No.11120
+1 cc to The Government Pleader, SR.No.11833

W.P.No.3101 of 2018
and W.M.P.No.3797 of 2018

MG(CO)
CSL/05.03.2019