

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.03.2019

CORAM

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

W.P.No.30850 of 2018
and
W.M.P.Nos.35999 & 36000 of 2018

D.Raghu ... Petitioner

...vs...

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

2.The Commissioner,
Chidambaram Municipality,
Chidambaram,
Cuddalore District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Roc.No.22425/2017/VI, dated 31.10.2018 and quash the same and consequently directing the respondents to disburse the petitioner's retirement benefits to the petitioner.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.A.N.Thambidurai
Special Government Pleader for R1

Mr.P.Srinivas for R2

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O R D E R

The charge memo in proceedings No.22425/2017/VI, dated 31.10.2018 is under challenge in the present writ petition.

2. The charges against the writ petitioner are extracted hereunder:

Charge No.1:

"That the said Thiru D.Raghu, while he was working as Town Planning Inspector in Ambattur Municipality was arrested for demanding and accepting a bribe amount of Rs.5000/- from one Thiru.K.Loganathan for processing and obtaining of sanction order for building plan.

Charge No.2:

"That the said Thiru D.Raghu, Town Planning Inspector, erstwhile Ambattur Municipality has failed to maintain absolute integrity and devotion to duty in a manner on becoming of a Government Servant thus hereby violated the Rule 21 of the Tamil Nadu Municipal Servants Conduct Rules 1979".

Annexure - II to the charge memo provides statement of allegations namely imputations of misconduct or misbehaviour in support of the charges. Annexure - III denotes the list of documents relied upon by the Department. Annexure - IV enumerates the list of witnesses to be examined. Thus there is no infirmity as such in respect of the charge memo issued against the writ petitioner.

3. The learned counsel for the writ petitioner states that the writ petitioner was removed from the service, based on the order of conviction issued by the Competent Court of Law and against the order of conviction, the petitioner preferred an appeal before the High Court and the appeal was allowed and he was acquitted from the criminal charges. The appeal filed by the State was dismissed by the High Court, considering the order of acquittal passed in the Criminal Appeal. The writ petitioner was reinstated into service and on the date of his retirement, the Competent Authority issued an order in Proceedings dated 31.10.2018, allowing the petitioner to retire from service without prejudice to the Departmental Disciplinary Proceedings initiated against him. On the same day, the charge memo also was issued in proceedings dated 31.10.2018.

4. The grievance of the writ petitioner is that he was removed from service, based on the conviction and he was reinstated pursuant to the order of acquittal passed in the Criminal Appeal by this Court. Again the respondents initiated the departmental disciplinary proceedings and on that ground also the charge memo is liable to be scrapped. This apart, the writ petitioner is allowed to retire from service without prejudice to the departmental disciplinary proceedings. However, the subsistence allowance and other terminal benefits due to the

writ petitioner has not been settled. Under these circumstances, the writ petitioner is constrained to move the present writ petition.

5. The learned counsel appearing on behalf of the second respondent assisted by Mr.B.V.Surendra Sha, The Commissioner, Chidambaram Municipality, who is present before this Court along with the files and the learned counsel urged this Court by stating that the writ petitioner was holding the post of Town Planning Inspector and the Criminal case was registered against him under the provisions of the Prevention of Corruption Act, for demand and acceptance of bribe from the defacto complainant. The writ petitioner was initially convicted by Criminal Court of Law and on appeal, the writ petitioner was acquitted from the criminal charges. However, the first order of removal from service was based on the conviction and the Department had not conducted any domestic enquiry in respect of the allegations against the writ petitioner, in view of the fact that no disciplinary proceedings were initiated against the writ petitioner. After the order of acquittal the writ petitioner was reinstated into service and simultaneously, the charge memo had been issued. Thus, there is no infirmity in respect of the procedures followed by the respondents and the writ petitioner has to face the departmental disciplinary proceedings in order to establish his innocence or otherwise in respect of the allegations of corruption set out in the impugned charge memo.

6. Considering the arguments, this Court is of the considered opinion that the allegations against the writ petitioner is certainly serious. Allegations of corruptions cannot be dealt with leniently. So also, a charge memo in respect of corruption allegations, cannot be quashed on certain technical grounds. A complete enquiry against such nature of allegations are certainly imminent and the public servants has to prove their innocence only in an enquiry proceedings by producing documents or by adducing evidences or otherwise. Contrarily, the charge memo in relation to the allegations of corruption cannot be quashed, merely on the ground that there is a delay or on the ground that the earlier removal order was passed based on the order of conviction.

