



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.07.2019
CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

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W.P.(MD).No.9250 of 2015
and
M.P.(MD)No.1 of 2015
and
W.M.P.(MD)No.7848 of 2016

R.Rajaram ... Petitioner

-Vs-

1.The Director General of Police,
Kamarajar Salai (Beach Road),
Chennai-600 004.

2.The Deputy Inspector General of Police,
Madurai Range, Madurai.

3.The District Superintendent of Police,
Madurai District, Madurai.

4.The Additional Superintendent of Police,
Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned charge memo issued by the 2nd respondent in Na.Ka.No.Tha.Pa.No.37/2014, Madurai District, dated 03.04.2014 and quash the same.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.K.Mu.Muthu
Additional Government Pleader

ORDER

The charge memo dated 03.04.2014 is under challenge in the present writ petition. The writ petitioner was working as Police Inspector and retired from service on attaining the age of superannuation on 31.01.2013. After retirement of the writ petitioner, the impugned charge memo has been issued under Rule 9 (B) of the Tamil Nadu Pension Rules, 1978.

2.The learned Counsel appearing on behalf of the writ petitioner made a submission that the charge itself is untenable. The charges in relation to the contradictions made by the writ



petitioner during the deposition before the competent criminal Court of law is not supported by any valid document and therefore, the very constitution of the charge is to be scrapped. It is further contended that the writ petitioner had deposed the truth and the statement based on the documents available and he has not committed any misconduct warranting an action under Rule 9(B) of the Tamil Nadu Pension Rules, 1978.

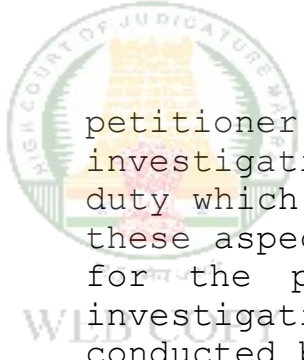
3.The learned Counsel for the writ petitioner solicited the attention of this Court in respect of the observations made by the competent criminal Court of law in a case registered against the public servants under the provisions of the Prevention of Corruption Act, 1988. Learned Counsel for the petitioner further urged this Court stating that on a perusal of all the statements deposed by the writ petitioner, he has not committed any such misconduct or offence as stated in the impugned charge memo.

4.The learned Additional Government Pleader appearing on behalf of the respondents disputed the contentions by stating that the writ petitioner has given contradictory statements before the Criminal Court of law after his retirement. The learned Additional Government Pleader further contended that all these allegations are to be enquired into in view of the fact that the prosecuting officer has deposed before the criminal Court of law with contradictory statements and therefore, the issues are serious in nature warranting detailed enquiry by the departmental authorities.

5.Considering the arguments advanced by the respective learned Counsel appearing on behalf of the writ petitioner as well as the respondents, this Court is bound to consider the nature of the allegations set out in the impugned charge memo.

6.The learned counsel appearing on behalf of the writ petitioner further reiterated that the judgment of the competent criminal Court of law reveals that there is no contradictions in respect of the deposition placed by the writ petitioner during the course of trial. It is further contended that the deposition was provided by the writ petitioner based on the documents available on record and therefore, he has not committed any misconduct, lapse, negligence or dereliction on duty.

7.The said contentions of the writ petitioner was disputed by the learned counsel appearing on behalf of the respondents by stating that even the basic requirement of sending the documents for forensic analysis were not done by the writ petitioner. It is the duty mandatory on the part of the investigating officer to ascertain the genuinity or otherwise of the documents seized from the accused persons or from the office concerned. Thus, the writ



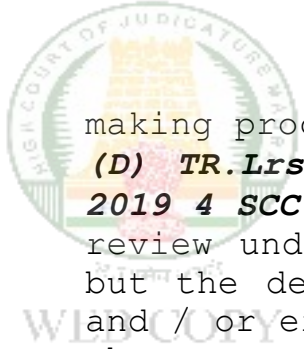
petitioner had not even followed the basic principles of the investigation and committed lapse, negligence and derelictions of duty which resulted acquittal in the criminal case. Therefore, all these aspects are to be enquired into by the competent authorities for the purpose of culling out the truth behind the entire investigation as well as the manner in which, the trial was conducted before the competent criminal Court of law.

8. This Court is of the considered opinion that the present writ petition on hand is filed challenging the very charge memo on the ground that the writ petitioner has not committed any misconduct or otherwise. The power of judicial review under Article 226 of the Constitution of India is limited and this Court in a writ jurisdiction cannot go into the merits and demerits of the allegations set out in the charge memo. Such an adjudication must be done by the competent authority by verifying the original records and by adducing evidences, if required.

