

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.A.No.3165 of 2019

K.Thirumurugan ... Appellant/Petitioner

Vs.

1. Additional Chief Secretary / Industries Commissioner
and Director of Industries and Commerce,
SIDCO Office Building, Guindy,
Chennai - 600 032.

2. Mr.T.Mayathevar
General Manager / Inquiry Officer,
District Industries Centre,
Cuddalore. ... Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the Order dated 30.04.2019 made in W.P.No.15015 of 2018.

Prayer in W.P.No.15015 of 2018:Writ Petition filed under Article
226 of the Constitution of India praying to issue a Writ of
Certiorari calling for the records in Rc.No. 19901/EG1/2015
dated 26.05.2016 on the file of the 1st respondent and quash the
same.

For Appellant : Mr. A.Immanuel

For Respondents: Mr.P.S.Sivashanmugasundaram (for R1)
Special Government Pleader

J U D G E M E N T

(Order of the Court was delivered by S.MANIKUMAR, J)

Being aggrieved by the order made in WP No.15015 of 2018
dated 30.04.2019, declining to quash the charge framed under
Rule 17(b) of the Tamil Nadu Civil Services (Discipline and
Appeal) Rules, dated 30.04.2019, instant writ appeal is filed.
Statement of charges framed against the appellant are as
hereunder.

"1. That in the Demand Collection Balance Sheet furnished by him as an Administrative Officer, Government Industrial Estate for Ceramics, Vridhachalam in respect of rental due for the unit M/s. Southern Ceramics and Refractories at Government Industrial Estate for Ceramics, Vridhachalam, he has suddenly increased the opening balance (June 2015) by Rs.1.00 lakh as against the closing balance (May 2015) as detailed below:

Month	Opening Balance (Rs.)	Monthly Demand (Rs.)	Total (Rs.)	Collection	Closing Balance (Rs.)
May 2015	2,23,858	6,636	2,40,494	--	2,40,494
June 2015	30,40,494	6,636	3,47,130	--	3,47,130

2. That he has failed to furnish the cash receipt and remittance challan for the observations noticed by Joint Director (Chemicals), Guindy during the inspection conducted on 27.6.2014 requested vide his letter No.1321/BC/2014 dated 11.9.2015.

3. By his above act, he has temporarily misappropriated a sum of Rs.1.00 lakh of Government fund.

4. By his above act, he has failed to perform his legitimate duty and thus violated Rule 20 of Government Servants' Conduct Rules."

2. After considering the decisions of the Hon'ble Supreme Court in Union of India and Others Vs. Upendra Singh, reported in 1994 (3) SCC 357, Secretary, Ministry of Defence and others Vs. Prabhash Chandra Mirdha [Civil Appeal No.2333 of 2007 dated 29.05.2012], Union of India Vs. Kunishetty Satyanarayana, reported in 2006 (12) SCC 28, writ Court by observing that the allegations are serious in nature, warranting enquiry, declined to quash the charge memorandum and at paragraph Nos. 7 to 9, held as follows:

7. The writ petitioner, in the affidavit filed in support of the writ petition, submits the explanations in respect of the allegations set out in the charge memo. The High Court cannot adjudicate the merits and the demerits of the allegations set out in the charge memo and provide a finding in this regard. Such complex and disputed facts and circumstances are to be adjudicated only by producing documents and by

adducing evidences if required. Thus, the writ petitioner has to establish his innocence or otherwise before the enquiry proceedings and the explanations and the grounds raised regarding the merits cannot be adjudicated in the present writ petition.

8. 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.

9. 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."

3. Though several grounds have been raised assailing the correctness of the order made by the writ Court, on this day, when the writ appeal came up for admission, Mr.A.Immanuel, learned counsel for the appellant submitted that enquiry has been completed and notice on the Enquiry Officer's report is yet to be issued. However, he submitted that observation of the writ Court at paragraph No.5 of the order dated 30.04.2019 made in WP No.15015 of 2018 that the allegations are serious in nature, warranting an enquiry, could be used against the appellant, when arriving at the guilt or otherwise of the misconduct alleged and therefore, prayed that the observation made in paragraph No.5 stated supra, be deleted, we are not inclined to accept the said contention for the reason that disciplinary action has been initiated against the appellant under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules.

