

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.No.30412 of 2018
and
W.M.P.No.35479 of 2018

A.Narayanan,
Door No.976, Bhavani Street,
Highways Nagar,
Villupuram.Petitioner

Vs.

1.The Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St. George, Chennai 600 009.

2.The District Collector,
Collectorate,
Cuddalore District @ Cuddalore. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the second charge memo formulated by the second respondent herein in his Na.Ka.No.PA2/8854/10 dated 26.04.2013 and quash the same and consequently direct the first respondent herein to pass final orders on the charge memo formulated by the second respondent herein in his Na.Ka.No.PA2/8854/10 dated 28.09.2010 within a stipulated time.

For Petitioner :Mr.Ravi Shanmugam

For Respondents: Mr.A.N.Thambidurai

Special Government Pleader

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O R D E R

The charge memo dated 26.04.2013 is sought to be quashed in the present Writ Petition.

2.The writ petitioner was directly recruited as an Assistant Engineer on 23.11.2007 and on account of certain allegations, the charge memo was issued initially on 28.09.2010. The disciplinary authority appointed an enquiry officer and the writ petitioner also participated in the process of enquiry and the

enquiry officer submitted the final report in proceedings dated 21.02.2012. The findings of the enquiry officer states that the charges against the writ petitioner are not proved. Without passing any final orders in the departmental proceedings based on the enquiry report, the impugned charge memo was issued in proceedings dated 26.04.2013, in respect of the same allegations.

3.The learned counsel for the writ petitioner states that the second charge memo on the same set of offences are impermissible. Once the charge memo was issued in proceedings dated 28.09.2010 and the enquiry officer concluded the enquiry and submitted his report, thereafter, the disciplinary authority cannot issue another charge memo for the purpose of conducting second enquiry and said enquiry is in violation of provisions of the rules itself. The writ petitioner cannot be harrassed again and again to undergo the process of enquiry and the said procedure is in violation of the principles of natural justice.

4.This Court is of the considered opinion that the charge memo was originally issued under proceedings dated 28.09.2010. Admittedly, the writ petitioner participated in the process of enquiry and the enquiry officer concluded the proceedings and submitted his final report stating that the charges are not proved against the writ petitioner. Thus the course available to the disciplinary authorities either to accept the finding of the enquiry officer or to deviate the finding by assigning reasons. In the event of taking decisions to deviate the finding of the enquiry officer, then disciplinary authority is bound to issue show cause notice, setting out the reasons for deviation, enabling the delinquent official to file representations/objections in respect on such deviation. On receipt of such, from the delinquent official, the disciplinary authority is empowered to take the decision and pass final orders and in the departmental disciplinary proceedings. Contrarily the disciplinary authorities cannot frame the very same charges once again and conduct the second enquiry by another enquiry officer or by the same enquiry officer. At the outset, the second enquiry on the same set out allegations are impermissible.

5.This being the principle to be followed, the respondents are at liberty to proceed with the disciplinary proceedings based on the enquiry report submitted by the enquiry officer and pass all further orders by following the procedures contemplated. However, the second enquiry based on the impugned charge memo is certainly impermissible and accordingly the impugned charge memo issued by the 2nd respondent in proceedings Na.Ka.No.PA2/8854/10, dated 26.04.2013 is quashed. However, the respondents are directed to proceed with the enquiry report and pass final orders in the departmental disciplinary proceedings, based on the charge memo dated 28.09.2010 as expeditiously as

possible and without causing any undue delay.

With this direction, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

av/sai

To

1.The Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St. George, Chennai 600 009.

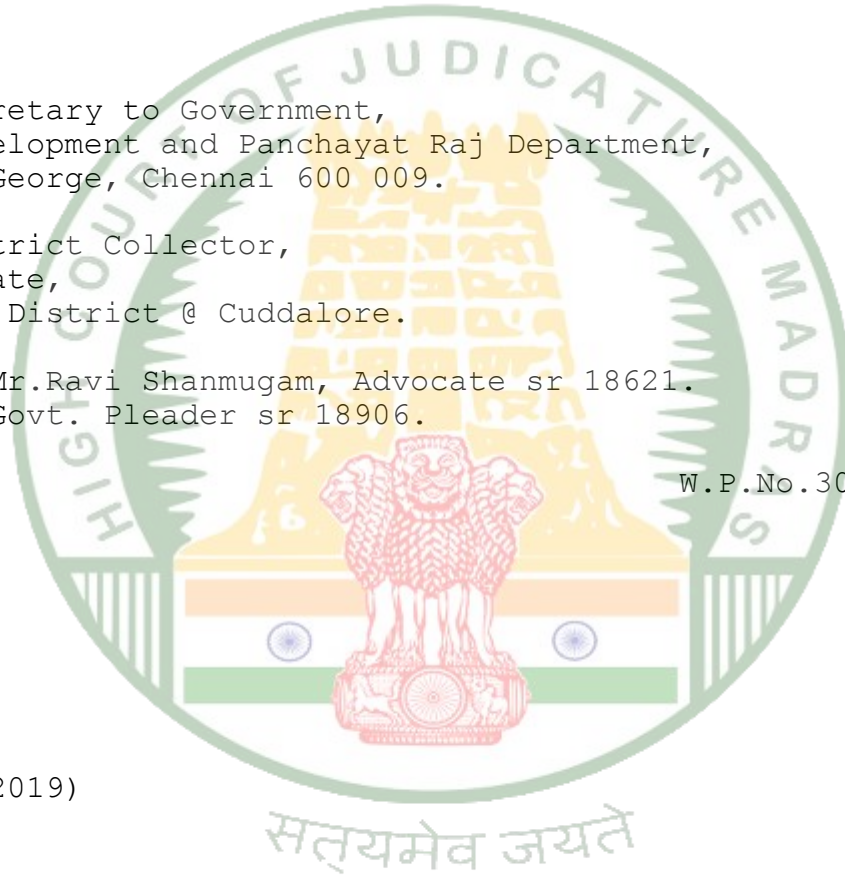
2.The District Collector,
Collectorate,
Cuddalore District @ Cuddalore.

+1 CC to Mr.Ravi Shanmugam, Advocate sr 18621.

+1 CC to Govt. Pleader sr 18906.

W.P.No.30412 of 2018

GJ(CO)
SP(28/03/2019)



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