BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2019

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THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD)Nos.8099 and 8100 of 2014

R.Chandrasekar ...Petitioner in both cases

vs.

1.The Director of Treasuries and Accounts,
No.1, Jennis Road,
Panagal Buildings 2nd Floor,
Saidapet, Chennai -15.

2.The Treasury Officer,
District Treasury,
Tiruchirapalli – 620 001. ...Respondents in both cases

Prayer in W.P.(MD)No.8099 of 2014: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the first respondent in R.C.No.12063/2014/Q3, dated 23.04.2014 converting the disciplinary action initiated against the petitioner under Rule 17(a) into that of disciplinary action under Rule 17(b) of Tamil Nadu Civil Services (Disciplinary and Appeal) Rules and quash the same.

Prayer in W.P.(MD)No.8099 of 2014: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the first respondent in R.C.No.12063/2014/Q3, dated 23.04.2014 placing the petitioner under suspension from service and quash the same.

For Petitioner : Mr.R.Subramanian
For Respondents: Mr.M.Jeyakumar
Additional Government Pleader
(in both cases)

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COMMON ORDER

These Writ Petitions are directed against the proceedings of the first respondent in R.C.No.12063/2014/Q3, dated 23.04.2014 converting the disciplinary action initiated against the petitioner under Rule 17(a) into that of disciplinary action under Rule 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules and also directed against the proceedings of the first respondent in Proc.No.12063/2014/Q3, dated 23.04.2014, placing the petitioner under suspension from service.

2.The petitioner entered into the Government service as a Junior Assistant in the Treasuries and Accounts Department and he was promoted as Sub Treasury Officer on 11.08.2011. While, he was working as Sub Treasury Officer in Sub Treasury, Srirangam, Tiruchirapalli District, a charge memo under Rule 17(a) of Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, dated 27.03.2014, was served on the petitioner. As per the charge memo, the following are the charges:

> "1.ஸ்ரீரங்கம் சார்நிலைக் கருவூலத்தின் வாயிலாக ஓய்வூதியம் பெறும் முதியோர் ஓய்வூதிய (OAP) பட்டியல்கள் அனுமதிப்பதில் ஏற்பட்ட காலதாமதம்.
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> 2.அப்பட்டியல்களையும் ஏற்பளிப்பு செய்யப்பட்ட நாளிலிருந்து வங்கிக்கு காலதாமதம் ஆக அனுப்பியது.
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> 3.ஓய்வூதிய பட்டியல்களை உடனுக்குடன் ஏற்பளிப்பு செய்யுமாறு மாவட்ட ஆட்சியர் மற்றும் கருவூல அலுவலர், திருச்சி அவர்களால் அறிவுறுத்தப்பட்டிருந்தும், தொடர்ந்து காலதாமதமாக அனுப்பியது.
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> 4.அலுவலக தலைவர் என்ற முறையில் குறைகளை உடனுக்குடன் களைய வேண்டும் என்ற பொறுப்பினை உணராமல் இந்நிகழ்வில் மேற்கொண்ட மெத்தனப்போக்கு."

3.To the charge memo issued to the petitioner, the petitioner submitted a representation, dated 02.04.2014, meeting all the charges. However, even after receipt of the representation, by impugned order, the first respondent proposed to convert the disciplinary proceedings initiated against the petitioner under Rule 17(a) of Tamil Nadu Civil Services (Disciplinary and Appeal) Rules into that of one under Rule 17(b) of Tamil Nadu Civil Services (Disciplinary and Appeal) Rules. Following the impugned order of conversion, dated 23.04.2014, the first respondent passed another order on 23.04.2014 suspending the petitioner from service.

4.It is stated in the order of suspension that it is necessary in the public interest to place the petitioner under suspension in contemplation of disciplinary proceedings. It is to be noted that the order of suspension also refers to a communication received from the District Collector, dated 29.03.2014. Challenging the order converting the charges from Rule 17(a) to Rule 17(b), the petitioner has filed the writ petition in W.P.(MD)No.8099 of 2014. Challenging the order of suspension, the petitioner has filed the writ petition in W.P.(MD) No.8100 of 2014.

