

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.02.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.15332 of 2018
and
W.M.P.No.18221 of 2018

P.N.Raghukumar

...Petitioner

..Vs..

1. The Principal Secretary/Commissioner of Revenue Administration, Disaster Management and Mitigation Department, Chepauk, Chennai - 5.
 2. The District Collector, Krishnagiri.
- ...Respondents

Writ Petitions filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the first respondent dated 27.12.2017 vide Proceedings No. Ser.2[1]/12935/2014 and to quash the same.

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

For Respondent : Mrs.P.Rajalakshmi
Additional Government Pleader

ORDER जयते

The relief sought for in the present writ petition is to call for the records relating to the first respondent dated 27.12.2017 vide Proceedings No. Ser.2[1]/12935/2014 and to quash the same.

2. Mr.N.G.R.Prasad, learned counsel, who is appearing on behalf of the writ petitioner raised the grounds that the impugned charge memo has been issued after the crucial date fixed for the purpose of preparation of panel for promotion to the higher post. The petitioner is now working as Deputy Collector, more specifically, in the post of Additional Personal Assistant to Collector (Land). In order to stop the promotional

opportunities of the writ petitioner, the charge memo has been issued, is the complaint now made out by the learned counsel for the writ petitioner.

3. It is further contended that the documents and the relevant files in respect of the allegations set out in the charge memo have not been furnished to the writ petitioner. This apart, the allegations are of the year 2014 and the charge memo has been issued after a lapse of about 4 years during the year 2018 and on that ground also, writ petition is liable to be allowed. In view of the fact that on the crucial date for preparation of panel, the writ petitioner was found suitable and qualified. The subsequent charge memo issued, cannot be a ground to defer the name of the writ petitioner for inclusion in the panel of persons fit for promotion to the next higher post.

4. The learned counsel for the writ petitioner reiterated and re-emphasized that the authorities competent, in order to deprive the promotional opportunity of the writ petitioner, issued the impugned charge memo.

5. The learned Additional Government Pleader, who is appearing on behalf of the respondent opposed the contentions by stating that the charge memo was issued on account of certain serious allegations. The allegations set out in the charge memo are in relation to the demand of Rs.2,00,000/- for the bill amount of Rs.38,00,000/- settled to the vendor thereby delayed the electoral roll printing process. This apart, the promotion is to the post of District Collector and therefore, the writ petitioner is not eligible on account of pending charges.

6. This Court is of an opinion that the charges against the writ petitioner are certainly serious, warranting an enquiry under the Provisions of the Discipline and Appeal Rules, the charges are extracted herein:

"Charge-1:

That Thiru P.N.Raghukumar, formerly Personal Assistant (Election) to Collector, Kancheepuram, now working as Additional Personal Assistant (Land) Krishnagiri, while working as Personal Assistant (Election) to Collector, Kancheepuram, it has been alleged by the vendor M/s.Bharathi Data Service Centre, Chennai who was engaged for printing of Electoral Roll in respect of Kancheepuram District that Thiru P.N.Raghukumar has demanded and accepted Rs.10,000/- for giving the BLO Register CD and Draft Roll 2013 CD to the Vendor for printing and also demanded Rs.25,000/- for giving the reprinted mother Roll CD and Supplementary-1 CD and also demanded Rs.2 Lakh for the bill amount of Rs.38 Lakhs, settled to

the vendor and thereby delayed the electoral roll printing process. This has led to a complaint filed by the vendor to the Chief Electoral Officer, Chennai along with proof in the form of CD containing the conversation between Thiru P.N.Raghukumar and the Vendor regarding the demand of bribe. Thus, he brought disrepute and embarrassment to the Government.

Charge-2:

That Thiru P.N.Raghukumar, formerly Personal Assistant (Election) to Collector, Kancheepuram, now working as Additional Personal Assistant (Land) Krishnagiri, while working as Personal Assistant (Election) to Collector, Kancheepuram, with an ulterior motive, delayed the issue of CD to the vendor and thus became responsible for the supply of only 32 copies of e-rolls instead of 40 copies and thus put the administration in a delicate situation where copies of the e-roll could not be given to others.

Charge-3:

That Thiru P.N.Raghukumar, formerly Personal Assistant (Election) to Collector, Kancheepuram, now working as Additional Personal Assistant (Land) Krishnagiri, while working as Personal Assistant (Election) to Collector, Kancheepuram failed to maintain absolute integrity and devotion to duty and acted in a manner prejudicial to the interest of the Government which is unbecoming of a Government Servant and thus violated rule 20(1) of the Tamil Nadu Government Conduct Rules, 1973."

7. Annexure II to the charge memo provides statement of allegations namely imputations of misconduct or misbehavior in respect of the grounds raised by the learned counsel for the petitioner states that the details, which are given cannot be accepted in view of the fact that the statement of allegation enclosed in Annexure II to the charge memo categorically enumerates the incidents took place in relation to the charge memo framed against the writ petition in Annexure I. Annexure III provides the list of documents relied on by the departmental authorities. Annexure IV provides the list of witnesses be examined during the course of enquiry. Thus, there is no infirmity as such in respect of the charge memo framed. However, all the documents relied upon and the witnesses stated are to be examined and enquired into by the competent authorities at the time of conducting domestic enquiry.

8. The writ petitioner is also entitled to peruse the documents and furnish the details and defence statements by availing the opportunities to be provided by the competent authorities, while conducting enquiry. Thus, the documents

relied upon by the department is to be furnished to the writ petitioner at the time of commencement of enquiry.

