

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2019

CORAM

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

W.P.No.12582 of 2018

and W.M.P.No.14736 of 2018

C.Punniyakotti

....

Petitioner

Vs

The Managing Director

Tamilnadu Zari Limited Industrial Estate

Kanchipuram- 631 502.

....

Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records from the respondent relating to the impugned Charge-memo Ref. Estab/2017-18 dated 19.10.2017 and quash the same and direct the respondent to pay compensation to the petitioner for framing false charges against the Petitioner.

For Petitioner : Mr.N.G.R.Prasad
for M/s.R.Rajaram

For Respondent : Mr.Y.Jothish Chander

O R D E R

The charge memo dated 19.10.2017 is sought to be quashed in the present writ petition. Learned Senior Advocate appearing on behalf of the writ petitioner vehemently contended that the writ petitioner is an innocent employee, the charges framed against the writ petitioner are fabricated, the writ petitioner is no way connected with the cash transactions of the respondent organization and, in respect of the irregularities now cited in the impugned charge memo, another co-employee viz., Mani was removed from service. This apart, the learned Senior Advocate urged this Court by stating that the statement of all allegations set out in the case of the co-employee Mani is akin to that of the allegations set out in the present impugned charge memo, and therefore, in respect of the same amount, there cannot be a charge memo for two employees, and when the said Mani had already been terminated from service, there is no question of initiation of charges against the writ petitioner. It is further contended that the writ petitioner was not holding the post of cashier and that he was not responsible for any such alleged misappropriation of the funds of the respondent organization and therefore, the present case is a fit case for quashing the charge memo.

2. Learned counsel for the respondent opposed the contentions, by stating that the writ petitioner was holding the post of Cashier for a period of about one year and in this regard, the proceedings issued by the Managing Director dated 21.05.2010 states that Thiru.R.Mani, Cashier is directed to hand over the stock of scrap materials to Thiru S.Pitchaikani, Storekeeper and also he is directed to hand over the post of Cashier to Thiru C.Punnikotti, Accounts Assistant and report to the Managing Director immediately. It is further stated that Thiru.S.Pitchaikani, Storekeeper is directed to take over the stock of scrap materials from Thiru R.Mani, Cashier and that Thiru C.Punnikotti, Accounts Assistant is directed to take over the post of Cashier from Thiru R.Mani.

3. The proceedings dated 25.07.2011 states that the writ petitioner was relieved from the post of cashier and thereafter one S.Pitchaikani was appointed in the said post. Learned counsel for the respondent states that the writ petitioner was holding the post of Cashier for about one year and during his tenure, there is a misappropriation of Rs.9,50,000/-. Thus, the respondent has taken action against the petitioner and issued the charge memo.

4. Learned counsel for the writ petitioner states that the writ petitioner has not deposited any such alleged misappropriated amount and Mr.Mani, who was terminated from service, has only deposited the entire amount and therefore, there is no reason whatsoever to issue charge memo against the writ petitioner.

5. Learned counsel for the respondent further states that beyond the allegations now set out in the impugned charge memo, there are other allegations also framed against the writ petitioner. Another charge memo was issued during the year 2016 to the writ petitioner and four other staff of the organization on the basis of the report of the Vigilance and Anti Corruption Department, that during the period from April 2010 to July 2011, they had, in connivance with Thiru.Mohankumar, the then Joint Director of Handloom and Textiles (Managing Director) of the respondent company, Thiru.Panneerselvam, Assistant Manager (Gilding), Thiru.B.Govindarajan, Assistant Manager (Testing), Thiru K.A.Perumal, Assistant Manager (Gilding) and Thiru r.Mani, Junior Assistant, made spurious Zari using lesser amount of gold and manipulated the results of the Zari produced at the Tamil Nadu Zari Limited, Kanchipuram as 100% pure Zari and supplied the same to twenty six Silk Co-operative Societies functioning under the Department of Handloom and Textiles thereby played a major role in paving way for misappropriation of

Rs.16,00,77,090/- and failed to maintain absolute integrity and devotion to his duty and acted in a manner prejudicial to the company, where he is employed, violating Regulation 3.1 of the Conduct Regulations of the Tamil Nadu Zari Limited, Kanchipuram, Staff Regulations of 1981. Hence, the averments of the writ petitioner that the petitioner had unblemished / clean past record is incorrect and there are documents to show that the writ petitioner is having blemished record of service.

6. The point for consideration is whether the charge memo can be quashed by this Court in a writ proceedings based on certain merits and the facts placed by the writ petitioner. Undoubtedly, the employee against whom the charge memo is issued, is responsible for establishing his innocence or otherwise by participating in the enquiry proceedings and the writ Court under Article 226 of the Constitution of India cannot enter into the arena of adjudicating the merits of the allegations set out in the charge memo. If those merits and demerits are adjudicated, this Court would be conducting the departmental enquiry in writ proceedings. Such a process is certainly impermissible and the scope of judicial review against a charge memo is undoubtedly limited. A charge memo cannot be quashed in a routine manner. Judicial review against the charge memo is also limited. Even though certain facts and circumstances are narrated disputing the allegations, counter allegations are also raised by the respondent, by stating that the writ petitioner served as a cashier for about one year.

