IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.561 of 2018
and
WMP.Nos.695 & 23851 of 2018

S.Logachandran ... Petitioner

Versus

1. The Superintendent of Police,
   Nagapattinam, Nagapattinam District.

2. The Director General of Police Tamil Nadu,
   Chennai-4. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in relating to the charge memo issued by the 1st respondent in PR.No.11/2017 dated 11.05.2017 and quash the same.

For Petitioner : Mr.N.Kolandaivelu

For Respondents 1&2 : Mrs.P.Rajalakshmi
Addl. Govt. Pleader

O R D E R

The charge memo issued against the writ petitioner by the first respondent in Pr.No.11/2017 dated 11.05.2017 is under challenge in the present writ petition.

2. The charges against the writ petitioner are extracted hereunder:-

"Annexure - I
Statement of Charges framed against Thiru.S.Logachandran, Superintendent, District Police Office, Nagapattinam.
Charge-1

That the said Thiru.S.Logachandran, while he was functioning as Superintendent in 'Pay Section' at DPO, Nagapattinam during the period from 08.04.2009 to 15.12.2009, has failed to verify and check the Pay bills, Supplementary bills, DA Arrears, Bonus, TLS and SLS bills etc., intended to various police personnel of Nagapattinam District prepared by the dealing Junior Assistant and by the HC 514 N.Hidhayathullah, Anaikaran Chatram P.S., Nagapattinam District which resulted, in the said HC (who was attached with pay section on OD from Anaikaran Chathram PS for assisting in pay section work) having utilized the opportunity of your gross negligence and slack supervision in above mandatory work assigned to you and thereby misappropriated a portion of Government money to the tune of Rs.1,88,447/- which is to be paid to various police personnel/officers and made false claim and drawn in 5 salary bills for the year 2009 and credited the same into Savings Bank account of himself and his relatives by manipulating the ECS statement both in soft and hard copies presented along with bills to Treasury for which a case in Nagapattinam DCB Cr.No.12/2016 u/s 409,465,468,477(A) and 420 IPC was registered against HC 514 N.Hidhayathullah. Thus, he failed to maintain absolute integrity, devotion to duty and conducted himself in a manner unbecoming of a public servant and thereby committed a misconduct in violation of Rule 20(1) of Tamil Nadu Government Servants Conducts Rule,1973.

Charge-II

That during the aforesaid period and while functioning in the aforesaid office, the said Thiru S.Logachandran has failed to supervise the work of dealing Junior Assistant in auditing of bills as per the guidelines issued in G.O.175 Finance (Salaries) Department, Dated 18.06.2010 and as per the guidelines issued by the DGP, Tamil Nadu, Chennai in Chief Office Circular memo in C.No.037115/IAW/2012, Dated 10.05.2013 (Order No.43/2013) which resulted in HC 514 N.Hidhayathullah having manipulated Government money of various police personnel by manipulating the ECS statement in both soft and hard copies presented to the Treasury could not be detected and thus he has failed to supervise the work of dealing Junior Assistant in auditing of en-cashed bills. Thus, he failed to maintain absolute integrity, devotion to duty and conducted him in a manner unbecoming of a public servant and thereby committed a misconduct in violation of Rule 20(1) of Tamil Nadu Government Servants Conduct Rules, 1973.

Sd/-
Superintendent of Police,
Nagapattinam District."

3. Annexure-II to the charge memo provides the statement of allegations namely imputation of misconduct or misbehaviour in support of the charges framed. Annexure-III enumerates the list of document relied on by the Competent Authority. Annexure-IV denotes the list of witnesses to be examined in support of the charges set out in the impugned charge memo.

4. The writ petitioner was serving as an Office Superintendent in the District Police Office, Nagapattinam. The learned counsel for the writ petitioner states that the allegations against the writ petitioner are in relation to the supervisory lapse and he has not involved in the case of misappropriation. On account of such a minor allegation, the charge memo has been issued after a lapse of about 8 years. The allegations are in relation to the year 2009 and the impugned charge memo was issued on 11.05.2017, after a lapse of about 8 years. Thus, the charge memo is liable to be quashed on the ground of delay.

