

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.02.2020

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.32360 of 2014 and
WMP No.16937 of 2016 and WMP No.12078 of 2019

M.N.Pushpa

... Petitioner

.Vs.

1. The Additional Chief Secretary cum
Commissioner,
Directorate of Museum, Government Museum,
Egmore, Chennai-8.
2. Dr.R.Kannan, I.A.S.,
Commissioner and Additional Chief Secretary,
Directorate of Museum, Government Museum,
Egmore, Chennai-8.
3. The Additional Chief Secretary cum
Commissioner for Government of Tamilnadu,
Tourism, Culture and Hindu Religious Department,
Fort St. George, Chennai-9.

... Respondents

Prayer : This writ petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other appropriate Writ, order or Direction in the nature of writ, calling for the records of the 1st respondent in connection with the impugned charge memos issued by him in Na.Ka.No.2423/2014/E2 dated 17.07.2014 and in Na.Ka.No.2423/2014/E2 dated 17.07.2014 and quash the same.

For Petitioner : Mr.K.Venkataramani, Senior Counsel
for Mr.M.Muthappan

For Respondents: Mr.S.Thangavel, Spl.Gov.Pleader
for R1 to R3

ORDER

This petition has been filed to quash the charge memos issued by the first respondent against the petitioner in Na.Ka.No.2423/2014/E2 dated 17.07.2014 and in Na.Ka.No.2423/2014/E2 dated 17.07.2014 and quash the same and quash the same.

2. The case of the writ petitioner in nutshell is as follows:

The petitioner was appointed as Guide on 09.03.1979 in the Department of Museum by the Tamil Nadu Public Service Commission and during the year 1992, she was promoted as Curator (Botony). Her next promotion post was Assistant Director and hence, she made a claim in the year 2013-2014, however, it was denied.

2.1. In the year 2006, the 2nd respondent, the Commissioner of Museum directed the petitioner to take charge of the Post of Anthropology Curator from one Dr.C.Maheswaran. But she could not take over the charges from him, as he could not give full charge of the post and the same was informed by the petitioner to the Head of Department. However, the 2nd respondent in his proceedings dated 28.07.2006, framed charges under 17(b) of the Tamil Nadu Civil Service (D and A) Rules. By that time the 2nd respondent transferred to some other place. Thereafter, the then Principal Secretary cum Commissioner of Museum, after gone through the charges, explanation of the petitioner and the detail report of the enquiry officer, exonerated the petitioner from the charges by his proceedings dated 24.11.2008.

2.2. The petitioner was transferred from Chennai to the Government Museum, Salem and the 2nd respondent in order to punish the petitioner in one way or other, deputed an Assistant Director (Technical) to make inspection in the Government Museum, Salem and based on his report, she was issued with a charge memo under Section 17(b) of the TNCS (D and A) Rules containing 5 charges, which are vague and non-specific ambiguous. In the charge memo, it was stated that some articles, sculptures etc. are found missing. But the fact remains that those are very much available in the Government Museum, Salem.

2.3. The Assistant Director (Tech) did not cause inspection individually, but he took assistance of an outsider, a retired Government Servant, who has got no authority to enter and handle the articles available in the Government Museum. The petitioner has objected to the Assistant Direction for having brought the outsider Tr.Periyasamy. The petitioner after receiving charge memo dated 17.07.2014, submitted her detailed explanation dated 27.08.2014. However, enquiry officer was appointed and he conducted oral enquiry on 11.12.2014. Hence this writ petition has been filed to quash the charge memos dated 17.07.2014.

3. The first respondent filed Counter affidavit, wherein it is stated as follows :

The petitioner has taken over the charge fully from her predecessor and relieved her predecessor on 10.07.2013 and only after filing the charges under 17(b) of Tamilnadu Civil Services (Discipline and Appeal) Rules, the writ petitioner alleged that the charges were not handed over properly by the predecessor.

4. The 2nd respondent filed counter affidavit in W.P.No32360 of 2014, wherein, it is stated as follows.

The petitioner was appointed as Gallery Guide in the Department of Museum on 09.03.1979 and she was promoted as curator on 01.10.1992. Thereafter, two sets of charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) dated 17.07.2014 and another charge under Rule 18 of the Tamil Nadu Government Servant Conduct Rules dated 07.10.2014 were framed against the petitioner and are pending. Therefore, her name was not considered in the Panel of Assistant Director. The allegation of the petitioner that due to personal grudge against her, charges were framed is denied, since there is no need to develop personal grudge or revenge against the petitioner for such official matters. If an employee disobeys an order, it is the duty of the superior officer to take disciplinary action.

