

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-03-2019

CORAM

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

W.P.No.27207 of 2018

And

W.M.P.Nos.31636 and 31644 of 2018

B.Selvam

.. Petitioner

- Vs. -

The Commissioner of Municipal Administration,
Office of the Commissioner of Municipal
Administration,
Chepauk,
Chennai-600 005.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceeding of the respondent in Roc. No.35295/2014 F1-2 dated 17.9.2018, quash the same and consequently, direct the respondent herein to promote the petitioner as Executive Engineer in Trichy City Corporation.

For Petitioner

: Mr.A.Mohamed Iqbal

For Respondent

: Mr.A.N.Thambidurai,
Special Government Pleader.

ORDER

The charge memo dated 17.9.2018, issued against the writ petitioner, by the Commissioner of Municipal Administration, Chennai, is under challenge in the present writ petition.

2. The writ petitioner is working as Executive Engineer in-charge in Tiruchirappalli Corporation.

3. On account of certain allegations, a charge memo has been issued against the writ petitioner in proceedings dated 17.9.2018. The charges against the writ petitioner are enumerated in Annexure-I to the impugned charge memo, which reads as under:-

"Charge No.1:

That the said Thiru P.Selvam while working as Municipal Engineer at Villupuram Municipality has colluded with Thiru K.Meiporul, Assistant Engineer for having recorded false measurement against the actual works carried out and also improper execution of works as indicated in the Annexure-II at Maraimalai Adigal Street in Ward No.39 of Villupuram Municipality and thus caused financial loss for Rs.2,00,193/- to the Municipal funds.

Charge No.2:

That the said Thiru P.Selvam while working as Municipal Engineer at Villupuram Municipality have derelicted from your legitimate duty by violating the Rule 20 of the Tamil Nadu Government Servants Conduct Rules 1973."

4. Annexure-II provides the statement of allegations, namely, imputation of misconduct or misbehaviour in support of each charges against the writ petitioner.

5. Annexure-III denotes the list of documents.

6. Thus, there is no infirmity in respect of the charge memo framed against the writ petitioner.

7. The learned counsel appearing on behalf of the writ petitioner relied upon the Inspection Report dated 16.9.2014, which is the source for initiation of departmental disciplinary proceedings against the officials.

8. The learned counsel for the writ petitioner relying on the Inspection Report states that on enquiry and verification of the 'M'

Book, it is seen that the measurements for the above work had been recorded by Thiru K.Meipporul, Assistant Engineer, on 14.5.2014, 22.5.2014 and 28.5.2014. Whereas the estimate for the above work had been prepared for providing new storm water drain to the entire length of road.

9. Relying on the abovesaid statement, the learned counsel for the writ petitioner states that nowhere in the Inspection Report submitted by the Regional Executive Engineer, the name of the writ petitioner has been stated. In view of the fact that the name of the writ petitioner is not found in the Inspection Report, there is no reason to frame charges against the writ petitioner.

10. This apart, the Inspection Report states that one Thiru K.Meipporul, Assistant Engineer was the person, who had undertaken the job of measurement and therefore, he is liable for all irregularities, if any occurred. Under these circumstances, the writ petitioner is to be exonerated from the allegations.

11. Though the learned counsel for the writ petitioner articulated the facts and circumstances based on the Inspection

Report, this Court is of an undoubted opinion that those facts and circumstances and the merits of the case can never be adjudicated in a writ proceeding under Article 226 of the Constitution of India. The disputed facts are to be adjudicated before the Competent Authorities by producing documents and by adducing evidences. Such disputed facts cannot be adjudicated based on the averments made in the affidavit or based on a single Inspection Report.

12. To cull out the entire truth in respect of the allegations set out in the charge memo, an enquiry is certainly warranted and the writ petitioner has to participate in the process of enquiry in order to establish his innocence or otherwise by producing documents and by adducing evidence, if required.

13. Contrarily, the charge memo cannot be quashed in an entirety mere only the ground that the name of the writ petitioner is not found place in the copy of the Inspection Report.

14. On a reading of the charge memo, it is stated that the writ petitioner while working as Municipal Engineer at Villupuram Municipality has colluded with Thiru K.Meipporul, Assistant Engineer for

having recorded false measurement against the actual works carried out and also improper execution of works as indicated in the Annexure-II at Maraimalai Adigal Street in Ward No.39 of Villupuram Municipality and caused financial loss for Rs.2,00,193/- to the Municipal funds.

