

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 11-12-2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.20073 OF 2019

B.Sowndhararaj

... Petitioner

-vs-

1.The Director of Elementary Education,  
Chennai - 6.

2.The District Educational Officer,  
Pollachi Education District,  
Pollachi,  
Coimbatore District,

3.The Block Educational Officer,  
Pollachi North Union,  
Pollachi.

... Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent relating to the order in (1) Pro.Na.Ka.No.6045/B2/2018, dated 29.11.2018, and (2) Pro.Na.Ka.No.6045/B2/2019, dated 08.04.2019, to quash the same and issue consequential directions to the respondents to include the name of the petitioner in the panel as on 01.01.2019 in the appropriate place therein for promotion as B.T.Assistant (Science) in Pollachi North Union, and to promote him as such with retrospective effect from the date of promotion of his immediate junior with all consequential benefits.

For Petitioner : Mr.M.Ravi

For Respondents : Mrs.V.Annalakshmi,  
Government Advocate.

ORDER

This Writ Petition has been filed, challenging the Charge Memo, dated 29.11.2018, issued by the second respondent, and for a consequential direction to the respondents to include the name of the petitioner in the Panel and to consider his promotion as B.T.Assistant (Science).

2. The case of the petitioner is that he was appointed as a Secondary Grade Teacher in the year 2004 and he has become eligible for promotion as B.T.Assistant (Science) as on 01.01.2019. However, the petitioner had participated in an agitation that was organised by Tamil Nadu Elementary School Teachers Association on 26.11.1998. It is stated, that during the demonstration, a Government Order came to be burnt and that was taken to be a violation of Rule 22 of the Tamil Nadu Government Servants Conduct Rules and, therefore, the Charge Memo came to be issued against the petitioner under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, in short, 'the Rules'. The said Charge Memo is the subject matter of challenge in this Writ Petition.

3. Mr.M.Ravi, learned counsel for the petitioner, submitted that the facts of the present case will not justify the Charge Memo being issued under Rule 17 (b) of the Rules and there are guidelines which clearly indicate the type of cases that can be brought within Rule 17 (b) of the Rules, but the case on hand will not fall under those guidelines. The learned counsel has further submitted that as a subsequent development, the F.I.R., that was registered against the petitioner and others, came to be quashed by this Court, by an order, dated 03.07.2019, passed in CrI.O.P.No.17302 of 2019.

He also submits that in view of the said subsequent development, no useful purpose will be served in continuing further with the Departmental proceedings and, therefore, he requested this Court to interfere with the Charge Memo and issue directions to the respondents to consider the name of the petitioner for promotion as B.T.Assistant (Science). The learned counsel, in order to substantiate his submissions, has placed reliance upon two judgments of this Court, one in M.Sapoornam v. The State of Tamil Nadu, dated 22.03.2013, passed in W.P.(MD)No.12725 of 2011, 2013 SCC OnLine Mad 1057, and the other in The Government of Tamil Nadu v. P.Sundar, dated 07.08.2018, passed in W.A.No.1184 of 2015.

4. Per contra, Mrs.V.Annalakshmi, learned Government Advocate, appearing for the respondents, has submitted that the act committed by the petitioner and others in burning the Government Order during the agitation is a serious violation and it clearly falls within Rule 22 of the Tamil Nadu Government Servants Conduct Rules. She further submitted that quashing of the F.I.R. against the petitioner will not be a bar for the respondents to proceed further with the disciplinary proceedings, since it is independent of the criminal case. She finally submits that since the Charge Memo has been issued under Rule 17 (b) of the Rules, the petitioner will not be entitled to be considered for promotion till he

comes out clean from the charges.

5. This Court has carefully considered the submissions made by the learned counsel on either side and also the material available on record.

6. The Charge Memo, dated 29.11.2018, has been issued against the petitioner under Rule 17 (b) of the Rules. The gravamen of the charge is that the petitioner participated in an agitation along with other teachers and, during the said agitation, a Government Order was burnt. Therefore, the Charge Memo came to be issued, by taking the said incident to be a serious one, in contemplation of subjecting the petitioner to a major punishment.

7. The important issue that has to be taken into consideration is, whether the Charge, that has been levelled against the petitioner, can be brought under Rule 17 (b) of the Rules. Guidelines have been issued by the Government in this regard and there are clear indications as to the types of cases, for which Charge Memo can be served under Rule 17 (b). It must also be borne in mind that the criminal case that was registered for the very same incident was quashed by this Court by an order, dated 03.07.2019, passed in CrI.O.P.No.17302 of 2019. The burning of Government Order during agitation had happened due to sudden rush of blood and it cannot be taken to be intentional. It will also be relevant to rely upon the judgments, which have been placed before this Court.