5.The learned Counsel for the petitioner submitted that the order of the first respondent converting the charges is in violation of principles of natural justice and therefore, liable to be quashed. Since the charges against the petitioner are trivial, the conversion, according to the learned Counsel for the petitioner, is unwarranted and that the whole thing is without an application of mind. The learned Counsel also refers to the charges one by one and stated that the first respondent, without considering the explanations offered by the petitioner to the charges, has passed the impugned order.

6.The learned Counsel for the petitioner further submitted that there is no scope for converting the charges into one for major punishment, having regard to the allegations made in the charge memo. It is also pointed by the learned Counsel for the petitioner that the impugned order does not contain any reasons and that therefore, the conversion is wholly illegal.

7.With regard to the order of suspension, the learned Counsel for the petitioner would submit that it is only consequential and this Court may quash the proceedings, if it is convinced that the order of first respondent regarding conversion of charge into one under Rule 17(b) is bad in law. Alternatively, it is also submitted that the order of suspension gives an indication that the same is an act of victimisation, as the suspension was not based on the charges already framed against the petitioner, but, on a complaint or letter received from the District Collector carrying some allegations against the petitioner.

8.The learned Counsel for the petitioner also relied upon the guidelines for deciding whether the charges can be framed under Rule 17(b). The guidelines read as follows:

> *"Without prejudice to the generality of situations involving indiscipline, moral turpitude, corruption etc., charges under rule 17 (b) have to be framed in the following types of cases for imposing any one of the major penalties :-*
>
> *1) Cases in which there is reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a Court of Law, e.g.*
>
> *(a) possession of assets disproportionate to the known sources of income ;*
>
> *(b) obtaining or attempting to obtain illegal gratification ;*
>
> *(c) misappropriation of Government property, money or shares;*
>
> *(d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate etc;*
>
> *(2) Falsification of Government records.*

(3) Irregularity or negligence in the discharge of official duties with a dishonest motive. (emphasis supplied) (4) Misuse of official position for personal gain.

(5) Disclosure of secret or confidential information even though it does not fall strictly within the scope of the Official Secrets Act.

(6) Misappropriation of Government funds, false claims of Travelling Allowance, reimbursement of false medical bills etc. Unless a major punishment is really warranted namely, dismissal from service, removal from service, compulsory retirement or reduction to a lower rank in the seniority list or to a lower post or time scale, framing of charges under rule 17 (b) is not necessary and should be avoided."

9.The learned Counsel for the petitioner relying upon the guidelines, submitted that the charges framed against the petitioner originally do not warrant any major punishment. Stating that mere irregularity or negligence is not sufficient to frame charges under Rule 17(b). Even if there is negligence, unless, the allegation is that the said irregularity or negligence in the discharge of official duties, is with a dishonest motive, it is submitted that charge memo issued originally will not attract Rule 17(b).

10.The learned Counsel for the petitioner also relied upon the judgment of Honourable Division Bench of this Court in the case of ***A.Bommusamy vs The State of Tamil Nadu***, reported in ***2007 (3) CTC 518***. In a similar situation, the Honourable Division Bench has held as follows:

“12.As seen from the facts and circumstances of the case, though initially the charges were framed under Rule 17(a) of the Rules, but, later on the charges were altered to the one under Rule 17(b) and this was done without following the procedure as contemplated in the Rules, without conducting any further enquiry and without giving any opportunity to the petitioner. Further, the third respondent is not the competent authority to issue the charge memo under Rule 17(b) of the Rules, as he was not the appointing authority of the petitioner and even on this ground also the order of punishment is liable to be set aside.”