7. In respect of the lis on hand, undoubtedly, the order of removal has been passed based on the order of conviction. However, the disciplinary authority had not initiated any action for conducting an enquiry. Thus, no departmental disciplinary proceedings were continued and an order of removal had been issued only based on the conviction.

8. The legal principles in this regard are now settled that mere acquittal in criminal case would not be a bar for the

disciplinary authority to initiate and continue departmental disciplinary proceedings under the Discipline and Appeal Rules. The standard of proof required to convict a public servant is high in nature. In other words, strict proof is required for imposing conviction. But no such strict proof is required for the purpose of punishing Government employee under the Discipline and Appeal Rules. Even preponderance of probabilities are enough to punish an employee. The moral turpitude is also a ground to punish a public servant under the Discipline and Appeal Rules as well as under the Government Servants Conduct Rules. This being the distinct and different procedures to be followed, both in criminal proceedings as well as in the departmental disciplinary proceedings, undoubtedly, there is no bar for the disciplinary authority to proceed with the departmental disciplinary proceedings, even if the public servant is acquitted in a criminal case. Thus, there is no impediment for the Authorities Competent to continue the departmental disciplinary proceedings, as the allegations against the writ petitioner are demand and acceptance of bribe. The charge memo contains the list of documents relied upon and the list of witnesses to be examined. Under these circumstances, the Authorities Competent are bound to continue the departmental disciplinary proceedings and conclude the same at the earliest possible.

9. It is relevant to state that on initiation of departmental disciplinary proceedings, the Authorities Competent must ensure that the said proceedings are concluded without causing any undue delay. Long pendency of departmental disciplinary proceedings would cause prejudice to the service rights of the employees also. In the present case on hand, the writ petitioner had already attained the age of superannuation and in the event of any further delay, the same would cause deprivation of his right to receive terminal and pensionary benefits. Even during the pendency of the departmental disciplinary proceedings, the writ petitioner is entitled to get the Provisional Pension, as he was not placed under suspension and he was allowed to retire from service, without prejudice to the departmental disciplinary proceedings initiated against him. Thus, the Competent Authority has to submit the necessary proposals for the purpose of sanctioning and disbursing the provisional pension to the writ petitioner till the completion of the departmental disciplinary proceedings initiated against him.

10. Simultaneous proceedings are also permissible. The Competent Authority even during the pendency of the criminal case, can continue departmental disciplinary proceedings and there is no bar. However, in the present case, no disciplinary

proceedings were initiated during the pendency of the criminal trial. The petitioner was removed only based on the order of conviction. Thus, no action could be initiated during the pendency of the criminal appeal. Thus, the delay occurred during that period cannot be held against the administration. The writ petitioner was removed, when the criminal appeal was pending and therefore, at that point of time there was no employer, employee relationship existed. Only after the order of acquittal on 24.08.2017, the writ petitioner was reinstated into service and thereafter, allowed to retire from service without prejudice to the disciplinary proceedings initiated and consequently, the charge memo has been issued. As far as the charge memo is concerned, there is no infirmity as such and it is capable of proceeding with.

11. 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.

12. 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.

13. The Honourable Supreme Court of India in the case of Union of India and others Vs. Upendra Singh, reported in (1994) 3 SCC 357 and the 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."

14. 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.

15. 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.

16. In case of Secretary, Ministry of Defence vs. Prabhash Chandra Mirdha reported in (2012) 11 SCC 565 Supreme Court held as follows:

"10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court. (Vide State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943], Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327], Ulagappav. Commr. [(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)], Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] and Union of India v. Kunishetty Satyanarayana [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304]

11. In State of Orissa v. Sangram Keshari Misra [(2010) 13 SCC 311 : (2011) 1 SCC (L&S) 380] (SCC pp. 315-16, para 10) this Court held that normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority. (See also Union of India v. Upendra Singh [(1994) 3 SCC 357 : 1994 SCC (L&S) 768 : (1994) 27 ATC 200]

12. Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings".