8. This Court, in the case of M.Sampoornam, referred to supra, has held as follows :

''7. Learned counsel for the petitioner submitted that based on the allegations, charges could be framed against the petitioner only under rule 17 (a) and not under rule 17 (b) of the Tamil Nadu Civil Services ( Discipline & Appeals) Rules. In support of the contention raised, the learned counsel appearing for the petitioner also relied the various decisions: A Division Bench of this Court (P.K.Misra, J and F.M. Ibrahim Kalifulla, J) in W.P.No.6809 of 2004 dated 17.06.2004, preferred by the State against the order passed in Original Application No.3913 of 2003 dated 04.02.2004 by the Tamil Nadu Administrative Tribunal, has held that the modification of charge under Rule 17(a) instead of Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules was not against law and accordingly declined to interfere with the order. It was held that there is no error in the order

passed by the Tamil Nadu State Administrative Tribunal, modifying the charge under Rule 17(b) instead of Rule 17(a) under the Tamil Nadu Civil Services (Discipline & Appeal) Rules and accordingly, the writ petition was dismissed. It has been made clear in the decision that charge Nos.1 and 2 framed against the first respondent therein relating to failure for taking effective steps towards collection of taxes due from the dealers by Subordinate Officials and it was failure in executing administrative instructions given by the superior officers therein. The Tamil Nadu State Administrative Tribunal held that the Assistant Commissioner (CT), violating Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973 would be under rule 17(a) and not rule 17(b) to frame the charge for the alleged failure for the non-compliance of the administrative instructions given by the superior officer. A Division Bench of this Court (Eliphe Dharma Rao, J and K.Suguna, J) passed an order dated 05.09.2006 in W.P.No.3558 of 2004, wherein it has been held that as per the guidelines given by the Government, the charges framed against the petitioner would not come under rule 17(b) but only under rule 17(a) of the said Rules. The Government of Tamil Nadu has given specific guidelines with regard to framing of charges under rule 17(a) and rule 17(b) of the said Rules. In this regard, the guidelines given are as follows:

"(1) Cases in which there is reasonable ground to believe that a penal offences has been committed by a Government Servant but the evidence forthcoming is not sufficient for prosecution in a Court, of law, e.g.,

(a) possession of asset disproportionate to the known sources of income;

(b) obtaining or attempting to obtain illegal gratification;

(c) misappropriation of Government property, money or shares;

(d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate, etc.,

(2) Falsification of Government records.

(3) Irregularity of negligence in the discharge of official duties with a dishonest motive".

8. It is not in dispute that the charges under rule 17(a) relate to minor delinquencies whereas the charges under rule 17(b) relate to any major delinquency warranting major punishment in case the same is proved. In Writ Appeal No.1893 of 2011 dated 29.09.2011, a Division Bench of this Court (M.Y.Eqbal, the Chief Justice and T.S.Sivagnanam, J) has held as follows:

"2. We have considered the reasoning given by the learned Single Judge and other materials available on record including the charge memo and the consequential proceedings, from where it appears that there are no grave charges levelled against the respondent/writ petitioner except for some lapses in the discharge of his supervisory duty. Moreover the allegation pertains to the period 2004-2006, whereas, the charge memo was served only in the year 2011, i.e. on the verge of his retirement.

3. In that view of the matter, the impugned judgment passed by the learned Single Judge needs no interference by this Court..."

9. In S.KANNAN VS. STATE OF TAMIL NADU, (2009) 8 MLJ 217, this Court (V.Dhanapalan, J) held that unless there is dishonest motive, misconduct or misappropriation of funds of the Government or wilful and dishonest act, there cannot be any departmental proceeding initiated under rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules, as per the guidelines issued by the Government. It is an admitted fact that the Government of Tamil Nadu has issued guidelines with regard to framing of charges under rule 17(a) and rule 17(b) of the said Rules. The unreported decision in W.P.No.13581 of 2007 dated 24.08.2011, this Court (K.N.Basha, J), based on the guidelines given by the Government has highlighted the same in respect of charges being framed under rule 17 (a) and rule 17 (b) of the said Rules. Referring to the guidelines in S.KANNAN VS. STATE OF TAMIL NADU, represented by its Secretary to the Government, calling upon the impugned proceedings therein, this Court (V.Dhanapalan, J) directed the first respondent therein to alter the charge levelled

against the petitioner only under rule 17(a) and not proceed under rule 17 (b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules and to proceed in accordance with law.

10. In the instant case, it has been made clear in the light of various decisions rendered by this Court that the guidelines given by the Government have to be followed scrupulously for framing charges against employee of the Government. As per the guidelines, charges can be framed under rule 17 (b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules, under the following circumstances:

1) Cases in which there is a reasonable ground to believe that a penal offence has been committed by the Government Servant but the evidence forthcoming is not sufficient for prosecution in a Court of law, e.g., [a] possession of assets disproportionate to the known sources of income; [b] obtaining or attempting to obtain illegal gratification; [c] misappropriation of Government property, money or shares; [d] obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate etc.,

[2] Falsification of Government records.

[3] Irregularity or negligence in the discharge of official duties with a dishonest motive. [emphasis supplied]

[4] Misuse of official position for personal gain.

[5] Disclosure of secret or confidential information even though it does not fall strictly within the scope of the Official Secrets Act. [6] Misappropriation of Government funds, false claims of Travelling Allowance, reimbursement of false medical bills, etc., Charges could be made framed under rule 17(b) of TNCS (D & A) Rules.