9. No writ petition can be entertained against the charge memo in a routine manner. A charge memo can be quashed only on exceptional circumstances and on limited grounds. A charge memo can be challenged, if the same has been issued by an incompetent authority having no jurisdiction or an allegations of *malafides* are raised or if the same is in violation of the statutory rules in force. Even in case of allegations of *malafides*, the authority against whom such an allegation is raised must be impleaded as party respondent in the writ proceedings in a personal capacity. In the absence of any one of the legal grounds, no writ proceedings can be entertained against the charge memo.

10. Intermittent intervention in departmental disciplinary proceedings are not desirable. On institution of departmental disciplinary proceedings, the authority competent must be allowed to continue the same and all such proceedings should reach its logical conclusion. Frequent interventions by the Courts in a departmental disciplinary proceedings would cause prejudice to the very proceedings itself. Only when there is in cross violation of the procedures adopted or the very proceedings itself is in violation of statutory rules then alone, such intermittent interventions can be done by the High Court and not otherwise. In all other circumstances, the delinquent officials are entitled to avail the opportunity to be provided under the Discipline and Appeal Rules and established their innocence or otherwise by producing the documents and by adducing evidences. Contrarily, such an exercise cannot be done in a writ proceedings by the High Court.

<https://hcservices.ecourts.gov.in/hcservices/> repeatedly held by the Hon'ble Supreme Court of India that the power of judicial review under Article 226 of the Constitution of India is not against the decision but the decision



making process. Even recently, in the case of **Sarvepalli Ramaiah (D) TR.Lrs Vs. District Collector, Chittoor District** reported in **2019 4 SCC 500**, the Hon'ble Supreme Court observed that "judicial review under Article 226 is directed, not against the decision, but the decision making process. Of course, a patent illegality and/or error apparent on the face of the decision, which goes to the root of the decision, may vitiate the decision making process. The decision of the Collector was based on the materials on thus not liable to be interfered with".

12.The said principles were reiterated by the Hon'ble Supreme Court of India on several occasions, therefore, it is not that on each and every stage, the departmental disciplinary proceedings must be interfered with by the High Courts. Even certain grievances regarding the procedures, delinquent officials are entitled to approach the authority for redressal. For instance, for appointment of defence assistant or for certain records they have to approach the authorities at the first instance and if the denial caused any prejudice in the interest of the delinquent official then alone, they can approach the Court of law and not otherwise.

13.In the present case on hand, the learned counsel appearing on behalf of the writ petitioner strenuously contended that the writ petitioner has not committed any error, contradictions or travelled beyond the scope of the documents available on record. However, all such adjudications are to be done by the competent authority by verifying the original records after providing an opportunity to the writ petitioner. Such an enquiry cannot be conducted in a writ jurisdiction. Thus, the grounds raised on merit in the present writ petition deserves no merit consideration. All such merits on the part of the writ petitioner must be submitted by way of explanations and the explanations submitted by the writ petitioner is to be considered by the competent authority at the time of conducting a detailed enquiry. However, the contentions raised or the explanations provided in the writ petition cannot be adjudicated in a writ proceedings, so as to give a finding that the writ petitioner is innocent of the allegations or not committed any lapse, negligence or derelictions of duty. Such an exercise if done by the High Court, undoubtedly is beyond the scope of the judicial review under Article 226 of the Constitution of India.

14.In respect of entertaining the writ petition against the charge memo the Supreme Court also held in the case of **Secretary, Ministry of Defence and Others Vs. Prabhash Chandra Mirdha [(2012) 11 SCC 565]**, the Hon'ble Apex Court of India has held as follows:-

<https://hcservices.ecourts.gov.in/hcservices/> "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.

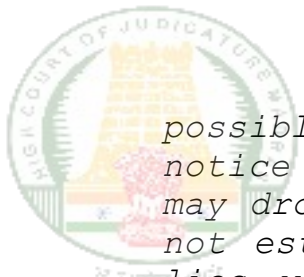
11. In *State of Orissa V. Sangram Keshari Misra* (SCC pp.315-16, para 10) this Court held that normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority.

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."

15. In the case of **Union of India vs. Kunishetty Satyanarayana [(2006) 12 SCC 28]**, it was held that:-

"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*, *Special Director V. Mohd. Ghulam Ghouse*, *Ulagappa V. Divisional Commr., Mysore*, *State of U.P. V. Brahm Datt Sharma*, 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."

