

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.03.2019

CORAM

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

W.P.No.24897 of 2018
and
W.M.P.No.28937 of 2018

S.Matheswaran

..Petitioner

vs

1.The Principal Secretary and
Commissioner for Revenue Administration
Revenue and Disaster Management Department
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The District Collector
Salem.

..Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records in connection with the impugned charge
memo in Ser.No.2(4)/24647/2016-2 dated 13.01.2018 issued by the
1st Respondent and quash the same.

For Petitioner : M/s.Jerry V.V.Sundar

For Respondents : Mr.D.Suriyanarayanan
Additional Government Pleader

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O R D E R

The charge memo dated 13.01.2018 issued against the writ
petitioner is under challenge in the present writ petition.

2.The writ petitioner is working as Special Tahsildar and on
account of certain allegations, the charge memo was issued to
the writ petitioner. The charges against the writ petitioner are
extracted hereunder:-

Charge 1:

That Thiru.S.Matheswaran, Special Tahsildar(Social
Security Scheme), Salem during the period between
06.02.2014 and 09.08.2014 sanctioned Old Age Pension,

Destitute Widow Pension etc., to Tmt.Amutha and 32 others whose applications were enquired and not recommended by Revenue Inspector, Vembadithalam as they were all ineligible. Thus, he was responsible for sanctioning of Old Age Pension to ineligible beneficiaries.

Charge 2:

That Thiru.S.Matheswaran, Special Tahsildar(Social Security Scheme), Salem entertained the 33 applications and passed orders for granting Old Age Pension, by-passing the established procedures of enquiry by himself (or) getting recommendation of field staff such as Village Administrative Officer and Revenue Inspector.

Charge 3:

That Thiru.S.Matheswaran, Special Tahsildar(Social Security Scheme), Salem, by sanctioning pensions under Old Age Pension and other schemes to ineligible persons, he brought loss to Government.

Charge 4:

Thus by his above act, he has demonstrated that he lacked absolute integrity and devotion to duty and acted in a manner which is unbecoming of a Government Servant and thereby violated provisions laid down under rule 20 (1) of the Tamil Nadu Government Servant Conduct Rules 1973.

3. Annexure II to the charge memo provides Statement of allegations, namely imputations of misconduct or misbehaviour in support of each charge framed against Thiru.S.matheswaran, Special Tahsildar(Social Security Scheme), Salem. Annexure III to the charge memo provides List of documents based on which charges are framed against Thiru.S.Madheswaran, Special Tahsildar(Social Security Scheme), Salem are proposed to be sustained.

4. The learned counsel for the writ petitioner contended that there is no basis for the charges framed against the writ petitioner. The writ petitioner urged this Court with reference to certain certificates and orders issued by the authorities, stating that the allegations are incorrect. However, this Court cannot appreciate those documents in view of the fact that all such exercises are to be done only by the competent authority at the time of undertaking the process of enquiry. The complex facts and circumstances can never be adjudicated in a writ proceedings. Disputed facts are to be adjudicated by producing the original documents and by adducing evidences, if necessary. Contrarily, the Hon'ble High Court cannot enter into the venture of adjudicating those facts, which all are yet to be adjudicated and remains only as the charge as of now. It is for the writ

petitioner to submit his explanation/objections and defend the charges by availing the opportunities to be provided by the competent authorities at the time of conducting enquiry. Contrarily, the writ petitioner cannot request the Hon'ble High Court to look into those documents, which all are yet to be adjudicated by the competent authorities during the course of enquiry. All such merits in relation to the allegations can never be adjudicated nor a finding can be provided by the Hon'ble High Court in a writ proceedings.

5. 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.

6. 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.

7. 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."

8. 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.

9. 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.

10. In the case of Secretary, Ministry of Defence and others Vs. Prabhash Chandra Mirdha, reported in 2012 11 SCC 565, the Apex Court observed as follows:-

"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."

11. In the case of Union of India and another Vs. Kunisetty Satyanarayana, reported in 2006 12 SCC 28, the Hon'ble Supreme Court of India, held as follows:-

"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] , Ulagaappa 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."

12. The Judicial review against the charge memo are certainly limited and the delinquent officials cannot make an attempt to adjudicate the issues on merits in the writ petitions. All such adjudications are to be done only by the competent authority as the charge memo is only initiation of disciplinary proceedings and subsequently, an enquiry is to be conducted by affording opportunity to the delinquent officials.

13.This being the factum, this Court is not inclined to consider the writ petition and accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal Secretary and
Commissioner for Revenue Administration
Revenue and Disaster Management Department
Ezhilagam, Chepauk,
Chennai - 600 005.
- 2.The District Collector
Salem.

+1cc to Mr.Jerry, V.V.Sundar, Advocate Sr.21369

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