5. The counter affidavit filed by the first respondent, Superintendent of Police, Nagapattinam, states that during the period from 08.04.2009 to 15.12.2009, the writ petitioner was in pay section and there were one Assistant, Junior Assistant, and one person posted on other duty basis from any police station in the rank of a Head Constable to assist the pay section. By that time, the Head Constable posted there to assist was H.C.514, Mr.N.Hidhayathullah, as the petitioner being slackness in his supervision over the work allotted to his subordinates and utilizing the services of H.C.514, Mr.N.Hidhayathullah had dealt with the manipulation in the preparation of the statement both in the soft and hard copies of ECS.

6. The writ petitioner had miserably failed to check the documents properly and verify the pay commission arrears bills which is to be paid to various Police personnel/Officers to the tune of Rs.1,88,447/-. The negligence caused financial loss to

State Exchequer and, further, the slackness of the writ petitioner resulted misappropriation of the funds of the Government.

7. It is further stated that during the periodical audit inspection by the concerned officials in a routine manner, the fact could not be culled out at the earlier stage. However, from the subsequent inspections, it was found during the period from 2008 to 2016, a huge amount of misappropriation of the Government amount in the District Police Office, Nagapattinam was committed by the said H.C.514, Mr. N.Hidhayathullah which was unearthed on 17.12.2016. Thus, a case in District Crime Branch, Nagapattinam Police Station was registered in Cr.No.12 of 2016 for offence under Section 409,465,468,477(A) and 420 IPC. A special audit party was constituted by the Deputy Inspector General of Police, Thanjavur Range, Thanjavur, to unearth the real facts for the commission of offence from the year 2008 in each place without omitting any individual.

8. During the Special Audit conducted effectively and during the verification of the entire records, it was found that the said commission of misappropriation of Government amount to the tune of Rs.1,88,447/- was committed in the pay section during the period from 08.04.2009 to 15.12.2009. Thus, the charge memo was issued thereafter on 11.05.2017. The period of limitation is to be reckoned from the date of a complaint or the date of identification of fraud or misappropriation of the Government funds. The period cannot be counted from the date from which the employee was serving in a particular post or place. On account of huge transactions in Government Departments and Offices, it may not be possible to unearth all such misappropriation of Government funds immediately. Even, the routine audit inspections are conducted in the random manner and there is no 100% audit is conducted in all the departments in every year. Certain misappropriation and other illegalities are identified during the subsequent audit inspections also. Thus, the limitation is to be calculated from the date on which the misappropriation or illegalities is unearthed or came to the knowledge of the Competent Authorities.

9. In the present case on hand, undoubtedly, the charge memo was issued on 11.05.2017 with reference to the allegations committed during the year 2009. However, the entire misappropriation was unearthed only during the year 2016, by the special audit team and, therefore, this Court is of an opinion that the ground of delay raised in the present writ petition deserves no merit consideration. This apart, the official lapses led to misappropriation of Government funds. Thus, the writ petitioner is answerable and he has to submit his

explanation/objection with reference to the allegations set out in the charge memo and defend his case and prove his innocence or otherwise by availing the opportunities to be provided by the Competent Authority at the time of conduct of enquiry and during all further proceedings.

10. 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.

11. 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.

12. 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."

13. 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.

14. 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.

15. In the case of Secretary, Ministry of Defence & Others, Vs. Prabhash Chandra Mirdha reported in (2012) 11 SCC 565, the Apex Court ruled as follows in paragraphs No.10 to 12:-

> '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 Boardv.Ramesh Kumar Singh[(1996) 1 SCC 327] ,Ulagappav.Commr.[(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)] ,Special Directorv.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."

16. In the case of Union of India and others Vs. Kunisetty Satyanarayana reported in (2006) 12 SCC 28, the following principles are laid down in paragraphs No.13 and 14 by the Hon'ble Supreme Court of India, are extracted hereunder:-

"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 videExecutive 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] ,Ulagappa 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."

17. In view of the facts and circumstances, the ground of delay raised in the present writ petition has not been established and, therefore, the writ petitioner is at liberty to participate in the process of enquiry and prove his innocence or otherwise.

18. With these observations, the writ petition stands dismissed. No Costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Pkn

To

1. The Superintendent of Police,
   Nagapattinam, Nagapattinam District.

2. The Director General of Police Tamil Nadu,
   Chennai-4.

+1 cc to The Government Pleader, Sr.No.19387

W.P.No.561 of 2018

SAI(CO)
CSL/03.04.2019