16. The allegations of the police officials in the matter of conducting investigations and assisting the prosecution before the criminal Court of law is of paramount importance and the same ought to be monitored by the higher officials. There should not be any lacuna or lapse on the part of the investigating officials in the matter of establishing the offence committed against the State.

17. Thus, the data shows that in large number of criminal cases, the accused persons are acquitted on account of the non availability of documents or the charges are not proved beyond the doubt. Therefore, the investigations are to be conducted more scientifically, vigilantly and prudently. Once the case is registered under the criminal law, the investigating officials must be prudent enough to quote all the materials so as to establish the charges framed against the accused persons. During the course, if the higher officials or the Court found that there are lapses on the part of the police officials, undoubtedly, serious actions are to be initiated for committing such lapses or derelictions of duty. Mechanical or routine approach in the matter of investigations are to be deprecated. The criminal activities and crimes are increasing day by day and modernisation and improvisation in the matter of investigations are also of paramount importance. The officials required more training in conducting investigation scientifically and prudently. In the regard, the higher officials are also have to concentrate and conduct review meetings in the matter of conducting investigations in a prudent manner and establish the charges before the competent Court of law for the purpose of proving the allegations. All these aspects are to be considered for the purpose of developing the criminal law system in our country.

18. When large number of criminal cases are ended with an order of acquittal, undoubtedly review of those cases by the higher officials are also warranted. The higher officials are bound to examine the reasons for such acquittals and if any lapses or negligence or derelictions are found then, all suitable actions <https://hccases.courtservice.gov.in/cases> and suitable guidelines are also to be issued in this regard. As far as the lis on hand is concerned, undoubtedly, the charge memo was framed against the writ



petitioner with some allegations. The charges against the writ petitioner are enumerated as under:-

குற்றச் சாட்டு-I

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“மதுரை ஊழல் தடுப்பு மற்றும் கண்காணிப்பு பிரிவு குற்ற எண்.1/2005, ச/பி 120(B), 467, 468, 471 இ.த.ச. மற்றும் 13(2) உ/இ 13(1)(d) ஊழல் தடுப்பு சட்டம் 1988 வழக்கின் நீதிமன்ற விசாரணையின் போது முன்னுக்குப் பின் முரணாக சாட்சியம் அளித்து 1 முதல் 3 எதிரிகளும் விடுதலை அடைவதற்கு காரணமாக இருந்த ஒழுங்கீனமான செயல்”

Annexure-2 to the charge memo provides the statement of allegations and imputation of misconduct in respect of the allegations. Annexure-3 denotes the list of documents relied upon by the department. Annexure-4 enumerates the list of witnesses to be examined. Thus, there is no infirmity as such in respect of the charge memorandum issued against the writ petitioner. It is left open to the writ petitioner to submit his explanation and participate in the process of enquiry so as to establish his innocence or otherwise. Contrarily, the charge memorandum cannot be quashed on the ground that the writ petitioner has deposed before the Court of law based on the documents available.

19.In respect of the grounds raised by the learned counsel for the petitioner that no prayer sanction was obtained from the Government. The learned Additional Government Pleader made a submission that since the writ petitioner was working in the cadre of Inspector of Police, the Director General of Police accorded such permission with reference to the Government Order passed in G.O.Ms.No.31, Personnel and Administrative Reforms (N) Department, dated 23.02.2012 and G.O.Ms.349 Fin (pen) Department, dated 12.08.2013. Therefore, there is no infirmity or administrative lapse in the matter of issuing a charge memo against the writ petitioner under the Discipline and Appeal Rules. This being the facts and circumstances, this Court is of the considered opinion that the charges framed against the writ petitioner must be proceeded with and the enquiry to be conducted and the departmental disciplinary proceedings are to be concluded as expeditiously as possible. The writ petitioner is directed to co-operate for early disposal of the enquiry proceedings. In the event of non-cooperation on the part of the writ petitioner, the same shall be recorded by the competent authority in the proceedings itself. This being the principles to be followed, the respondents are also bound to provide an opportunity to the writ petitioner as contemplated under the Discipline and Appeal Rules.



20. With these observations, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Director General of Police, Kamarajar Salai (Beach Road), Chennai-600 004.
2. The Deputy Inspector General of Police, Madurai Range, Madurai.
3. The District Superintendent of Police, Madurai District, Madurai.
4. The Additional Superintendent of Police, Madurai.

+1cc to Mr. R. Subramanian, Advocate, SR.No.76196

+1cc to the Spl. Govt. Pleader Sr.No.76411

sjj/am
W.P. (MD) .No.9250 of 2015
18.07.2019

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