

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.02.2019

CORAM

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

W.P.No.13968 of 2018
in
W.M.P.Nos.16500 & 16501 of 2018

Dr.T.Santhakumari

.. Petitioner

..vs..

1.The Secretary to Government,
Animal Husbandry, Dairying and Fisheries Department,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.

2.The Director,
Department of Animal Husbandry and
Veterinary Services,
Government of Tamil Nadu,
Central Office Building, Part - II,
Chennai - 600 006.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the 2nd respondent in and connected with charge memo in Na.Ka.No.6152-L1/2018 dated 07.03.2018 and quash the same for being contrary to facts as well as and Tamil Nadu Civil Services (Discipline and Appeal) Rules as amended and being an abuse of process.

For Petitioner : B.Sathish Sundar

For Respondents : Mr.A.N.Thambi durai
Special Government Pleader

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O R D E R

The charge memo dated 07.03.2018 is sought to be quashed in the present writ petition. The writ petitioner is Veterinary Doctor and presently employed as Deputy Director in Animal Husbandry Department. On account of certain allegations, a charge memo was issued to the writ petitioner in proceedings dated 07.03.2018. The charges against the writ petitioner are extracted hereunder;

"Allegation:

Dr.T.Santhakumari, Former Regional Joint Director of Animal Husbandry (Additional Charge), Kanchipuram, Deputy Director of Animal Husbandry, Cattle Breeding and Fodder Development Vellore had committed the following allegation when she was holding additional Charge of Regional Joint Director of Animal Husbandry, Kanchipuram.

1. In Amarambedu Village attached to Kundrathur Block of Kancheepuram District, it has been given milch cows to 50 beneficiaries. Out of this 21 beneficiaries are not below poverty line.

2. In milch animal procurement, milk yield test has not been carried out. It was revealed that seller did not permit them to do milk yield test. So it is confirmed that the work was not carried out as per the guidelines.

3. So it is ascertained in the inspection report as the milk yield test had not undertaken, the milch animals distributed to the beneficiaries have low milk yielding capacity.

4. As per records it is ascertained that there is violation in depositing the balance amount in the Bank which was obtained buying the milch animals below Rs.35,000/-.

5. Due to improper monitoring and acted without responsibility and dedication, this matter had come in the paper news and created a bad name to the Government and thereby violated rule 20 of Tamil nadu Government Servant's conduct rules 1973."

Annexure-2 of the charge memo provides statement of allegations, namely imputation of misconduct or misbehavior in support of the charges framed.

Annexure-3 provides list of documents relied upon.

Thus, there is no infirmity in respect of the charges framed against the writ petitioner.

2. The learned counsel for the writ petitioner states that the identification of the beneficiaries were done by the Village Level Authorities which was approved by the District Collector Concern. Thus, the writ petitioner acted only as the Sanctioning Authority and therefore, the petitioner is not responsible for any of the allegations set out in the charge memo. This apart, the petitioner states that the charges are vague in nature and in that ground also charge memo is liable to be scraped. On plain reading of the charge memo reveals that the allegations are certainly serious in nature and the Government welfare schemes are either manipulated or abused by the Authorities by

granting the same to the unqualified persons who all are not actual beneficiaries. Thus, those allegations are to be enquired into by the Authorities Competent. The charges enumerated in the impugned charge memo are clear and the allegations are set out, statement of allegations and imputations are also enumerated and therefore, this Court is of an opinion that the charge memo is capable of being enquired into by the Competent Authorities.

3. 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.

4. 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.

5. 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."

6. 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.

7. 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.

8. An attempt taken by the learned counsel for the writ petitioner to argue the case on merits cannot be entertained in view of the fact that all such complex facts and circumstances are to be adjudicated only by producing documents and by adducing evidences before the Competent Authorities. Disputed facts cannot be adjudicated in a Writ Proceedings under Article 226 of the Constitution of India.

9. Thus, it is left open to the writ petitioner to participate in the departmental disciplinary proceedings and prove her innocence or otherwise by producing documents and adducing evidences, if any, and by establishing the other facts. This being the legal principles to be followed, this Court has no hesitation in coming to the conclusion that petitioner has not established any acceptable legal grounds for the purpose of quashing a very charge memo.

10. The Authorities Competent on initiation of departmental disciplinary proceedings must ensure that the same is concluded within a reasonable period of time and without causing any undue delay. Under these circumstances, the respondents are bound to participate in the enquiry proceedings conclude the same and pass final orders on departmental disciplinary proceedings as expeditiously as possible.

11. With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CO)

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Sub-Assistant Registrar

Pns/kmm

To

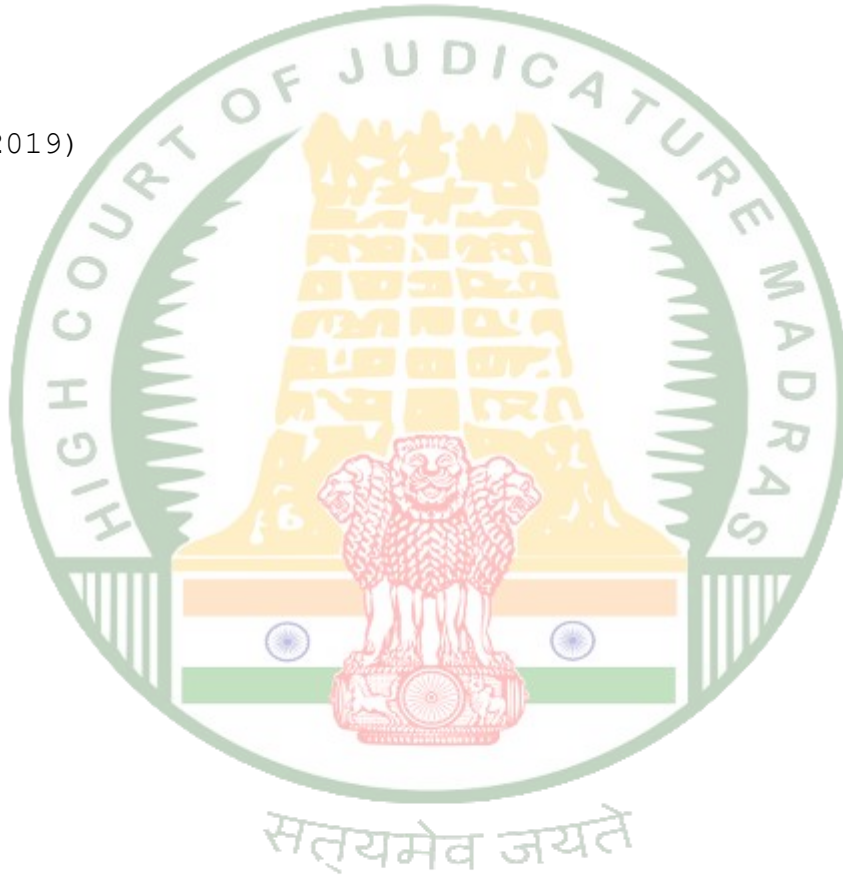
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+1 CC to Mr.B.Sathish Sundar, Advocatesr 15391.
+1 CC to Govt. Pleader sr 16640.

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RR(CO)
SP(19/03/2019)



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