



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.08.2019

CORAM:

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.7465 of 2014
and
M.P.(MD).No.1 of 2014

P.Rengasamy

... Petitioner

Vs.

1.The Commissioner,
Disciplinary Proceedings,
Nagercoil.

2.The Superintendent of Police,
Office of the Superintendent of Police
Nagercoil.

3.The Inspector of Police,
Vigilance and Anti-Corruption,
Kanyakumari.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the respondent in connection with the proceedings in Roc.No.B1/196/2012(TDP No.42/2012) dated 03.01.2013 and quash the same as illegal and improper.

For Petitioner : Mr.M.P.Senthil

For Respondents : Mr.K.Mu.Muthu

Additional Government Pleader

ORDER

The charge memo dated 03.01.2013 is sought to be quashed in the present writ petition.

2.The writ petitioner was joined as Grade-II Police Constable in the Police Department and promoted as Grade-I Police Constable in the year 1995. Subsequently, he was promoted to the post of Head Constable and thereafter, Special Sub-Inspector of Police in the year 2010. On account of an allegation of accumulation of wealth disproportionate to the known source of the writ petitioner, a charge memo was issued by the competent authorities. In view of the fact that the allegation against the writ petitioner are in relation



to disproportionate wealth, the case was referred to the Tribunal for Disciplinary Proceedings, Nagercoil. The Tribunal for Disciplinary Proceedings in proceedings, dated 03.01.2013 framed the following charges against the writ petitioner:

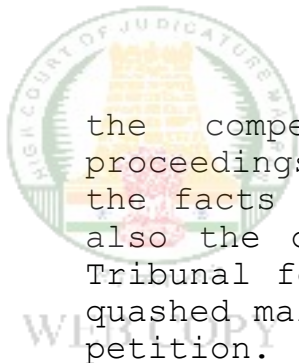
"CHARGE1 :

While you (Accused Officer) Thiru.P.Rengasamy, being a public servant were working as Head Constable in the Police Department of the Government of Tamil Nadu in Kanniyakumari District, by abusing your official position and by resorting to corrupt and illegal means acquired assets during the period from 01.12.1999 to 30.11.2004 in your name and also in the name of your wife Tmt.M.Thangaleela to the tune of Rs.5,10,912/- in the form of immovable and movable assets, which are disproportionate to your known source of income as shown in the Statements I to VII annexed herewith. Thus, your (Accused Officer) Thiru.P.Rengasamy have failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming of a member of the service and violated Rule-24 (1) of Tamil Nadu Subordinate Police Officers' Conduct Rules 1964.

CHARGE-2 :

While you (Accused Officer) Thiru.P.Rengasamy, being a public servant were working as Head Constable in Kanniyakumari District have purchased a Royal Enfield Bullet Motor Cycle bearing Registration No.TN 74 H 0063 on 05.03.2003 and you did not report the transaction to the Prescribed Authority and thereby you have violated Rule 9(2) of Tamil Nadu Subordinate Police Officers' Conduct Rules 1964."

34 witnesses were cited for examination. The annexure provides statement in relation to the value of the properties and the statement -II to the Annexure provides assets stood in the name of the Accused Officer and his family members. The Statement-III provides the income received by the Accused Officer and his family members. Statement-IV provides the expenditure incurred by the Accused Officer and his family members. Thus, there is no infirmity in respect of the charge memo issued by the Tribunal for Disciplinary Proceedings. Instead of defending his case before the Tribunal, the writ petitioner has chosen to file the present writ petition mainly on the ground that the charge-memo was issued on malafide grounds and a fair exercise of power was not exercised by the first respondent. The writ petitioner has reached the age of superannuation on 30.04.2014 and without completing the enquiry, the matter was kept pending for a prolonged period. The writ petitioner filed the writ petition mainly based on certain facts and circumstances on merit, which cannot be adjudicated by the High Court under Article 226 of the Constitution of India. The disputed facts in issue raised in the writ petition are to be adjudicated by



the competent disciplinary authorities. During the enquiry proceedings, the High Court cannot provide a finding in respect of the facts as well as the statements furnished by the witnesses and also the deposition. Such an exercise is to be done only by the Tribunal for disciplinary proceedings and the charge-memo cannot be quashed mainly on the grounds raised on merits, in the present writ petition.

"3. 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.

4. 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.

5. 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



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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."

6. 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.

7. 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.

3. The learned Additional Government Pleader appearing on behalf of the respondents also opposed the contention of the writ petitioner by stating that the writ petitioner accumulated wealth disproportionately and the allegation against the petitioner are serious in nature. 34 witnesses are cited and already 14 witnesses were examined by the Tribunal for Disciplinary Proceedings. On account of the pendency of the present writ petition, further enquiry is stalled. Under these circumstances, the Tribunal would be in a position to conclude the enquiry within a period of three months.

4. This Court is of the considered opinion that the judicial review against the charge memo is undoubtedly limited. The charge memo cannot be quashed by considering the merits and the demerits of the allegation set out in the charge memorandum. The explanations now submitted by the writ petitioner in the present writ petition cannot be considered by the High Court. As all such disputed facts are to be adjudicated with reference to the original documents and by adducing evidence by following the procedures. This being the factum, the writ petitioner is at liberty to defend his case before the Tribunal for Disciplinary Proceedings by availing the opportunity to be provided. In these circumstances, the respondents are also bound to continue the departmental disciplinary proceedings and conclude the same as expeditiously as possible. The writ petitioner has already attained the age of superannuation and therefore, speedy disposal of the departmental disciplinary proceedings is imminent. This being the factum, the following orders are passed:

(i) the relief as such sought for in the present writ petition stands rejected.

(ii) the respondents are directed to continue the departmental disciplinary proceedings and conclude the same and pass final orders as expeditiously as possible, preferably within a period of 5 months from the date of receipt of a copy of this order.

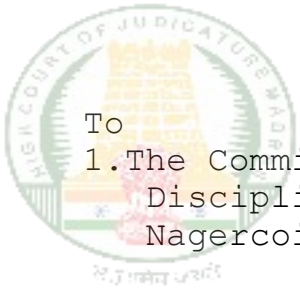
(iii) with these directions, this writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar



To

1.The Commissioner,
Disciplinary Proceedings,
Nagercoil.

2.The Superintendent of Police,
Office of the Superintendent of Police
Nagercoil.

3.The Inspector of Police,
Vigilance and Anti-Corruption,
Kanyakumari.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-82946[F] dated 22/08/2019)

+1 CC to M/s.SPL GP (SR-83182[F] dated 22/08/2019)

W.P.(MD)No.7465 of 2014 and
M.P.(MD).No.1 of 2014
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