

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.04.2019

CORAM

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

W.P.No.11314 of 2019

and

WMP.Nos.11650 & 11651 of 2019

Dr.K.G.Senthilvasan .. Petitioner

vs

The Registrar(i/c)
Bharathiar University,
Coimbatore.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the respondent herein in Memorandum No.Estt./E5/1148/10062-1/2018 dated 19.6.2018 and quash the same.

For Petitioner : Mr.Anandan R.S.

For Respondent : Mr.L.P.Shanmugasundaram
Standing counsel

O R D E R

The charge memo dated 19.06.2018 is under challenge in the present writ petition.

2.The writ petitioner was appointed as Lecturer at Erode Arts College on 11.10.1985. The writ petitioner was appointed as and acted as Controller of Examination in Bharathiar University and thereafter, he was posted as Associate Professor. Subsequently, the petitioner was appointed as Registrar of Bharathiar University and acted as such from 15.04.2015 to 01.04.2016. Again, he was posted as Associate Professor and continuing as such at Erode Arts and Science Colleges. The writ petitioner is due to retire from service on 31.05.2019.

3. When the writ petitioner was serving as the Registrar of Bharathiar University, certain irregularities took place and on account of the allegations and a charge memorandum was issued against the writ petitioner in proceedings dated 19.06.2018. The charges against the writ petitioner are extracted hereunder:-

Charge-I

"Dr.K.G.Senthilvasan while working as Registrar, Bharathiar University, Coimbatore has colluded with Dr.C.R.Gladys Leema Rose and Thiru.Murugan, the proprietor of Murugan Waste Paper without the knowledge of the Vice-Chancellor and he was also responsible for selling 1,56,215 kgs of answer scripts at a lesser price of Rs.15/- per kg to M/s.Murugan Waster Paper, without inviting a competitive tender and in violation of syndicate resolution No.42 dated 08.03.2010. It was noticed that there was under weightment of cardboard boxes and old answer script bundle. He was incharge for issuing gate pass for the movement and disposal of waste paper. He has played primary role in the disposal of old answer script.

He has guided and directed Dr.C.R.Gladys Leema Rose, Controller of Examination on day-today operation of O/o.Controller of Examination she was exploited by him.

Charge-II

In the previous year, answer papers of the University were disposed of at Rs.21.50 per kg after inviting competitive tender. During the year 2015, 1,56,215 kgs of answer papers were sold at Rs.15/- per kg instead of Rs.21.50 per kg to M/s Murugan Waste Paper, R.K.G. Nagar, Kalveerampalayam, Coimbatore without inviting competitive tender thereby causing Rs.10,15,397 loss to the University."

Annexure-II to the charge memo provides Statement of allegations, namely imputations of misconduct or misbehaviour in support of the charges. Annexure-III provides the List of documents relied upon. Thus, there is no infirmity as such in respect of the charge memorandum issued against the writ petitioner by the respondents.

4.The learned counsel appearing on behalf of the writ petitioner states that the Registrar(in charge) issued the impugned memorandum of charges and the Registrar is an incompetent authority. This apart, it is stated that the writ petitioner is innocent of the allegations and he is not involved in any of these incidents narrated in the impugned charge memo. Thirdly, it is contended that the writ petitioner that the writ petitioner is due to retire from service on 31.05.2019 and the long pendency of the disciplinary proceedings would cause prejudice in respect of the pending disciplinary proceedings.

5.The learned counsel for the petitioner also states that the charge memorandum has been issued now during the fag end of the career of the writ petitioner and therefore, the said charge memo is liable to be scrapped as the petitioner is no way connected with the allegations.

6.This Court is of the considered opinion that the facts, circumstances and the disputed issues can never be adjudicated in a writ proceedings under Article 226 of the Constitution of India. All such disputed facts are to be adjudicated by producing original documents and by adducing evidences. It is for the writ petitioner to establish his innocence or otherwise by participating in the process of enquiry. Contrarily, the charge memo cannot be quashed, merely on the ground that the Registrar(in charge) issued the memorandum of charges. The Registrar is only the communicating authority as far as the decisions taken by the University is concerned. The decisions are taken by the Syndicate of the University and the Registrar has communicated the decision taken by the Syndicate competent to frame the charge memorandum against the writ petitioner.

