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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.No.1876 of 2019
&
C.M.P.No.12727 of 2019

A.Parameswaran ... Appellant

-vs-

1.The Director of Horticulture,
Department of Horticulture,
Chepauk,
Chennai - 600 005.

2.The Deputy Director of Horticulture,
Department of Horticulture,
Dharmapuri - 636 705.

...Respondents

Writ Appeal filed under Clause 15 of Letter Patent against the order in W.P.No.31366 of 2018 dated 05.03.2019 on the file of the High Court of Judicature at Madras and praying to issue a Writ in the nature of Writ of Certiorari to call for the records pertaining to the charge memo issued by the 1st Respondent in O.Na.B1/5746/2018 dated 18.06.2018 and quash the same.

For Appellant : Mr.N.G.R.Prasad
for Mr.V.Stalin

J U D G E M E N T

[Judgment of the Court was delivered by P.T.ASHA,J.]

This Intra-Court appeal is filed challenging the order in W.P.No.31366 of 2018, dismissing the Writ Petition filed by the appellant to quash the Charge memo dated 18 June 2018. The charge memo included complaints made by the women employees of the department stating that the appellant was constantly harassing them and using abusive language and threatening them with proceedings under the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the SC/ST Act).



2. It is necessary to briefly allude to the facts of the case for morefully appreciating the events preceeding the filing of the above Writ Appeal.

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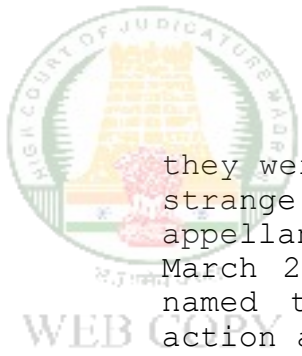
3. The appellant herein was working as an Assistant in the office of the Deputy Director of Horticulture, Dharmapuri District. He would submit that he belongs to the oppressed community and had been discharging his duties with the utmost sincerity and had been receiving Rs.4,200/- as grade pay. After putting two years of service in the said grade pay, he was informed that the Grade pay was wrongly given to him and thereafter the excess amount was deducted from his monthly salary. As against the said order he had filed W.P.No.33008 of 2017 and obtained stay of recovery in W.M.P.No.36370 of 2017 in W.P.No.33008 of 2017. He further contended that the permission sought for by him in the year 2017 to put up a first floor is yet to be sanctioned.

4. The appellant would further contend that as a sequel to his issuing a legal notice dated 17.03.2018, he was transferred from Dharmapuri District to Udagai, vide order dated 10.04.2018.

5. The appellant would submit that he had given a representation to the 1st respondent to cancel the transfer order and give him an alternative post in Dharmapuri District itself. Instead of complying with his request the respondent had transferred him to Krishnagiri District, vide order dated 28.06.2018. Meanwhile, the appellant had filed W.P.No.16496 of 2018 for a Writ of Certiorari to quash the order dated 10.04.2018 passed by the 1st respondent transferring him from Krishnagiri to Udagai.

6. By order dated 04.07.2018, this Court had given a direction that the 1st respondent should take an informed and considered decision on the representation dated 18.05.2018 and consider modification of the order of transfer from Dharmapuri to Udagai within four weeks. It was not brought to the notice of the Court that, in the interregnum, an order of transfer dated 28.06.2018 had been passed, transferring the appellant from Dharmapuri to Krishnagiri.

7. Be that as it may, in the mean time around seven women employees of the department of Horticulture, Dharmapuri, had given a complaint dated 12.03.2018 to the Deputy Director of Horticulture Department, the 2nd respondent herein, alleging that the appellant was harassing them by abusing them and tarnishing their reputation before other male colleagues. When questioned, he had threatened them with action under the SC/ST Act. The women employees had addressed the 2nd respondent stating that



they were working in a very hostile atmosphere on account of the strange behavior of the appellant. It also appears that the appellant had also written several letters between February and March 2018 to the Deputy Director of Horticulture where he has named these women employees and asked the officials to take action against them.

8. Thereafter by letter dated 16.03.2018, the Deputy Director had called upon the appellant and all the women employees who had given complaint to appear before him for a personal hearing on 17.03.2018 at 11.00 a.m.

9. On receipt of the said notice of hearing, the appellant whose complaints were also scheduled to be heard, issued a legal notice dated 17.03.2018, alleging that his salary had been wrongly deducted, his request for medical expenses made in March 2018 for his mother was not processed, that one woman employee had abused him pointing a finger at his community, permission for putting up additional construction was not given, the complaints made by him was not being processed etc,. Ultimately, in the said notice, the appellant would contend that the inaction on the part of the 2nd respondent had resulted in benefits being denied to him. The appellant would accuse the 2nd respondent of personal and departmental bias towards him.

10. Thereafter, on 18.06.2018, the charge memo impugned in the Writ Petition was issued for the following misconduct:

a) Misbehavior in an abusive, disgraceful, outrageous manner to the women staff of the office.

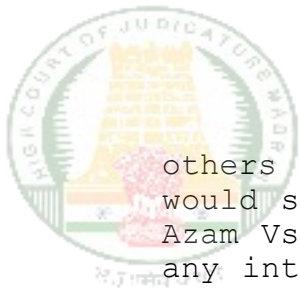
b) Giving advice to his superiors and issuing legal notice seeking details of office practice.

c) Constructing a first floor in his premises without prior permission.

11. It was after the issue of the Charge Memo that the appellant was transferred to Krishnagiri.

12. By order dated 05.03.2019 the learned Judge was pleased to dismiss the Writ Petition by observing that, it is open to the appellant to make a submission regarding the complaint made against him and other departmental bias if any as projected by him during the enquiry. Challenging the said order the appellant is before this Court.

13. Mr.N.G.R.Prasad, learned counsel appearing on behalf of the appellant would contend that the appellant was being harassed only on account of his community and that all the



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others have joined together to discriminate the appellant. He would submit the Judgement reported in 1963 (1) LLJ 512 - Sayed Azam Vs. State of Madras, in support of his argument that where any intemperate language was used in the heat of the moment the same would not be a misconduct.

14. A perusal of the charge memo would indicate that a specific complaint had been lodged by the women employees accusing the appellant of misbehaving with them in an abusive, disgraceful and uncivilized manner. A further reading of the charge memo would indicate that a preliminary enquiry of the complaint of the women employees had been held by the 2nd respondent and during this enquiry it was prima facie revealed that the appellant had behaved badly with the women employees. The misconduct being very serious, the charge memo cannot be quashed at this stage without holding enquiry. There is absolutely no prejudice caused to the appellant by issuing the charge memo. It is open to the appellant to place all his evidence to disprove the charges. In any case, it is for the respondents to prove the charges, by producing evidence.

15. The Judgement cited by the learned counsel for the appellant would not be applicable to the facts of the instant case for the simple reason that it was a case where the employee was terminated from service and the Court had reinstated him stating that the punishment was not commensurate with the misconduct. In the instant case the proceedings is only at the stage of the charge memo and enquiry is yet to commence.

16. We do not find any infirmity in the order passed by the learned single Judge. The Writ Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

Kan/tar

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Director of Horticulture,
Department of Horticulture,
Chepauk,
Chennai - 600 005.



2.The Deputy Director of Horticulture,
Department of Horticulture,
Dharmapuri - 636 705.

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+1cc to Mr.V.Stalin, Advocate, SR.No.64998

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Kak (14/09/2019)