4.1. The post of Assistant Director was not filled up from 2004 onwards till the first respondent took steps and got it filled up by promotion. Therefore, considering the necessity to fill up one post of Assistant Director, a senior most qualified Curator was appointed to that post temporarily, till a regular panel was prepared, vide government order dated 17.06.2013. Hence, the allegation of the petitioner that she was not considered to the post of Assistant Director is baseless.

4.2. The petitioner was transferred from Chennai to Salem purely on administrative grounds. As per the Museum Manual, inspect of Museums was done annually to check the stock register of artifacts and ensure that nothing is missing. Accordingly, on 09.07.2014 and 10.07.2014, the Assistant Director (Technical) inspected the objects of the Government Museum, Salem and based on the report of the Inspection officer, it was concluded that the writ petitioner was negligent in keeping the valuable museum artifacts safe and well preserved. Therefore, two sets of charges were framed against the petitioner on 17.07.2014 as follows.

First set of charges:

1. While inspecting the Government Museum, Salem

District by the Assistant Director (Technical) on 09.07.2014 and 10.07.2014, the Curator has not maintained the Sectional Registers properly. In the General Accession Register, the Curator has not signed in many pages in token of having taken charge.

2. During the course of inspection of museum objects, 4 numbers of stone sculptures, 3 numbers of paintings, 4 numbers of botanical objects and some zoological objects could not be verified.

3. Rocks and Minerals were packed in newspaper and polythene sheets. As no Accession numbers were written on the objects, verification of those objects could not be carried out. Some of those objects are valuable.

4. In the library Stock Register, except in some pages, the Curator has not signed for having token charge of the Library books. As the Library books were not arranged as per the serial number, the stock could not be verified.

5. Even though District Museum, Salem is a small Museum, the stock of office furniture could not be verified due to non maintenance of the concerned Register properly.

Second set of charges

While inspecting the Government Museum, Salem District by the Assistant Director (Technical) on 09.07.2014 and 10.07.2014, the following objects could not be verified. Due to carelessness of the Curator, it is presumed that the objects might have been lost. The main duty of the Curator is to preserve the museum objects safely. The Curator was not only derelict in her duties, but also very careless.

Sculptures	
50/76	Saivathuravi
55/77	Stone Pillar with inscriptions
63/90	Sumerian Inscription-stone
04/97	Inscription from Nathamedu
Paintings	
25/93	'Expectations'by Nagarajan
32/93	'Kiram'by Ragunathan
44/2002	Water Colour paintings by three artists
Botany-Wet specimens	
04/76	Utricularia
07/76	Drocera
08/76	Cretum Fruit
09/76	Psilotum

Zoology-Birds	
20/83	Heron
30/83	Wood Pecker
31/83	Keechan Kuruvi
33/83	Barbet
42/93	A set of birds eggs
Zoology-Fishes	
11/76	Head of Valai
19/76	Flying fish
27/76	Arinjan
Zoology-Snakes	
Zoology-Marine Animals	
07/76	Physalia
08/76	Sepia
09/76	Squilla

For the above said charges, enquiry officer has been appointed and enquiry is not over.

5. Heard the learned counsel appearing for the petitioner as well as the respondents. I have perused the materials on record.

6. The contention of the writ petitioner is that the charge memo dated 17.07.2014 containing 5 charges are vague and non-specific ambiguous. Her further contention is that in the other charge memo dated 17.07.2014, though the articles, sculptures etc. are very much available in the Government Museum, without any basis, it was stated as the articles, sculptures etc. are "found missing". Hence, she prayed that the above said two sets of charges are liable to be quashed.

7. The learned counsel appearing for the respondent submitted that as per the routine order, the Assistant Director (Technical) inspected several museums including Salem Museum and after inspection, he filed his inspection report and based on that report only, two sets of charge memo dated 17.07.2014 were issued against the petitioner. His further contention is that in response to the above said charges, the petitioner had given her explanation on 27.08.2014 and that not satisfied with the explanation given by the petitioner, the authority concerned appointed an enquiry officer and disciplinary proceedings are pending. His another contention is that after considering the explanation, hearing both the parties and upon perusing the materials available on record, the first respondent has to pass appropriate orders, and therefore, at this juncture, the writ petition filed by the petitioner is not maintainable.

