

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.02.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.4283 of 2019

and

WMP.No.4822 of 2019

Dr.S.Lourdu Initha
Associate Professor,
Department of Commerce,
S.I.V.E.T. College,
Gowrivakkam, Chennai-600 073. Petitioner

...Vs...

1. S.I.V.E.T.College,
Rep. by its Secretary,
Velachery main Road,
Gowrivakkam, Chennai - 600 073.
2. The Enquiry Committee,
Rep. by the Enquiry Officer Sri C.Madasamy,
S.I.V.E.T.College,
Gowrivakkam, Chennai - 600 073.
3. The University of Madras,
Rep. by the Registrar,
Chepauk, Chennai - 600 005. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in his proceedings ref.No.163/2018-2019 dated 01.08.2018 quash the same and direct the respondents 1 and 2 not to proceed further with the enquiry proceedings with respect to the objections raised by the petitioner regarding the election of member to the University Academic Council representing the college to the 3rd respondent on 27.12.2017.

For Petitioner : Mr.S.Balasubramanian

For Respondent 3 : Mr.L.P.Shanmugasundaram.
Spl.Govt.Pleader

O R D E R

A Charge memo issued against the writ petitioner dated 01.08.2018, is under challenge in the present writ petition.

2. The learned counsel appearing on behalf of the writ petitioner states that the allegations set out in the charge memo cannot attract the code of misconduct. This apart, the election petition filed by the writ petitioner has already been withdrawn and therefore, the disciplinary authority cannot proceed with the charge memo by conducting an enquiry, so as to pass final orders in the disciplinary proceedings. It is further contended that all the allegations are in relation to certain election related issues outside the scope of the employment and therefore, the same cannot be construed as a misconduct as contemplated under the Conduct Rules.

3. This Court is of the considered opinion that, the writ petitioner is a Professor of a reputed college. Professors are considered as performing the noble profession of Teaching. Any indiscipline or otherwise as far as the Professors / Teachers are concerned, the same must be viewed seriously and there should not be any leniency. Undoubtedly, the writ petitioner as a Professor is entitled to avail the opportunity to defend his case and establish his innocence or otherwise, before the Competent Authorities. However, at this point of time, this Court cannot adjudicate the issues on merits and based on the explanations now provided before this Court in the present writ petition. All such issues explanations, documents are to be adjudicated by the Competent Enquiry Officer by verifying the original records and by adducing evidences if required. Such an exercise cannot be done in a writ proceedings under Article 226 of the Constitution of India. Complex, facts and circumstances are to be adjudicated only by referring the original documents and by adducing evidences before the Competent Forum. This being the legal principles to be followed, the grounds raised in the writ petition in respect of merits and demerits of the allegations set out in the charge memo can never be entertained at all.

4. No writ petition can be entertained against a charge memo in a routine manner. Judicial review against the charge memo are certainly limited. A charge memo can be challenged on limited grounds. If the charge memo has been issued by the incompetent authority having no jurisdiction, or an allegations of malafides are raised, or if the same are in violation of statutory rules in force. Even in case of raising the allegations of malafides, the Authority against whom such an allegation is raised is to be impleaded as party respondent in his personal capacity. In the

absence of any one of these legal grounds, no writ petition can be entertained against a charge memo in a routine manner.

5. It is left open to the writ petitioner to defend his case in the manner known to law and the writ petitioner has to produce documents, adduce evidences and establish his innocence by participating in the process of enquiry. Contrarily, by raising disputes in respect of the factual aspects, no writ petition can be entertained to quash the charge memo itself.

6. The relevant paragraphs from WP.No.17151 of 2005 dated 07.01.2014 are extracted here under:-

"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."

7. The learned counsel appearing on behalf of the writ petitioner states that the very set of allegations narrated in the charge memo is not a fit one for the purpose of proceeding the enquiry at all. Thus, the memo is liable to be scrapped. However, this Court is of the considered opinion that, all such explanations are to be established before the Competent Enquiry Committee to prove innocence of the writ petitioner and this

Court at this point of time, cannot appreciate those documents, pleadings and evidences in a writ petition filed under Article 226 of the Constitution of India. This being the factum of the case, the writ petitioner is at liberty to participate in the enquiry proceedings by availing the opportunity to defend his case.

8. This Court is of the considered opinion that, the Competent Authorities on initiation of disciplinary proceedings must ensure that the same is concluded within a reasonable period of time. Long pendency of disciplinary proceedings would cause prejudice to the interest of the employees also. Thus, the Competent Authorities must be vigilant in pursuing the enquiry, conclude the same and pass final orders in the departmental disciplinary proceedings. It is informed that the Enquiry Committee has already been appointed and therefore, the exercise of completing the enquiry by following the procedures and affording opportunity to the writ petitioner and the final order in the disciplinary proceedings is to be passed without causing any undue delay by the Disciplinary Authority.

9. With these observations, the writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Registrar,
The University of Madras,
Chepauk, Chennai - 600 005.

+1cc to Mr.Balasubramanian, Advocate, S.R.No.13260

W.P.No.4283 of 2019

Kak (23/03/2019)