7.The learned Standing counsel appearing on behalf of the respondent also made a submission that the Vice Chancellor of the Madras University was appointed to conduct an enquiry, who in turn, declined to accept the offer. Thus, the respondent is now taking steps to appoint another Enquiry Officer to proceed with the enquiry against the writ petitioner. As far as the charge memorandum is concerned, the Syndicate considered the files and taken a decision and based on the resolution passed by the Syndicate, the Registrar issued the copy of the charge memo to the writ petitioner. Thus, the point of jurisdiction is untenable and the competent authority had taken a decision to frame charges against the writ petitioner and the Registrar has communicated the same to the writ petitioner as he is the authority competent to communicate the decisions taken by the University.

8.This Court is of an opinion that on initiation of disciplinary proceedings, the authorities competent must ensure early disposal of the same. Long pendency of the departmental disciplinary proceedings would certainly cause prejudice to the interest of the employees also.

9.In the present case on hand, the writ petitioner is due to retire from service on 31.05.2019 and therefore, the respondents are bound to proceed with the enquiry, conclude the same and pass final orders as expeditiously as possible. However, early disposal of the departmental disciplinary proceedings are possible, only if the writ petitioner co-operates for the same. Thus, the writ petitioner is bound to co-operate for the earlier disposal of the departmental disciplinary proceedings and in the event of non-cooperation on the part of the writ petitioner, the same shall be recorded by the authorities competent in the proceedings itself.

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**, reported in 2012 11 SCC 565, the Apex Court observed as follows:-

"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."

14. In the case of Union of India and another **Vs. Kunisetty Satyanarayana, reported in 2006 12 SCC 28**, the Hon'ble Supreme Court of India, held as follows:-

"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 Ghose* [(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."

15. In view of the legal principles settled, the charge memo cannot be quashed. However, the respondent is directed to proceed with the enquiry and conclude the same as expeditiously as possible by providing opportunity to the writ petitioner. The writ petitioner is also directed to co-operate for the early disposal of the enquiry by availing the opportunities to be provided by the respondents as per the rules in force.

16.With these observations, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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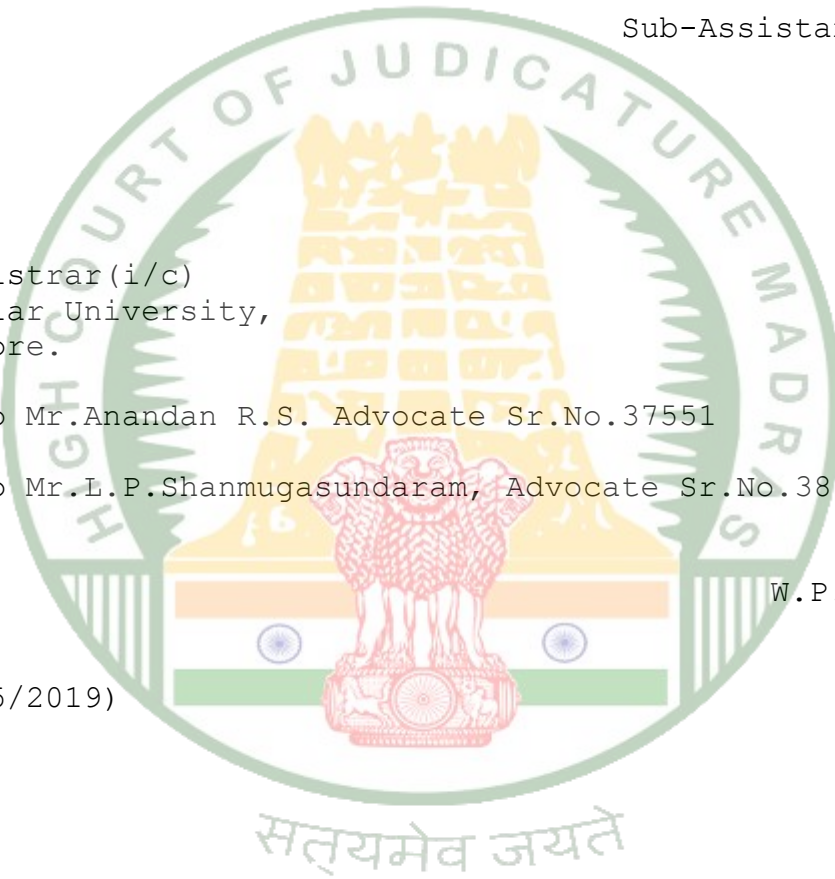
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VGI (CO)
KP(31/05/2019)



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