4. When charges are framed under Rule 17(b) of the said Rules, it goes without saying that charges are grave in nature. If charges are not grave, then disciplinary proceedings would have been initiated under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. Thus, the very initiation of disciplinary proceedings is for grave charges and in such circumstances observation of the writ Court, cannot be said to be unwarranted. Apprehension of the appellant that the above observation would be put against the appellant, while arriving at the conclusion in the disciplinary proceedings, is only presumptive.

5. Disciplinary authority, being a fact finding authority is bound to consider as to whether facts on which, the charges have been framed, have been established, whether the appellant / delinquent is provided with sufficient opportunity and whether the procedure followed by the enquiry officer is proper. Disciplinary authority, thereafter shall record a finding on the grounds thereof. Such being the statutory duties, contention of the appellant is not only untenable, but the same cannot be countenanced.

6. In the light of the above discussion, we find no error in the order impugned, warranting interference. Hence, the instant Writ Appeal is dismissed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

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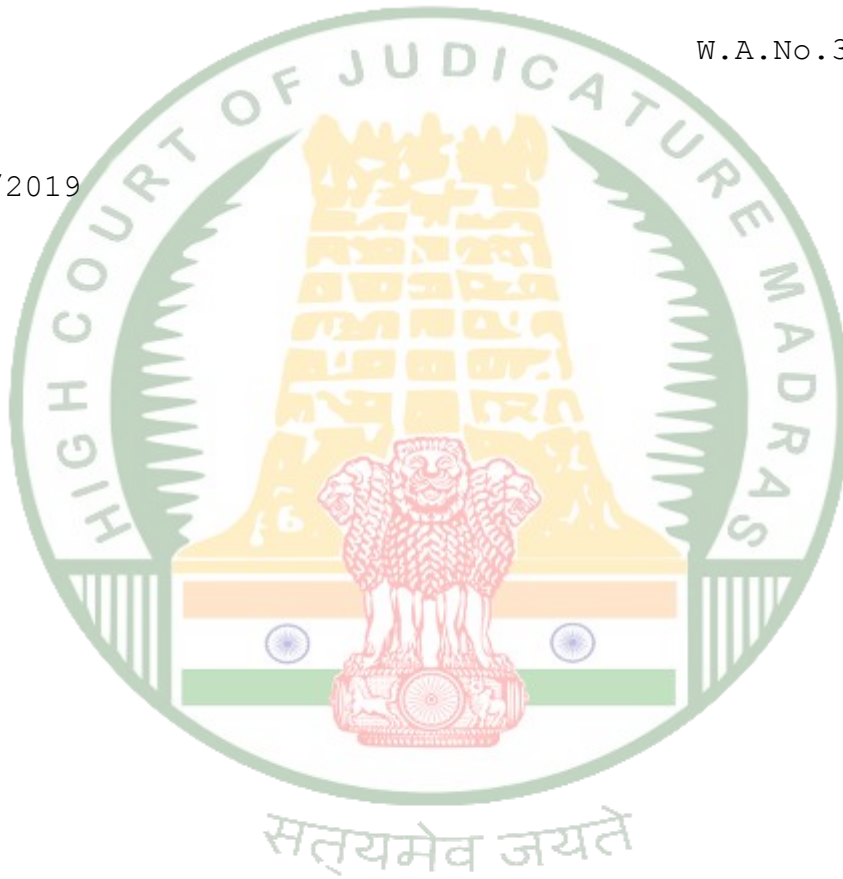
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+1cc to Mr.A.Immanuel, Advocate Sr.82081
+1cc to the Government Pleader Sr.81596

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srg 31/10/2019



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