11.The learned Additional Government Pleader relied upon the counter affidavit filed by the first respondent, which is filed along with the petition to vacate stay. In the counter affidavit, the first respondent has stated as follows:

“4.Regarding the averments made by the petitioners

in paragraph-4 of the affidavit, it is submitted that on receipt of the D.O. letter from the District Collector, Trichy and the District Administrative Authority by the first respondent, and the lapses pointed out in the Sub-Treasury, Sriranga, are serious in nature and immediately instructed the Regional Joint Director of Treasuries and Accounts, Trichy to undertake a special inspection on the accounts of the Sub Treasury, Srirangam for a token period of six months. The inspection covering the period from October 2013 to March 2014, has been taken up from 01.04.2014 to 03.04.2014. Findings of the special inspection report reveals that there was unnecessary delay in passing of bills presented by the Tahsildar (SSS), Srirangam and also various Drawing and Disbursing Officers attached to the Sub Treasury, Srirangam and pension related subjects. As per letter from the District Collect, Trichy, that common complaints against the petitioner have been received from the general public. The allegation in the said complaint are many public related bills, like, Old Age Pension and other Social Security Schemes bills were delayed and Money Order delivered to the public las week of the month instead of first week "Making the general public wait unnecessarily for even more than half a day for any official need" and "Willful demand by making the public to purchase toners for the computer printers, paper bundles, etc., for his private computer centre located at Lalgudi thereby misusing his official power and capacity. Hence, to curb the disorder and to maintain smooth functions of the Treasury, it is the view that the charges lapses against the petitioner are grave in nature and it is necessary to convert the 17(a) charge memo already issued by the second respondent into 17(b) and also to place the petitioner Thiru.R.Chandrasekar, Sub-Treasury Officer, Srirangam, under suspension from service. Therefore, the suspension order is well maintainable either on law or on facts and it is in order."

12.From the materials and nature of averments made in the affidavit filed in support of the petition and the counter affidavit, the charges against the petitioner are only minor/trivial, when it was originally framed as per the show cause notice, dated 27.03.2014. From the charges framed, it is seen that the charges are only about delay in approving the old age pension and other Social Security Schemes and in the performance of other official duties. The charges were refuted and the delay was properly met in the explanation offered by the petitioner. It is the specific case of the petitioner that the Sub Treasury

Office, Srirangam though sanctioned with two posts of Office Assistant, the two posts of Office Assistant fell vacant some time back and that the delay was solely due to insufficient strength of working force in the Sub Treasury Office, Srirengam. However, the impugned order, dated 23.04.2014, along with the order of suspension, dated 23.04.2014, give an indication that the first respondent was prompted to take action on the basis of a letter received from the District Collector, Trichy. This gives clear indication that the conversion was not on the basis of the charges already framed, but, on the basis of a subsequent complaint received by the first respondent. This vitiate the impugned order originally passed on 23.04.2014 proposing to convert the charges under Rule 17(a) to one under Rule 17(b) of Tamil Nadu Civil Services (Disciplinary and Appeal) Rules.

13.Though the Honourable Division Bench in the above judgment has referred to a procedure contemplated in the Rules for conversion, the learned Counsel for the petitioner admitted that no separate procedure is contemplated before going for conversion or alteration of charges from Rule 17(a) into one under Rule 17 (b). However, the Honourable Division Bench also held that the conversion is illegal, if it is done without conducting any enquiry and without giving any opportunity to the petitioner.

14.The judgment of Honourable Division Bench of this Court above referred to was also followed by a learned Single Judge of this Court in the case of ***M.Meera Mytheen, Deputy Chief Inspector of Factories vs State of Tamil Nadu***, in W.P.No.4242 of 2009. The learned Single Judge of this Court, after referring to the judgment of Honourable Division Bench, has held that alteration of charges framed under Rule 17(a) of Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, involves civil consequences affecting the rights of the petitioner and that therefore, conversion or alteration can be done only after giving an opportunity. This Court is also in agreement with the view that before alteration of charges with one attracting Rule 17(b), a preliminary enquiry or sufficient opportunity to the employee should be provided.