7. All these disputed facts and circumstances can never be adjudicated in writ proceedings and it is left open to the parties to submit the original documents and adduce evidence for the purpose of establishing their case and for proving innocence or otherwise. The High Court cannot appreciate the merits involved in respect of the allegations set out in the charge memo. The charges against the petitioner are in respect of misappropriation, which all are certainly serious allegations and which are to be dealt with in accordance with law. There cannot be any leniency or misplaced sympathy in respect of misappropriation case as well as corruption case. It is left open to the delinquent officials to establish their innocence by availing the opportunities, to be provided by the disciplinary authority in accordance with the rules in force.

8. Learned counsel for the respondent brought to the notice of this Court that Enquiry Officer has already been appointed and the writ petitioner had already participated in the enquiry. When the process of enquiry is in progress, and after the writ petitioner had participated in the enquiry on 10.05.2018, he has filed the present writ petition and on account of the interim order, the further proceedings were kept in abeyance.

9. Be that as it may. This Court is of an undoubted opinion that the enquiry already commenced must go on and the writ petitioner shall cooperate with the enquiry officer for the purpose of establishing his innocence, by producing the documents and by adducing evidence, if necessary. The authorities competent must also provide opportunity to the petitioner to establish his case in the manner known to law. It is clarified that the presenting officer of the department has to establish the charges at the first instance and thereafter the writ petitioner is at liberty to repudiate the charges by availing the opportunities. Thus, it is made clear that the presenting officer as well as the delinquent official are bound to establish their respective case by producing documents and by adducing evidence. No writ petition can be entertained against the charge memo in a routine manner. A charge memo can be challenged, if the same has been issued by the incompetent authority, having no jurisdiction or with a malafide intention or if the same is in violation of the statutory rules in force. Even in case of raising the allegation of malafides, the charge against whom such an allegation is raised, is to be impleaded as a party respondent in his personal capacity. In the absence of any one of these legal grounds, no judicial review is permissible against the charge memo.

10. The complex facts and circumstances can never be adjudicated in a writ proceedings, as such facts and circumstances are to be enquired into with reference to the original files and the statements or depositions, if any, furnished by the parties concerned. Thus, this Court cannot adjudicate the matter on merits. Intermittent intervention in departmental proceedings are certainly not preferable, and the same has to be completed in all respects and reach its logical conclusion. In the event of such intervention by the Court, the charges levelled against the delinquent officials cannot be effectively adjudicated in the process known to law. Therefore, the Courts must exercise restraint in respect of the cases filed against the charge memo and such cases must be allowed to be concluded at the hands of the departmental disciplinary authorities.

11. 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."

12. 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 in the abovesaid judgment is extracted hereunder.

11. Ordinarily a writ application does not lie against a chargesheet 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, chargesheet 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 chargesheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. (Vide :[State of U.P. v. Brahm Datt Sharma](#), AIR 1987 SC 943; [Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh & Ors.](#), (1996) 1 SCC 327; [Ulagappa & Ors. v. Div. Commr., Mysore & Ors.](#), AIR 2000 SC 3603 (2); [Special Director & Anr. v. Mohd. Ghulam Ghouse & Anr.](#), AIR 2004 SC 1467; and [Union of India & Anr. v. Kunisetty Satyanarayana](#), AIR 2007 SC 906).

12. In [State of Orissa & Anr. v. Sangram Keshari Misra & Anr.](#), (2010) 13 SCC 311, this Court held that normally a chargesheet is not quashed prior to the conclusion of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that correctness or truth of the charge is the function of the disciplinary authority."

13. In the case of [Union of India vs. Kunishetty Satyanarayana](#) [(2006) 12 SCC 28], the Supreme Court of India held as follows,

" 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. However, ordinarily the High Court should not interfere in such a matter."

14. The consistent view taken by the Constitutional Courts in the cases of quashing the charge memo is that the delinquent officials are duty bound to face the enquiry and establish their case before the competent authorities. In the present case on hand, the allegations are in relation to the misappropriation of

public funds. Thus, there cannot be any leniency or otherwise in the matter of quashing the charge memo. This being the factum of the case, it is left open to the petitioner to participate in the departmental disciplinary proceedings and establish his case and it is needless to state that the enquiry proceedings already commenced must be concluded within a reasonable period of time and there should not be any undue delay. In view of the fact that the enquiry officer has already been appointed and the first enquiry was conducted on 10.05.2018, this Court is of an opinion that the writ petitioner has to cooperate for the earlier conclusion of the departmental disciplinary proceedings and the disciplinary authority must also ensure that the final orders are passed in the disciplinary proceedings, by following the procedures, without causing any undue delay. With these directions, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

KST

To

1.The Commissioner
Directorate of Technical Education
Guindy, Chennai 600 025.

2.The Managing Director
Tamilnadu Zari Limited Industrial Estate
Kanchipuram- 631 502.

+lcc to M/s.R.Rajaram, Advocate sr.no.17689

+lcc to Mr.Y.Jothish Chander, Advocate sr.no.17919(23/04/2019)

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