

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.15882 of 2020 and
W.M.P.Nos.19739 & 19740 of 2020

C.Senthil Kumar

... Petitioner

-Vs-

1. Civil Supplies and Consumer Protection Department,
Represented by its Commissioner,
Government of Tamil Nadu,
Chepauk, Chennai - 5.
2. The Deputy Commissioner-I,
Civil Supplies and Consumer Protection Department,
Chepauk, Chennai-5.
3. The Assistance Commissioner-I,
R.K.Nagar Division,
Civil Supplies and Consumer Protection Department,
Chepauk, Chennai-5.
4. The Joint Commissioner,
Civil Supplies and Consumer Protection Department,
Chepauk, Chennai-5.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the fourth respondent pertaining to the impugned charge memo Na.Ka.No.A3/22880/2018 dated 27.12.2018 and quash the same and direct the respondents to promote the petitioner as Superintendent by giving effect to communication Na.Ka.No.A1/5996/2018 dated 06.12.2018 with monetary and all attendant benefits.

For Petitioner : Mr.Richarson Wilson

For Respondents : Mr.L.P.Shanmugasundaram, SGP

O R D E R

This writ petition has been filed to call for the records of the fourth respondent pertaining to the impugned charge memo Na.Ka.No.A3/22880/2018 dated 27.12.2018 and quash the same and direct the respondents to promote the petitioner as Superintendent by giving effect to communication Na.Ka.No.A1/5996/2018 dated 06.12.2018 with monetary and attendant benefits.

2. The case of the petitioner is that he is a physically disabled person, affected by Polio. He was appointed as Typist in Civil Supplies and Consumer Protection Department in the year 2013 and subsequently, promoted as Assistant on 26.12.2016. A charge memo was issued against him on 27.12.2018, containing four articles of charges. The averments contained in the affidavit are in the realm of his explanation in the background in which the charge memo came to be issued against him.

3. According to the petitioner, when he was about to be promoted as Superintendent, the charges were cooked up in order to take vindictive action against him. Moreover, the charges are extremely vague and the acts of misconduct as reflected in the charge memorandum, do not attract major penalty proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. In the said circumstances, the charge memo is put to challenge before this Court.

4. Mr. Richardson Wilson, learned counsel for the petitioner has strenuously contended that the charges which were framed against the petitioner were on the basis of malafide consideration in order to punish the petitioner for the complaints made by him against the other erring officials of the Department. Moreover, the charges as framed are extremely vague, lacking specificity as the Courts in the past, have interfered with the charge memorandum on the ground of charges being vague.

5. The learned counsel for the petitioner has also submitted that even assuming that there is some fault on the petitioner, the same does not warrant issuance of 17(b) charges. In this regard, the learned counsel attempted to draw reference to certain instructions issued by the Government that what are the acts of misconduct that would attract Rule 17(b).

6. However, this Court is not inclined to go into those aspects at this stage and it is clearly within the domain of the disciplinary authority to issue charge memo with reference to the nature of misconduct alleged against the petitioner. This Court by exercising its extraordinary jurisdiction under Article

226 of the Constitution of India, cannot replace the discretion exercised by the disciplinary authority and convert the major penalty proceedings into one of minor penalty proceedings. Even the other ground pleaded by the learned counsel as to the vagueness of the charges, this Court is not convinced for the reason that the charges framed against the petitioner were in relation to the discharge of his duties and merely because of a portion of the charges was unspecific, this Court cannot quash the entire charge memo.

7. Even otherwise, it is always open to the petitioner to put forth all his objections to the charge memo including the aspect of vagueness and participate in the enquiry process and in case, the petitioner is able to successfully plead his defence, he can always come out unscathed from the charges. Instead of allowing the disciplinary process to proceed to its logical end, the petitioner cannot rush to this Court and invoke the extraordinary jurisdiction of Article 226 of the Constitution of India, seeking to stall the disciplinary proceedings. The jurisdiction and the power of this Court is not open for the adjudication of factual dispute and controversies. The Court's jurisdiction cannot also extend to give a finding as to whether there was any basis of the charges or not. Such exercise would only mean treading into the realm of factual territory. Moreover, the grounds raised in support of the challenge, do not merit serious consideration by this Court, since the same are either inadequate or without substance, for interfering with the charge memo.