9. In respect of such serious allegations, this Court is of an opinion that the entire charge memo cannot be quashed on the ground that the allegations are not supported with any of the documents or belated or otherwise. The writ petitioner is working in the cadre of Deputy Collector. The allegation against him is demand of illegal gratification. Such being the nature of the allegations, the writ petitioner has to prove his innocence or otherwise by producing documents or by adducing evidence, if any available.

10. No writ petition can be entertained against the charge memo in a routine manner. Judicial review against charge memo are certainly limited. If any allegations are raised against the public servants, an enquiry into such allegations are certainly warranted and the writ petition cannot quash the charge memo on such grounds, which are all raised in the present writ petition. A charge memo can be challenged on the ground that if the same is issued by an incompetent authority having no jurisdiction or an allegation of malafides are raised or if the same is in violation of statutory rules in force. Even in case of malafides, the authority on whom such an allegation is raised, to be impleaded as party/respondent in his personal capacity. In the absence of any such legal grounds, no writ petition can be entertained against the charge memo.

11. Though the learned counsel for the petitioner states that the authorities had issued the charge memo in order to stop the promotional opportunities of the writ petitioner. No such pleadings are substantiated nor the officials competent are impleaded as party/respondent in their personal capacity. In the absence of such pleadings or impleading of officials in their personal capacity, this Court would not be in a position to consider all those mala fide intentions raised by the writ petitioner at that relevant point of time in order to quash the charge memo.

12. Intermittent interventions in departmental proceedings are certainly not preferable. Only on exceptional circumstances, the High Court can interfere with such proceedings, if there is gross injustice or violation of the statutory Rules in force. Thus, the writ petitioner has to submit his explanation/objections and participate in the enquiry proceedings in order to establish his innocence or otherwise.

13. 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."

14. 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.

15. 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.

16. In view of the fact that the allegations set out in the charge memo are serious in nature and in relation to demand of illegal gratification, the writ petitioner has to participate in the process of enquiry and cooperate for the earlier disposal of enquiry proceedings.

17. It is made clear that the Disciplinary Authority, on initiation of disciplinary proceedings, must ensure that all such proceedings are concluded without causing any undue delay. The departmental disciplinary proceedings are to be concluded at the earliest possible in order to avoid further denial of service benefits to the officials. Thus, the earlier disposal of the Departmental Disciplinary Proceedings are also imminent. However, the delinquent officials should also cooperate for the early disposal of the proceedings. In the event of any non co-operation on the part of the delinquent officials, the same shall be recorded by the Enquiry Officer as well as the disciplinary authorities in the proceedings itself.

18. In view of all these facts, the writ petitioner has not established any acceptable legal ground for the purpose of quashing the charge memo and the writ petition is devoid of merits and stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Assistant Registrar(CS III)

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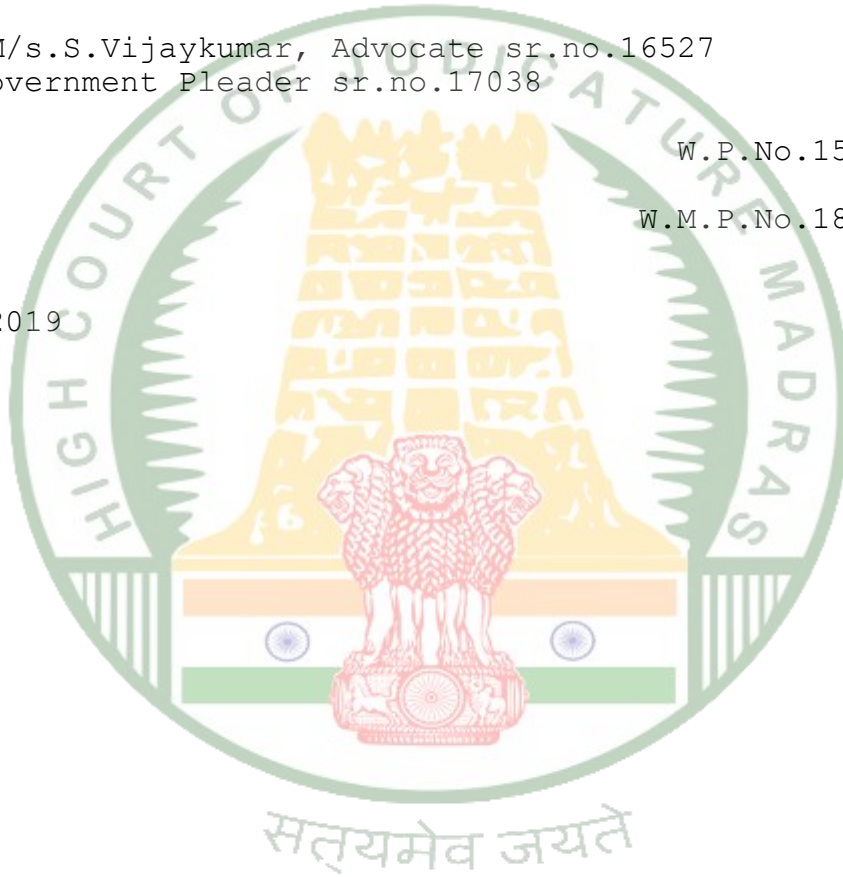
To

1. The Principal Secretary/Commissioner of
Revenue Administration, Disaster Management
and Mitigation Department, Chepauk,
Chennai - 5.
2. The District Collector,
Krishnagiri.

+1cc to M/s.S.Vijaykumar, Advocate sr.no.16527
+1cc to Government Pleader sr.no.17038

W.P.No.15332 of 2018
&
W.M.P.No.18221 of 2018

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