17. In the case of Union of India vs. Kunisetty Satyanarayana reported in (2006) 12 SCC 28 Apex Court 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 : JT (1995) 8 SC 331], Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467], Ulagappav. Divisional Commr., Mysore [(2001) 10 SCC 639], State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943], 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."

18. Under these circumstances, there is no impediment for the respondents to proceed with the disciplinary proceedings and conclude the same. However, taking note of the facts and circumstances the following orders are issued:

(i)The relief as such sought for in the present writ petition to quash the charge memo stands rejected.

(ii)The respondents are directed to proceed with the departmental disciplinary proceedings and pass final orders within a period of six months from the date of receipt of a copy of this order.

(iii)The writ petitioner is directed to submit his explanation within a period of one week from the date of receipt of a copy of this order and thereafter co-operate with the disciplinary authority for the early disposal of the departmental disciplinary proceedings in all respects. In the event of non-cooperation on the part of the writ petitioner, the same shall be recorded by the Competent Authorities in the proceedings and in such an event the time limit prescribed cannot be taken as a ground by the writ petitioner for the purpose of institution of further litigations.

(iv)The respondents are directed to sanction and disburse provisional pension till the conclusion of the departmental disciplinary proceedings.

19. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

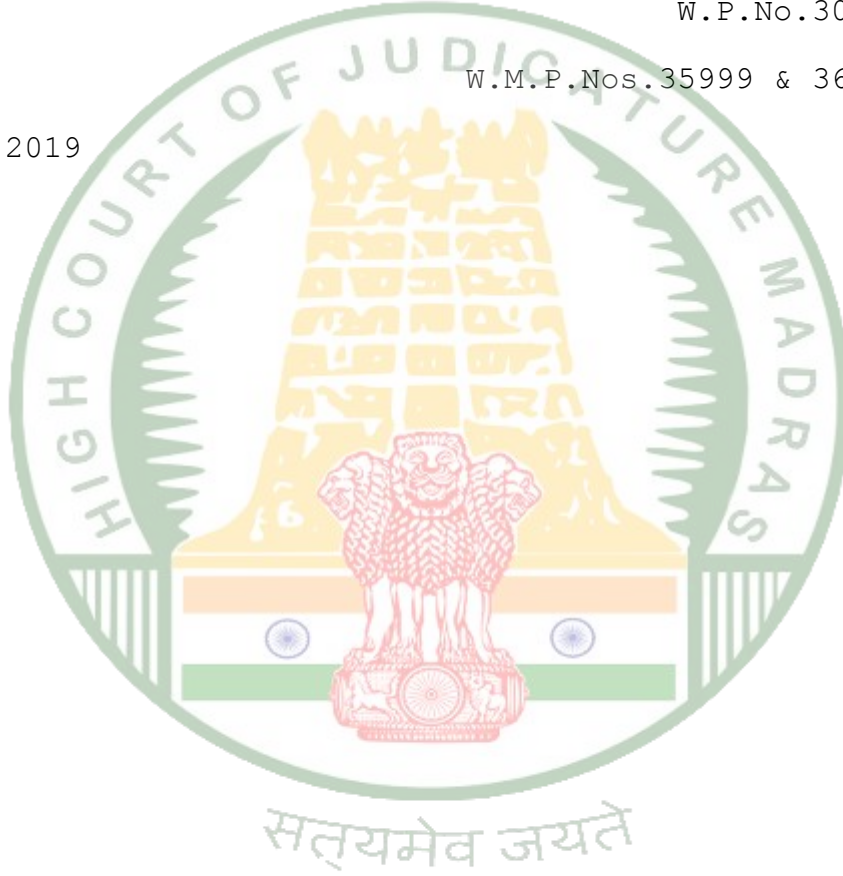
1.The Commissioner of Municipal Administration,
Chepauk, Chennai - 600 005.

2.The Commissioner,
Chidambaram Municipality,
Chidambaram,
Cuddalore District.

+1 cc to Mr.P.Srinivas, Advocate Sr.No.24449
+1 cc to Mr.C.Prakasam, Advocate Sr.No.23976
+1 cc to The Government Pleader, Sr.No.24719

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