



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.20398 and 20409 of 2019
and W.M.P.Nos.19722, 19724, 19731 and 19733 of 2019

P.Vasudevan ...Petitioner in W.P.No.20398 of 2019

R.Revathi ...Petitioner in W.P.No.20409 of 2019

vs.

1.The District Collector,
Salem District.

2.The Director of Rural Development and Panchayat Raj,
Panagal Building,
Chennai.

...Respondents in both WPs

Common Prayer:

Writ Petitions filed under Article 226 of Constitution of India, seeking for the issuance of a Writ of Certiorarified Mandamus, call for the entire records relating to the Disciplinary proceedings initiated against the petitioners vide Charge Memo "Roc.No.24222/2018/W2" dated 29.01.2019, on the file of District Collector, Salem and to quash the same as illegal and against principles of natural justice and consequently, to direct the respondents to include the petitioners name in the Approved List of Persons eligible to be promoted for the post of Block Development Officers during the year 2019-20, in Salem District.

For Petitioners in both WPs: Mr.S.Vijayakumar

For Respondents in both WPs: Mr.A.N.Thambi Durai
Special Government Pleader

COMMON ORDER

These writ petitions have been filed by the petitioners to quash the Disciplinary proceedings initiated against the petitioners vide Charge Memo "Roc.No.24222/2018/W2" dated 29.01.2019, on the file of District Collector, Salem as illegal and against principles of natural justice and consequently, to



direct the respondents to include the petitioners name in the Approved List of Persons eligible to be promoted for the post of Block Development Officers during the year 2019-20, in Salem District.

WEB COPY

2.The case of the petitioners is that the petitioners serving as Deputy Block Development Officers in Salem District. While they were in service, due to intolerable pain and personal reasons, the petitioners applied for casual leave from 22.01.2019 to 25.01.2019 and 22.01.2019 to 26.01.2019 respectively and the petitioners undergone leave for the said period, the same was not rejected by the BDO Office. Due to petitioners leave period, the Government employees associations called for an indefinite strike from 22.01.2019. Although, the petitioners were not connected with the strike. However, the District Collector has collected the details that who are all on leave and unjustly initiated proceedings against the petitioners without ascertaining the fact that the petitioners were on leave due to genuine medical reasons and personal reasons they were not participated in the indefinite strike. Challenging the charge memo dated 29.01.2019, these writ petitions have been filed before this Court.

3.The learned counsel for the petitioners would submit that the petitioners submitted applications on 21.01.2019 for casual leave due to intolerable pain and personal reasons from 22.01.2019 to 25.01.2019 and 22.01.2019 to 26.01.2019 respectively. He further submit that the petitioners were not participated in the indefinite strike, however, they were wrongly implicated and issued charge memo dated 29.01.2019. Hence, he prayed for allowing these writ petitions.

4.The learned Special Government Pleader appearing for the respondents would relied upon paragraph Nos.5, 5(c), 5(d) and 5 (e) in the counter affidavit, are extracted hereunder:

"5.With respect to the averments of the petitioner in para No.1 to 15 and grounds (i) to (ix) of his affidavit, it is respectfully submitted that the Principal Secretary to Government, Rural Development and Panchayat Raj Department, Secretariat, Chennai in his Lr.No.818/E4/2019-1 Dated 21.01.2019 informed that certain recognized/unrecognized Associations called for indefinite strike from 22.01.2019 onwards for pressing their demands and accordingly issued the following instructions which were reiterated by the second respondent in his Roc. No.3114/2019/F2 Dated 21.01.2019.



WEB COPY

c) All the Staff members of this Department may be informed that they should not indulge in violation of the provisions of the Tamil Nadu Government Servants' Conduct Rules, lest disciplinary action will be taken against them and if any of the Government Servants have not attended office, with an intention to participation in the proposed 'indefinite strike' from 22.01.2019 or any other day, organized by recognized / unrecognized service associations of the Teachers and Government Employees, their period of absence has to be considered as unauthorized on and as such they are not entitled for any and allowance on the basis of the principle "No work No Pay".

d) No Government servant should violate the Tamil Nadu Government Servants' Conduct Rules 1973 by participating in the proposed indefinite strike from 22.01.2019 onwards, if so disciplinary action should also be taken promptly for such unauthorized absence from the duty by the Employees under rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules. The application for "Casual Leave" or any other leave from the employees, other than medical leave shall not be allowed during the period of proposed strike. In the case of part time employees, those on daily wages and on consolidated pay, they are liable to be discharges from service, if they are found to be participated in the strike.

e) Before sanctioning of medical leave, the genuineness of the medical certificate may be got ascertained by referring the individuals to the medical board. No medical leave shall be sanctioned without ascertaining the genuineness of the medical leave applied for as certified by the medical board. If the medical board finds that the certificate produced is not on real medical grounds, the concerned government servants are liable for penal action. The pay for the period of medical leave applied for shall not be claimed and paid before the decision is taken on the genuineness of the medical leave applied for and before sanction of leave."

5. Considering the facts and circumstances, this Court is unable to accept any one of the contentions raised by the petitioners.

6. The Supreme Court in its decision in State of U.P. v. Brahm Datt Sharma reported in (1987) 2 SCC 179 dealt with the



power of the Court in dealing with a charge memo at the show cause stage and the following passage found in paragraph 9 will make the position clear:

WEB COPY

"9. The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. 'The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature, the High Court in our opinion ought not have interfered with the show cause notice."

7. The Supreme Court vide judgment in *Special Director v. Mohd. Ghulam Ghouse* reported in (2004) 3 SCC 440 in para 5 observed as follows:

"5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not



accorded to the writ petitioner even at the threshold by the interim protection granted."

8. Further, the Supreme Court in the judgment relating to Union of India v. Kunisetty Satyanarayana reported in (2006) 12 SCC 28 in paras 13 to 16 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, Special Director v. Mohd. Ghulam Ghouse (2004) 3 SCC 440, Ulagappa v. Divisional Commr., Mysore (2001) 10 SCC 639, State of U.P. v. Brahm Datt Sharma (1987) 2 SCC 179, 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.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

9. In the decision in Dy. Registrar, Co-op. Societies v. Sachindra Nath Pandey reported in (1995) 3 SCC 134, the Supreme Court held that the delay in framing charge cannot be a ground to interfere with the charge memo and the relevant passage found



To

1. The District Collector,
Salem District.

2. The Director of Rural Development and Panchayat Raj,
Panagal Building,
Chennai.

+2cc to Mr.S.Vijayakumar, Advocate, S.R.No.97699

+1cc to the Government Pleader, S.R.No.97109

W.P.Nos.20398 and 20409 of 2019

CP(CO)
CS/22/01/2020