

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.01.2019

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

W.P.No.40984 of 2005

V.Ramalingam,

..Petitioner

vs

1. The Principal Chief Conservator of Forests,
Panagal, Buildings,
Saidapet, Chennai-600 015
2. The Chief Conservator of Forests,
Dindigul Circle, Dindigul
3. The District Forest Officer,
Dindigul division
Collectorate Complex
Dindigul

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the third respondent's proceedings made in Na.Ka.No.5844/2005 dated 21.09.2005, to quash the same and consequently direct the first respondent to promote the petitioner as Ranger from the date on which his immediate junior was promoted as Ranger and to extend all service and other benefits thereto.

For Petitioner: Mrs.B.Swetha for Mr.L.Chandrakumar

For Respondents: Mrs.M.Lalitha, GA (Forests)

O R D E R

The Charge Memo issued by the 3rd respondent in proceeding dated 21.09.2005 is sought to be quashed in the present writ petition.

2. The writ petitioner was appointed as Forester in Tamil Nadu Forest Department on 01.07.1981 and on account of certain allegations disciplinary proceedings were initiated against the writ petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

3. On a perusal of the charges memo set out against the writ petitioner, the same are serious in nature. Annexure no. 2 to the impugned Charge Memo provides statement of allegations, Annexure no.3 denotes list of documents relied on by the respondents and Annexure no. 4 is about the list of witnesses and therefore, there is no infirmity, as such in respect of the impugned Charge Memo issued by the respondent.

4. This Court is of the considered opinion that no writ proceedings can be entertained against the Charge Memo in a routine manner. Judicial review against the Charge Memo is certainly limited. A writ proceeding can be entertained against the Charge Memo, if the same has been issued by an authority having no jurisdiction or if an allegation of mala fides are raised or if the same is in violation of Statutory Rules in force. Even in the case of raising an allegation of mala fides against the authorities concerned, the authority should be impleaded as party respondent in his personal capacity in the writ petition.

5. In the absence of anyone of this legal ground, no writ petition can be entertained against the Charge Memo. The delinquent official is bound to submit his explanation/objections on the allegations set out in the Charge Memo and prove his innocence or otherwise before the enquiry proceeding to be conducted by the disciplinary authority, in accordance with the procedures contemplated in the Rules.

6. Contrarily, the merit raised in the writ petition by the petitioner cannot be adjudicated in a writ proceeding under Article 226 of the Constitution of India. All those merits and demerits, factual details sought to be considered are with reference to the original records and by examination of witnesses during the course of enquiry of the competent authorities. This being the principles to be followed, this Court is of an opinion that the grounds raised in the present writ petition deserves no merit consideration.

7. In W.P.No.17151 of 2005 in a similar situation this Court has observed as follows:

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.

8. In view of all the facts and circumstances, this Court is of an opinion that there is no infirmity in respect of the Charge Memo issued against the writ petitioner. It is left open to the writ petitioner to submit his explanations/objections, in respect of the allegations set out in the Charge-Memo and

establish his case before the competent authorities. In this view of the matter, the writ petition is devoid of merits and stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To,

1. The Principal Chief Conservator of Forests,
Panagal, Buildings,
Saidapet, Chennai-600 015.
2. The Chief Conservator of Forests,
Dindigul Circle, Dindigul.
3. The District Forest Officer,
Dindigul division
Collectorate Complex, Dindigul.

+1cc to Mr.L.Chandrakumar, Advocate sr.5627
+1c to the Special Government Pleader sr.5457

W.P.No.40984 of 2005

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srg 2/3/2019

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