

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.03.2019

CORAM

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

W.P.No.6301 of 2019
and
W.M.P.No.7147 of 2019

K.Rangaraj

.. Petitioner

..vs..

- 1.Tamilnadu State Transport Corporation
(Coimbatore) Ltd.,
Rep. by its Managing Director
37, Mettupalayam Road,
Coimbatore - 43.
- 2.The General Manager,
Tamilnadu State Transport
Corporation (Coimbatore) Ltd.,
37, Mettupalayam Road,
Coimbatore-43.
- 3.The Dean,
Government Medical College and Hospital,
Coimbatore.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 07.12.2018 issued by the 2nd respondent in proceedings No.1/G8A/4990/TNSTC/CBE/2018, quash the same and consequently direct the respondents 1 and 2 to provide the petitioner forthwith suitable alternative employment, in commensurate with his health condition, with continuity of service, pay protection, back wages and all other service benefits with effect from 28.11.2017, after adjusting the salary already paid to him during the broken spells during which he was temporarily given light duty, award costs.

For Petitioner : Mr.R.Krishnaswamy

For Respondents: Mr.R.S.Selvam
Government Advocate

O R D E R

The charge memo issued by the respondents in proceedings No.1/G8A/4990/TNSTC/CBE/2018, dated 07.12.2018 is under challenge in the present writ petition.

2. The order of charge memo states that the writ petitioner had not attended duty and remained in unauthorized absence. Thus, the writ petitioner was directed to submit his explanation along with the reasons.

3. The learned counsel for the writ petitioner states that the writ petitioner has given a reply / explanation on 11.02.2019. However, the respondents are not permitting the writ petitioner to join duty.

4. This Court is of an opinion that the grievance of the writ petitioner is that he was not well and undergoing the medical treatment, which was not considered by the Competent Authority. This Court cannot adjudicate such facts and circumstances in a writ petition wherein a charge memo itself is under challenge.

5. The charge memo states that the writ petitioner was in unauthorized absence. Thus, the explanations and other documents are to be placed before the Competent Authorities for consideration and for taking a decision in this regard. As far as the charge memo is concerned there is no infirmity as such.

6. 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.

7. 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.

8. 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."

9. 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.

10. 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.

11. Under these circumstances, the writ petitioner is at liberty to pursue his remedy before the Competent Authorities by participating in the process of enquiry and the Authorities Competent are bound to consider all the materials available on record, take a decision and pass orders as expeditiously as possible.

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

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

Pns

To

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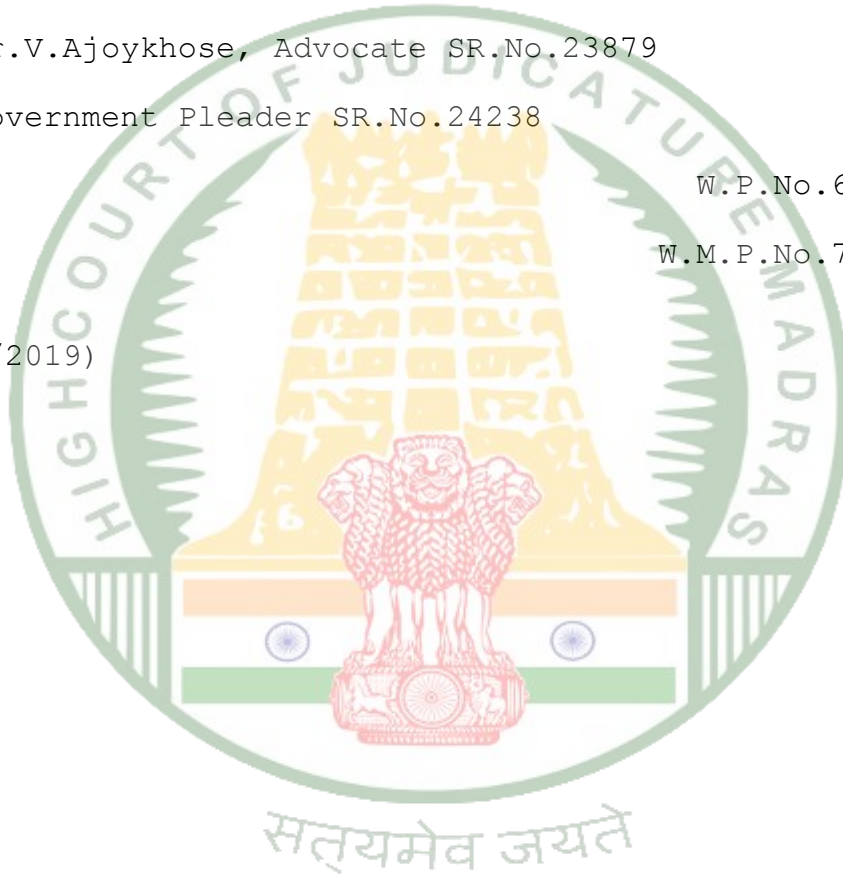
+1cc to Mr.RS.Selvam, Advocate SR.No.23993

+1cc to Mr.V.Ajoykhose, Advocate SR.No.23879

+1cc to Government Pleader SR.No.24238

W.P.No.6301 of 2019
and
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PA (CO)
GMY (09/04/2019)



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