15.The learned Counsel for the petitioner submitted that the counter affidavit refers to further allegation against the petitioner, as if there were complaints received from the public to the effect that the petitioner makes the general public wait unnecessarily even more than half a day for any official need and that he demanded from the public to purchase toners for the computer printers, paper bundles, etc., for his private computer centre, located at Lalgudi.

16.Para 4 of the counter affidavit clearly indicates that the conversion and the subsequent suspension are based on such further allegations, for which no charge memo was issued to the petitioner. Since the complaint received against the petitioner regarding misuse of his official power was stated as a reason to support the impugned order, the learned Counsel for the petitioner submitted that the respondents cannot support the impugned order by supplying informations or reasons, which are not assigned in the order impugned.

17.The submission of learned Counsel for the petitioner is acceptable in view of the judgment of Honourable Supreme Court in ***Mohinder Singh Gill*** case, reported in ***1978 (1) SCC 404***. Having regard to the stand taken by the respondents in the counter affidavit, it is seen that the impugned order converting the charges from 17(a) to 17(b) is not on the basis of charges originally framed against the petitioner. As pointed out by the learned Counsel for the petitioner, the charges, that were originally framed against the petitioner, do not justify conversion for a major punishment.

18.The learned Single Judge of this Court in the case of ***S.Kannan vs State of Tamil Nadu***, reported in ***(2009) 8 MLJ 217***, has after referring to the guidelines, which was quoted by this Court earlier, has held as follows:

> *"11. On a perusal of the above guidelines, what comes to be known is that none of the charges framed against the petitioner comes under the above category of cases. Though the charges are framed against the petitioner under Rule 17 (b) as if there is irregularity or negligence in the discharge of official duties, as adumbrated in clause 3 of the guidelines referred to supra, the said negligence, alleged by the respondents, does not contain the dishonest motive, which is a crucial factor for deciding the category of the charge i.e., under 17 (a) or under 17 (b).*
>
> *12. The very object of framing of the guidelines is that unless a major punishment is really warranted, namely, dismissal from service, removal from service, compulsory retirement or reduction to a lower rank in the seniority list or to a lower post or time scale, framing of charges under Rule 17 (b) is not necessary and should be avoided."*

19.As pointed out earlier, the original charge memo do not warrant major punishment. Since conversion and suspension of petitioner in contemplation of major penalty is on the basis of a communication that was received from the District Collector, this Court is unable to sustain the impugned order of the first respondent altering the charges. It is to be noted that the charges framed against the the petitioner originally are trivial and at best, the major allegation against the petitioner is delay in performing official duty and negligence on the part of the petitioner.

20.Simple negligence cannot justify conversion. The contention of the respondents in the counter affidavit clarifies the position that the first respondent acted only on the basis of the communication received from the District Collector subsequent to charge memo to go for conversion and for suspending the petitioner in contemplation of the disciplinary proceedings warranting major punishment. Hence, this Court is unable to sustain the order impugned in both writ petitions. Accordingly, these writ petitions are allowed and the order of impugned in both writ petitions, dated 23.04.2014, are set aside. However, it is open to the respondents to proceed further as against the petitioner, in case, the petitioner is guilty of any other misdeeds as stated in the counter and to proceed against the petitioner under Rule 17(a) pursuant to the charges already framed as per show cause notice dated 27.03.2014. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

cmr

To

1.The Director of Treasuries and Accounts,
No.1, Jennis Road,
Panagal Buildings 2nd Floor,
Saidapet, Chennai -15.

2.The Treasury Officer,
District Treasury,
Tiruchirapalli – 620 001.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-86465[F] dated 13/09/2019)

+1 CC to M/s.GP (SR-86581[F] dated 13/09/2019)

W.P.(MD)Nos.8099 and 8100 of 2014
12.09.2019

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