8. The petitioner contended that the 2nd respondent

has malafide intention against her and hence he deputed an Assistant Director to cause inspection on 09.07.2014 and 10.07.2014 and based on his report, two charge memos dated 17.07.2014 were issued, which are vague, non specific, ambiguous and without any basis. According to the petitioner, the articles, sculptures etc. are very much available in the Museum. Therefore, without considering her detailed explanation to the charge memos, an enquiry officer was appointed to conduct enquiry and hence, the above said charge memos are liable to be quashed. The above said contentions of the petitioner cannot be accepted, since the charge memos cannot be challenged based on the averments made in the affidavit. The petitioner attributed malafide against the 2nd respondent and on this ground alone, she prayed to quash the charge memos, which is not sustainable. After receiving explanation from the petitioner, an enquiry officer was appointed. Therefore, after conducting enquiry and examination of the petitioner and other witnesses, the enquiry officer has to decide the charges levelled against the petitioner on merits and the result may come out as charges proved or not proved. Apart from that, the allegation is attributed against the 2nd respondent in the personal capacity. At present, the 2nd respondent is not the officer of the 1st respondent and therefore, this court need not advert to this allegation. At this stage, this court cannot quash the charge memos dated 17.07.2014. Therefore, the contentions raised by the petitioner cannot be countenanced and the same are liable to be rejected. However, this court is inclined to pass some direction to first respondent.

9. Accordingly, the first respondent is directed to consider the explanation of the petitioner dated 27.08.2014 and pass appropriate final orders in the disciplinary proceedings on merits and in accordance with law, within a period of 14 weeks from the date of receipt of a copy of this order. It is pertinent to note that on instruction, the learned counsel appearing for the petitioner submitted that the petitioner will co-operate the enquiry conducted by the first respondent.

10. With the above observation, W.P.No.32360 of 2014 is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

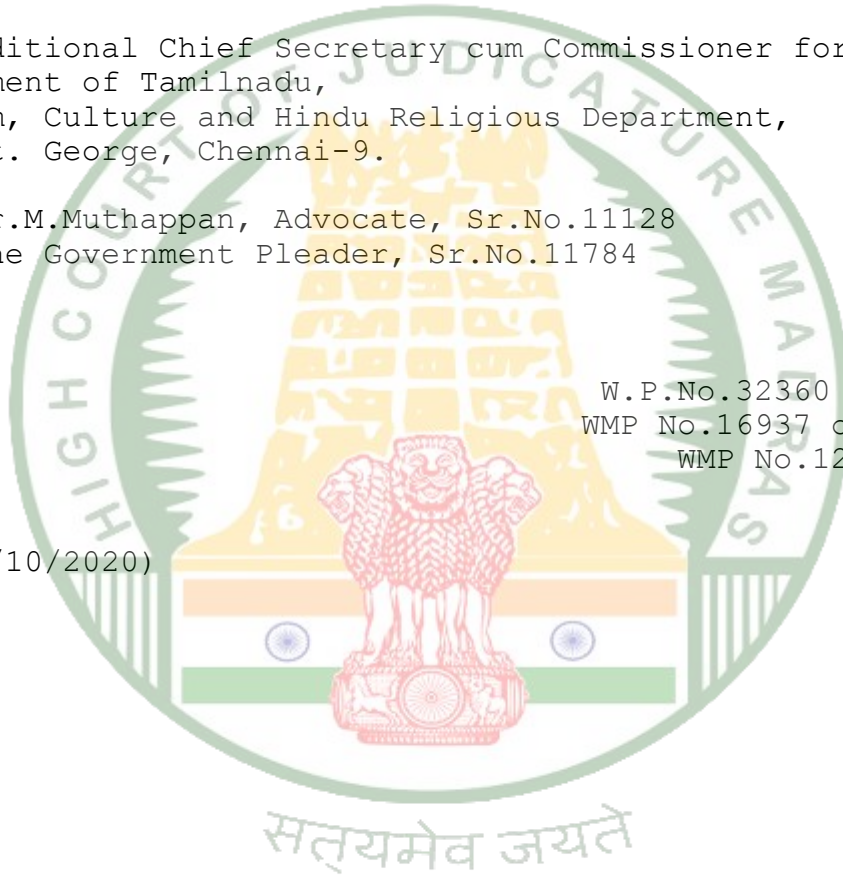
To

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2. Dr.R.Kannan, I.A.S.,
Commissioner and Additional Chief Secretary,
Directorate of Museum, Government Museum,
Egmore, Chennai-8.
3. The Additional Chief Secretary cum Commissioner for
Government of Tamilnadu,
Tourism, Culture and Hindu Religious Department,
Fort St. George, Chennai-9.

+lcc to Mr.M.Muthappan, Advocate, Sr.No.11128
+lcc to the Government Pleader, Sr.No.11784

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WMP No.16937 of 2016 and
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