

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.08.2019

Delivered on: 09.08.2019

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.18028 of 2019

and

W.M.P.Nos.17423 and 17424 of 2019

Aravind

.....

Petitioner

vs.

1.The Government of Tamil Nadu,
rep.by its Principal Secretary,
Transport (D) Department,
Fort St.George,
Madras-9

2.The Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Rep.by its Managing Director,
Villupuram-605 602

...

Respondents

Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari to call for the records, in G.O.(2D) No.8, dated 20.03.2019, on the file of the first respondent and consequential order passed by the 2nd respondent in Ka.Ku.No.8/7018/D7-Ku.A-Tha.Na.Apoka (V) VMA/2019-20, dated 28.03.2019 and quash the same as illegal, incompetent and without jurisdiction.

For Petitioner .. Mr.V.Raghavachari

For Respondents ... Mr.K.K.Ramesh,A.G.P.for R1
Mr.K.J.Sivakumar,Standing Counsel
for R2

ORDER

The petitioner joined the services of the respondent in 1987 as Assistant Branch Manager at Nagercoil. Subsequently he was promoted as Branch Manager and Deputy Manager in 1994 and 2010, respectively. The petitioner was appointed as Senior

Deputy Manager on 01.04.2015 and posted in various places. Subsequently, he was posted as Managing Director for a period of three months from March to May 2018. Thereafter, the petitioner was transferred as Managing Director, Salem, in June and discharged his duty till 31.05.2019. On the basis of a complaint filed by one person, an First Information Report was registered on 13.03.2019 as against eight persons, who were employees of the respondent Corporation. According to the petitioner, he was not arrayed as an accused in that case. However, Departmental action was initiated against him, vide G.O.(2D), No.8, Transport (D) Department, dated 20.03.2019 and the petitioner was shown as one of the suspected officials and the allegations were made for misuse of funds pertaining to the Corporation. Thereafter, a charge-memorandum was issued against the petitioner on 28.03.2019 containing four articles of charges. Both the Government Order as well as the subsequent charge-memorandum, dated 20.03.2019 and 28.03.2019, respectively, are put to challenge in the present writ petition.

2.Initially, though this Court felt that the writ petition was not maintainable as against the charge memorandum, notice was issued on the contention raised by the learned counsel Mr.V.Raghavachari, appearing for the petitioner, that at the relevant point of time, the petitioner was not in-charge of the place and therefore, the charges framed against him were baseless and unfounded.

3.In response to the notice, on behalf of the respondents, a counter affidavit has been filed. In the counter affidavit it is clearly explained as to how the petitioner was arrayed as one of the suspects in the transaction, which was the subject matter of consideration by the Directorate of Vigilance and Anti Corruption and in view of the petitioner being arrayed as one of the suspects, a charge-memorandum was issued for the irregularities pertaining to the service period of the petitioner from 01.10.2015 to 31.10.2017.

4.At this, the learned counsel appearing for the petitioner Shri.V.Raghavachari would submit that the counter affidavit does not specifically point out the complicity of the petitioner in the irregularities, but the authorities were merely guided by the direction of the Directorate of Vigilance and Anti Corruption and on that basis Departmental action has been initiated against the petitioner. The learned counsel has attempted to draw the attention of this Court to certain factual aspects in order to establish the innocence of the petitioner and urge this Court to quash the charge-memorandum and the Government Order, initiating disciplinary action against the petitioner.

5.This Court is unable to appreciate as to how such argument, entirely premised on factual aspects, would be the subject matter of consideration by this Court, particularly, when this Court is dealing with the preliminary stage of considering the correctness and validity of the charge memorandum issued against the petitioner. Unless this Court has compelling reasons in exceptional circumstances to deal with the charge-memorandum, this Court cannot interfere at the preliminary stage of issuance of charge-memorandum, particularly when the charge-memorandum is being substantially assailed on certain factual aspects. It is not within the jurisdictional realm of this Court under Article 226 of the Constitution of India to appreciate the factual aspects and come to a conclusion one way or the other, as such conclusion would not fall within the ambit of judicial Review to be undertaken by this Court in its Constitutional jurisdiction.

6.In case the petitioner feels strongly about his innocence, it is always open to him to participate in the disciplinary action and come out unscathed by establishing his innocence, in the Departmental enquiry. It is certainly not open to the petitioner to knock the doors of this Court at the very preliminary stage of issuance of charge-memorandum and expect this Court to come to his rescue on the basis of self-serving factual averments. The scope of Article 226 of the Constitution of India cannot be thrown open to such Review at all and this Court certainly cannot drag itself into appreciating the factual averments of the matter and on such consideration, it cannot venture into giving any opinion or conclusion about the complicity or involvement of the petitioner in the irregularities. Such adjudication would call for settlement of factual aspects, which cannot be undertaken by this Court by exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. Therefore, this Court is of the view that the writ petition, as it is, is too premature and the same is devoid of merits and substance and hence, the same is dismissed. No costs. Consequently, connected miscellaneous petitions are dismissed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

msk
To

1. The Principal Secretary,
Government of Tamil Nadu,
Transport(D) Department,
Fort St.George,
Madras-9

2.The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Villupuram-605 602

+1 CC to Mr.V.Raghavachari, Advocate sr 68395.
+1 CC to Mr.K.J.Sivakumar, Advocate sr 68622.

W.P.No.18028 of 2019

VSNI (CO)
SP(16/09/2019)



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