8. Therefore, this Court is of the view that the challenge to the charge memo is unsustainable and liable to be dismissed. Hence, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

1.Civil Supplies and Consumer Protection Department,
Represented by its Commissioner,
Government of Tamil Nadu,
Chepauk, Chennai - 5.

2.The Deputy Commissioner-I,
Civil Supplies and Consumer Protection Department,
Chepauk, Chennai-5.

3.The Assistance Commissioner-I,
R.K.Nagar Division,
Civil Supplies and Consumer Protection Department,
Chepauk, Chennai-5.

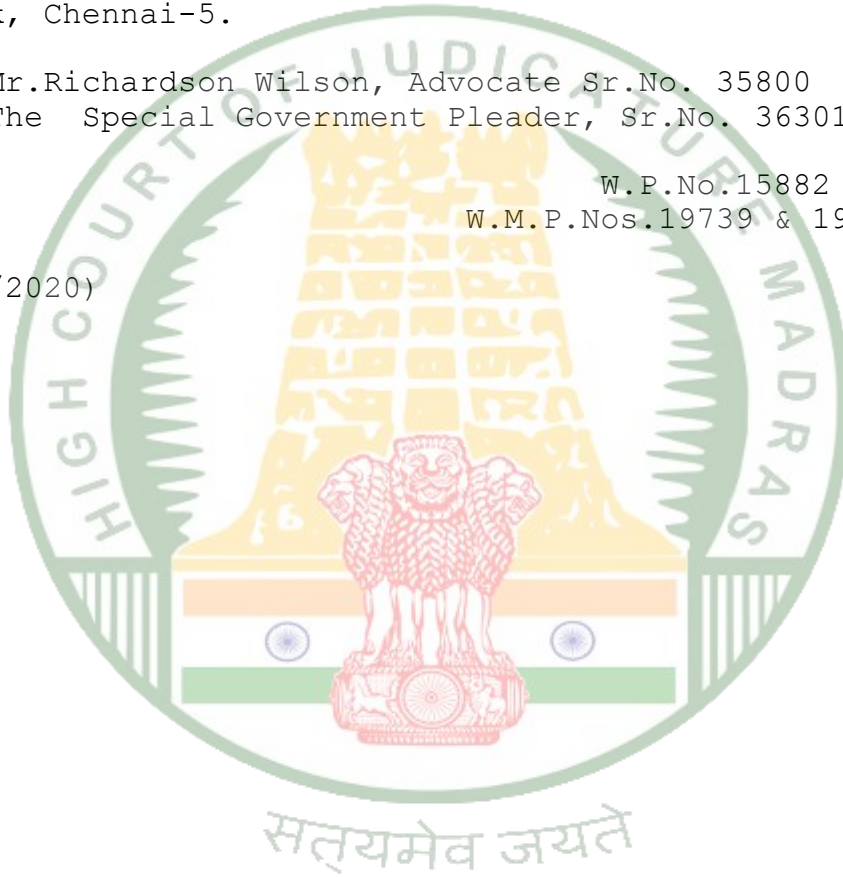
4.The Joint Commissioner,
Civil Supplies and Consumer Protection Department,
Chepauk, Chennai-5.

+1 cc to Mr.Richardson Wilson, Advocate Sr.No. 35800

+1 cc to The Special Government Pleader, Sr.No. 36301

W.P.No.15882 of 2020 and
W.M.P.Nos.19739 & 19740 of 2020

BS (CO)
RMP (14/12/2020)



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