IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.22294 of 2018
and
WMP.No.26130 of 2018

S.Mariappan ...Petitioner

Vs

1. The Inspector General of Registration,
No.100, Santhome High Road,
Pattinapakkam, Chennai-600 028.

2. The Deputy Inspector General of Registration,
No.312, Third Floor,
District Collector's Office,
Salem - 636 001.

3. The District Registrar/Enquiry Officer,
(In the cadre of Asst.Inspector General of Registration)
Salem East.

4. The District Registrar (Audits),
Namakkal. ...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 Certiorarified Mandamus, calling for the records of the impugned order charge memo vide No.1171/A1/2017 dated 20.03.2017 passed by the 2nd respondent and quash the same with consequential direction, directing the 1st respondent to consider the petitioner herein in the panel of officers fit for appointment to the post of Sub Registrar Grade I, 2013-2014 list.

For Petitioner :Mr.M.Velu,
for M/s.P.Stella Mary
For Respondents :Mr.M.Thamizharasan,
Govt.Advocate

O R D E R

The charge memo dated 20.03.2017, framed against the writ petitioner is under challenge in the present writ petition.

2. The writ petitioner is working as Sub Registrar and the charges against the writ petitioner are extracted hereunder:-

> "Charge:
>
> According to the internal audit reports for the year 2013-16, you, Thiru.S.Mariyappan, Sub-Registrar, Marandahalli, Dharmapuri Registration District, had created a financial loss to the Government to the tune of Rs.15,75,070/- (Rs.Fifteen lakhs seventy five thousands and seventy only) in various 142 types on account of the documents registered by you. You are being held accountable for the income loss of Rs.15,75,070/- (Rs.Fifteen lakhs seventy five thousands and seventy only) suffered by the Government in terms of stamp duty, registration and other fees which has been caused by you intentionally apart from being negligent and not focussing on you duty, and thus you are in breach of Rule 20(1) of Government Servants Conduct Rules."

3. Appendix 2 to the charge memo provides the statement of allegations and the Appendix 3 provides the list of documents. Thus, there is no infirmity as such in respect of the charge memo issued against the writ petitioner.

4. The learned counsel for the writ petitioner states that the earlier charge memo issued in respect of an allegation took place during the year 2011, an enquiry was conducted and the writ petitioner was exonerated from the allegations. When the writ petitioner was in verge of his promotion to the higher post, once again the present impugned charge memo has been issued. Thus, the charge memo is vindictive and on that ground, it is to be liable to be scrapped.

5. This Court is of the considered opinion that, charge memo impugned has been issued based on the internal audit reports for the year 2013-16 and a financial loss to the tune of Rs.15,75,070/- was found during the audit. Under these circumstances, those allegations are to be enquired into by the Competent Authorities for the purpose of culling out the truth. Contrarily, the charge memo cannot be quashed on the ground that the writ petitioner was in verge of promotion or the earlier charge memo had been dropped. When the allegations set out in the charge memo are serious in nature, the writ petitioner has to submit his explanations and defend his case for the purpose of establishing his innocence or otherwise.

6. 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.

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. In the case of Secretary, Ministry of Defence and Others Vs. Prabhash Chandra Mirdha reported in (2012) 11 SCC 565, the Apex Court held as follows in paragraphs No.10 to 12, which is 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.

12. In the case of Union of India and another Vs. Kunisetty Satyanarayana reported in (2006) 12 SCC 28, the Supreme Court of India held as follows in paragraphs No.13 and 14, which is extracted here under:-

"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] , 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."

13. Under these circumstances, the writ petitioner is bound to face the enquiry for the purpose of establishing his innocence or otherwise by producing the documents and by adducing evidences. However, the writ petitioner is not made out any acceptable grounds for the purpose of quashing the very charge memo.

14. The respondents are directed to proceed with the enquiry and conclude the same, by affording an opportunity to the writ petitioner as per the rules as expeditiously as possible without causing any undue delay.

15. With these observations, the writ petition stands disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

Pkn
To
1. The Inspector General of Registration,
No.100, Santhome High Road,
Pattinapakkam, Chennai-600 028.

2. The Deputy Inspector General of Registration,
No.312, Third Floor,
District Collector's Office,
Salem - 636 001.

3. The District Registrar/Enquiry Officer,
(In the cadre of Asst.Inspector General of Registration)
Salem East.

4. The District Registrar (Audits),
Namakkal.

+2 Ccs to M/s.P.Stella Mary, Advocate sr 23301.

W.P.No.22294 of 2018

SV(CO)
SP(22/04/2019)