15. When the allegation categorically enumerates that the writ petitioner, while working as Municipal Engineer, has colluded with Thiru K.Meipporul, Assistant Engineer, whose name is found in the Inspection Report. Such allegation deserves an enquiry and this Court cannot come to the conclusion at this stage whether the writ petitioner in his capacity as Municipal Engineer colluded with the said Thiru K.Meipporul, Assistant Engineer. Such an exercise cannot be done by the competent authorities at the time of undertaking the process of enquiry. The writ petitioner is bound to establish his innocence only by availing the opportunities to be provided by the competent authorities at the time of conducting the enquiry. No writ proceedings can be entertained as against the charge memo.

16. 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.

17. 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.

18. The Honourable Supreme Court of India in the case of ***Union of India and others Vs. Upendra Singh [(1994) 3 SCC 357]*** and the relevant 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."

19. 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.

20. 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.

21. In view of the fact that the writ petitioner has not established any acceptable legal grounds for the purpose of quashing the charge memo, this Court is of the opinion that it is left open to the writ petitioner to submit his explanations/objections on the allegations set out in the charge memo and defend his case by producing

documents and by adducing evidences by availing the opportunities to be provided by the competent authorities as per the Rules in force.

22. It is needless to state that undue delay in the conclusion of the departmental disciplinary proceedings will cause prejudice to the interest of the officials. Thus, the competent authorities are bound to proceed with the enquiry and conclude the same and pass final orders, without causing any undue delay as expeditiously as possible.

23. With the above observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

19-03-2019

Index:Yes.
Internet: Yes.
Speaking Order.
Svn

सत्यमेव जयते

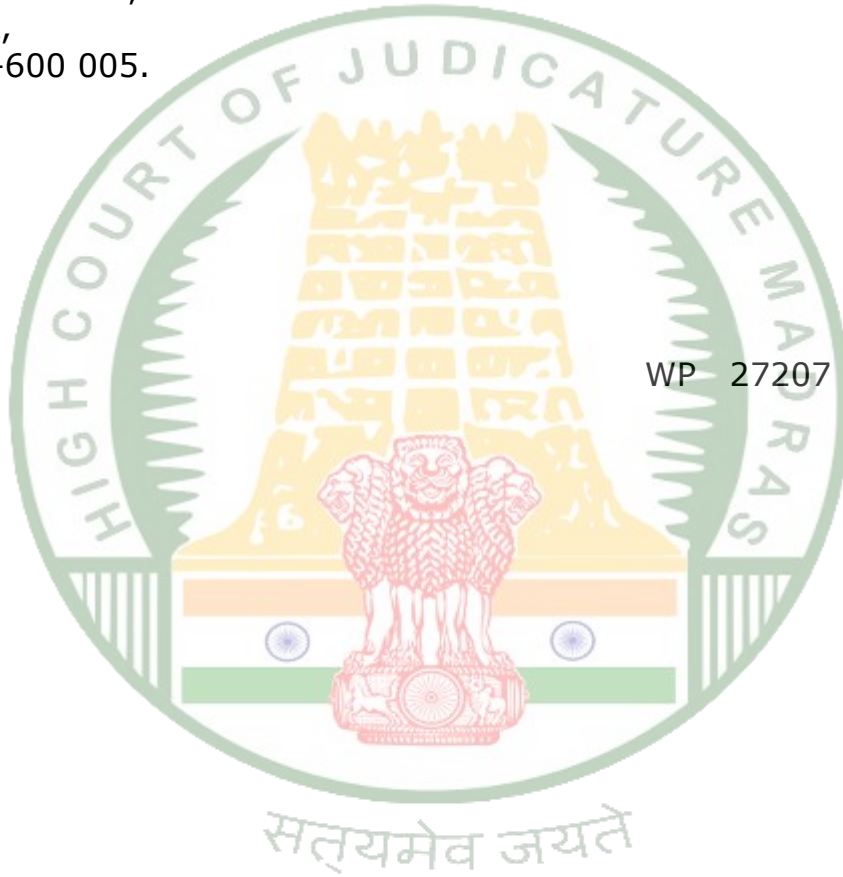
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S.M.SUBRAMANIAM, J.

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To

The Commissioner of Municipal Administration,
Office of the Commissioner of Municipal
Administration,
Chepauk,
Chennai-600 005.



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