12. In the light of catena of decisions referred to above, having gone through the facts and circumstances and material papers available on record, I am of the view that the respondents could have framed the charges against the petitioner only under rule 17(a) and not under rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal)

Rules, it being a minor delinquency, as per the guidelines issued by the Government and the proceeding would not be a bar in promoting the petitioner, subject to the result of the departmental proceeding. It is also brought to the notice of this Court that the petitioner is on the verge of retirement and if she is not promoted that will adversely affect her legitimate right, since the departmental proceeding was initiated after a lapse of 2+ years after the occurrence and pending for more than three years.'

9. It is also relevant to refer to the Division Bench decision of this Court in *Government of Tamil Nadu v. P.Sundar*, referred to above, wherein it has been held as under :

'10. We have considered the rival submissions. The guidelines framed by the government of Tamil Nadu for deciding whether charges may be framed under Rule 17 (b) are as follows :

1. Cases in which there is a reasonable ground to believe that the penal offence has been committed by a government servant but the evidence forthcoming is not sufficient for prosecution in a court of law, e.g.,

(a) possession of assets disproportionate to known sources of income;

(b) obtaining or attempting to obtain illegal gratification;

(c) misappropriation of government property, money or shares;

(d) obtaining or attempting to obtain any valuable thing on pecuniary advantage without consideration or for a consideration which is not adequate, etc.,

(2) falsification of government records.

(3) irregularity or negligence in discharge of official duties with dishonest motive.

It is the above guidelines which are considered by the Division Bench in WP No:3558 of 2004. Considering the guidelines issued by the Government with reference to framing of charges against its employees, the Division Bench has observed as follows :

Therefore, as per the above guidelines also, as stated earlier, the charges framed against the petitioner will not come under Rule 17 (b), but only under Rule 17 (a) however since the petitioner was

imposed punishment on framing charges under Rule 17 (b) which is a bar for consideration of promotion, he has been deprived of the promotion to the next cadre. We are therefore of the view that the charges should have been framed under Rule 17 (a) and not in Rule 17 (b). In Kannan Vs. State of Tamil Nadu, reported in 2009 (8) MLJ, the learned single judge of this court had followed and reiterated the above dictum of the Division Bench.

11. Adverting to the facts of the present case, we find that none of the charges framed against the respondent would fall within the parameters laid down in the guidelines issued by the Government. This being so, we do not think that the appellants were justified in framing charges under Rule 17 (b) even for minor delinquencies and thereby denying promotion to the respondent. We must point out that even though the Disciplinary Authority has found the respondent guilty of the charges imposed only a minor punishment of stoppage of increment that too without cumulative effect. The said punishment by itself does not operate as a bar for promotion. If so the appellants cannot by framing charges for trivial derelictions under Rule 17 (b) deprive promotion to the respondent."

10. It is clear from the above judgments that guidelines have been framed by the Government of Tamil Nadu for deciding when Charges can be framed under Rule 17 (b) of the Rules. The guidelines make it clear that framing charges under Rule 17 (b) will arise only in very serious cases and not for minor delinquencies. Such minor delinquencies can also be handled by framing charges under Rule 17 (a) of the Rules. The facts of the present case and also the subsequent development that has taken place, makes it very clear that they do not fall within the guidelines framed by the Government of Tamil Nadu and that they do not warrant a Charge Memo, being issued under Rule 17 (b) of the Rules. To that extent, the Charge Memo issued by the second respondent requires interference.

11. On issuance of Charge Memo under Rule 17 (b), serious consequences will arise, where the delinquent will not be entitled to be considered for promotion, whereas, when a Charge Memo is issued under Rule 17 (a) of the Rules, the guidelines issued by the Government clearly show that there is no bar in considering the promotion of the delinquent employee, subject to the result of the Departmental proceedings.

12. In view of the above discussion, the Charge Memo, issued by the second respondent vide his proceedings,

dated 29.11.2018, and the subsequent impugned proceedings, dated 08.04.2019, are hereby quashed. It is left open to the second respondent to issue a fresh Charge Memo under Rule 17 (a) of the Rules, if he decides to proceed further against the petitioner. In such an event, there will be no bar in considering the promotion of the petitioner, subject to the result of the disciplinary proceedings. If any such disciplinary proceedings are initiated, the same shall be completed within a period of eight weeks, since it will involve only a minor delinquency.

13. Writ Petition is allowed with the above directions and observations. No costs. Consequently, the connected W.M.P.Nos.19539, 19541,19542 and 27824 of 2019 are closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

dixit

To

1.The Director of Elementary Education,  
Chennai - 6.

2.The District Educational Officer,  
Pollachi Education District,  
Pollachi,  
Coimbatore District,

3.The Block Educational Officer,  
Pollachi North Union,  
Pollachi.

+1cc to the Government Pleader, S.R.No. 104009

RGN(CO)  
GN(28/01/2020)

W.P.No.20073 OF 2019