

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.32454 of 2018
and
WMP.No.37661 of 2018

R.Balasubramanian

...Petitioner

Vs

1.The Principal Secretary,
Public Works Department,
Secretariat, Chennai - 600 009.

2.The Engineer - In - Chief, (Buildings)
Chief Engineer (Buildings)
Chennai Region &
Chief Engineer (General) P.W.D,
Chepauk, Chennai - 600 005.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorari, to call for the records pertaining to the impugned proceedings issued by the first respondent in his No.7677/E2/2017-18 dated 16.10.2018 and quash the same.

For Petitioner : Mr.K.P.S.Palavelrajan

For Respondents : Mr.A.N.Thambidurai,
Spl.Govt.Pleader for R1 & R2

O R D E R

The show-cause notice issued by the respondent in proceeding No.7677/E2/2017-8, dated 16.10.2018, recording reasons for holding the charges proved in deviation from the findings of the Enquiry Officer, is under challenge in the present writ petition.

2. The writ petitioner was working as Assistant Executive Engineer in Public Works Department and on account of certain allegations, a charge memo was issued against the writ petitioner in proceeding dated 30.01.2018. The writ petitioner submitted his explanation on 02.03.2018, denying the charges.

The enquiry was ordered to be conducted and accordingly, the Enquiry Officer completed the enquiry by providing an opportunity to the writ petitioner and submit his report on 28.08.2018. On receipt of the enquiry report, the Disciplinary Authority arrived a conclusion that, the findings of the Enquiry Officer is not acceptable to the Disciplinary Authority. Thus, by assigning reasons, a show-cause notice was issued to the writ petitioner, providing an opportunity to submit his explanations.

3. The Disciplinary Authority namely, Principal Secretary to Government, Public Works Department, issued the impugned order stating that the Enquiry Officer is not categorically stated as to what exigency led the delinquent officer to incur expenditure under the head of account "8443 Deposits Class-III", without obtaining authorization by means of Letter of Credit issued by the Government.

4. In view of certain discrepancy in the report, the Disciplinary Authority came to the conclusion that, the findings of the Enquiry Officer is not acceptable and accordingly formulated the reasons and by recording the reasons, the opportunity is given to the writ petitioner to submit his explanations. The writ petitioner is directed to submit his representation in respect of the revised decision taken by the Disciplinary Authority within a period of 15 days from the date of receipt of the notice impugned dated 16.10.2018. Instead of submitting his explanations, the writ petitioner has chosen to file the present writ petition on the ground that, the Disciplinary Authority has come to the conclusion that the charges are proved and further, the learned counsel for the writ petitioner states that, new charge has been framed, by way of deviation.

5. This Court is of an opinion that, the Disciplinary Authority cannot frame a new charge with a decision taken to deviate the findings of the Enquiry Officer. However, certain connected allegations already formulated in the statement of allegations or imputation of misconduct can be adjudicated for the purpose of deviating the findings of the Enquiry Officer.

6. The findings connected with the allegations and statement of allegations and imputation of misconduct cannot be construed as a new charge. However, it is made clear that, if at all the Disciplinary Authority has decided to frame a new charge, that is to be done separately. However, in respect of the deviation from the findings of the Enquiry Officer's report, the writ petitioner has to submit his explanation and on receipt of the explanation/objection from the writ petitioner, the Disciplinary

Authority is empowered to pass orders on merit and in accordance with law.

7. Contrarily, no writ petition can be entertained against the show-cause notice. In view of the fact that an opportunity provided to the writ petitioner so submit his explanations/objections to the Authorities concerned. No writ petition can be entertained in a routine manner against the show-cause notice. A writ against the show-cause notice can be entertained if the same is violation of Statutory rules in force or the Authority has not jurisdiction or if there is any allegation or malafides. Even in case of raising an allegation or malafides, the Authority against whom such an allegation is raised is to be impleaded as the respondent in his personal capacity in the writ proceedings. In the absence of any one of these legal grounds, no writ can be entertained against the show-cause notice.

8. 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 show-cause notice 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.

9. In view of the fact that, the notice issued by the Disciplinary Authority on receipt of the findings of the Enquiry Officer is under challenge, this Court is of an opinion that, the writ petitioner has to submit his explanation/objection, in respect of the reasons for holding the charges as proved in deviation from the findings of the Enquiry Officer issued by the Competent Authority and on receipt of the explanation, it is for the Competent Authority to consider the merits and the materials available on record, and pass orders in accordance with law.

10. It is made clear that the Competent Authority on receipt of the explanation, consider the same and pass orders as expeditiously as possible. The writ petitioner is also directed to co-operate for earlier disposal of the departmental disciplinary proceedings by submitting his explanation/objection on the notice issued by the respondent. This being the principles to be followed, the Competent Authorities are directed to conclude the proceedings in all respects and pass final orders as expeditiously as possible. With these

directions, the writ petition stands disposed of. No Costs.
Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Pkn

To

- 1.The Principal Secretary,
Public Works Department,
Secretariat, Chennai - 600 009.
- 2.The Engineer - In - Chief, (Buildings)
Chief Engineer (Buildings)
Chennai Region &
Chief Engineer (General) P.W.D,
Chepauk, Chennai - 600 005.

+1cc to the Government Pleader Sr.38853

W.P.No.32454 of 2018

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