

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.20854 of 2018

and

WMP.Nos.24489 and 24490 of 2018

K.Thirumurugan

...Petitioner

vs

1. Additional Chief Secretary / Industries
Commissioner and Director of Industries
and Commerce,
SIDCO Office Building,
Guindy, Chennai - 600 032.

2. Mr.T.Mayathevar,
General Manager / Inquiry Officer,
District Industries Centre,
Cuddalore.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Certiorari, to call for the records in Rc.No.28839/EG2/2014 dated 06.06.2017 on the file of the first respondent and quash the same.

For Petitioner : Mr.A.Immanuel

For Respondent-1 : Mr.A.N.Thambidurai
Spl.Govt. Pleader

O R D E R

The charge memo dated 06.06.2017, is under challenge in the present writ petition. The charges against the writ petitioner are extracted hereunder:-

"Annexure-1:

Statement of charges framed against
Thiru.K.Thirumurugan, Principal, Institute of
Ceramic Technology, Vridhachalam.

1. that he has sent various representations by
affixing service stamp instead of postal stamp
for a total of Rs.225/- and thereby

- misappropriated the Government funds.
2. that by his above act, he has misused his official position for his personal gain.
 3. that he has failed to monitor as to whether the stamp account registers of Government Industrial Estate for Ceramics, Vridhachalam for the years 2009, 2013 and 2014 has been closed daily and the stamp used and balance in hand has been arrived daily.
 4. Thus, he has failed maintain absolute integration and devotion to his legitimate duty and thus violated Rule 20 of Government Servants Conduct Rules."

2. Annexure-2 to the charge memo provides statement of allegations namely the imputations of misconduct or misbehaviour in support of the charges framed. Annexure-3 provides the list of documents relied upon. Thus, there is no infirmity as such in respect of the charge memo issued against the writ petitioner. The writ petitioner instead of submitting his explanation/objection and participating in the process of enquiry, he has chosen to file the present writ petition challenging the very charge memo.

3. The learned counsel for the writ petitioner states that the charges issued against the writ petitioner are flimsy in nature and therefore, the charge memo is liable to be scrapped. This Court is of an opinion that, on a plain reading of a charge memo, the statements of allegations categorically enumerates the details and the list of document also produced. Thus, the writ petitioner has to participate in the process of enquiry in order to establish his innocence or otherwise, by availing the opportunities to be provided by the Competent Authorities with reference to the Discipline and Appeal Rule.

4. Therefore, this Court is of an 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.

5. 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.

6. 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."

7. 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. The relevant paragraphs are extracted here under:-

"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 Board v. Ramesh Kumar Singh [(1996) 1 SCC 327] , Ulagappa v. Commr. [(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)] , Special Director v. 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."

8. In the case of Union of India vs. Kunishetty Satyanarayana reported in [(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. The relevant paragraphs 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 vide Executive 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] , Ulagaappa 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."

9. In view of the facts and circumstances, this Court is of an opinion that, the explanations and the ground raised with reference to the merits and the allegations cannot be entertained nor adjudicate in the present writ petition. The writ petitioner is at liberty to participate in the process of enquiry and establish his innocence.

10. It is made clear that, the Disciplinary Authority shall proceed with the enquiry and conclude the same as expeditiously as possible and preferably within a period of 6 months from the date of receipt of a copy of this order. The writ petitioner is directed to cooperate for the earlier disposal of the enquiry proceeding. In the event of any non-cooperation on the part of the writ petitioner, the same shall be recorded by the Enquiry Officer as well as by the Disciplinary Authority in the proceedings itself.

11. In this view of the matter, the writ petition stands disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

Pkn

To

Additional Chief Secretary / Industries
Commissioner and Director of Industries
and Commerce, SIDCO Office Building,
Guindy, Chennai - 600 032.

+1cc to Mr.A.Immanuel, Advocate SR.No.21293

+1cc to Government Pleader SR.No.21519

W.P.No.20854 of 2018

PA(CO)
GMY(09/04/2019)