



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2020

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.4444 of 2020

and

W.M.P. (MD) .No.3729 of 2020

R.Ramesh

.. Petitioner

Vs.

1.The General Manager,
TNSTC,
Nagercoil Division,
Rani Thottam,
Nagercoil,
Kanyakumari District.

2.The Managing Director,
TNSTC,
Tirunelveli Division,
KTC Nagar,
Tirunelveli -12.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings in charge sheet in No.4932/Legal-05/Olungu/TNSTC/Thiruva/2018, dated 07.09.2018, passed by the 1st respondent and quash the same.

For petitioner : Mr.P.Thirumahilmaran

For respondents : Mr.R.Rajamohan

ORDER

This petition has been filed by the petitioner challenging the charge memo dated 07.09.2018 issued by the first respondent.

2. The learned counsel for the petitioner submitted that on 01.03.1993 the petitioner was appointed as conductor by the respondents and he has completed 26 years of service. While so, on 26.08.2018, he was orally suspended by the first respondent, without serving any suspension order. On 07.09.2018, a charge sheet was issued. The respondents have framed four charges against the petitioner in the charge sheet. They are (i) the petitioner has failed to come to Thiruvattar Branch Bus Route No.13-H at 14.40 hours dated 25.08.2018; (2) he scolded using filthy languages and beaten the controller - Mr.Goundappan with drunken condition at 15.00 hours; (3) he scolded using filthy languages and prevented to



do the Office work and (4) he was irresponsible and carelessness in work on the said date. After about 15 days from the date of oral suspension, the respondents allowed the petitioner to continue to work. He would further submit that the respondents did not furnish the documents mentioned in the charge sheet and only after his representation dated 24.09.2018, the respondents have furnished the copies of the complaints dated 25.08.2018 given by one Mr.Yosatharan, TI and Mr.Madhusudhanan, Superintendent. There is no complaint given by the alleged affected party ie., Mr.Goundappan. The petitioner has subsequently given his reply to the charge memo on 26.12.2018 denying all the charges. Thereafter, it is still pending without any progress. As the respondents have framed the vague charges in order to victimize the petitioner and in order to give promotion to his juniors, the petitioner has come up with this writ petition.

3.Mr.R.Rajamohan, learned standing counsel for the respondents took notice for the respondents and submitted that initially the petitioner has been suspended and later on, the suspension order has been revoked and now he is continuing in service. He would further submit that the disciplinary proceedings is under progress and two witnesses were examined.

4. It is a settled law that a charge memo or show cause notice cannot be quashed at the threshold, unless in a very rare and exceptional cases, where there is lack of jurisdiction. Useful reference are made, on this aspect, by the following decisions of the Hon'ble Supreme Court.

(i) In State of U.P. v. Brahm Datt Sharma reported in 1987 (2) SCC 179, at Paragraph 9, held as follows:

"When a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. 'The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature, the High Court in our opinion ought not have interfered with the show cause notice."

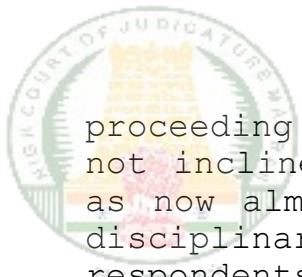


(ii) The Supreme Court in **Special Director v. Mohd. Ghulam Ghouse** reported in **2004 (3) SCC 440**, at paragraph 5, held as follows:

"This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted."

5. While exercising jurisdiction under Article 226 of the Constitution of India, this Court cannot go into the correctness of the allegations contained in the charge memo and assume the role of the Disciplinary Authority. The contention of the petitioner that the correctness of the charge memo should be examined at the threshold by this Court cannot be accepted, as the same would run contrary to the law laid down by the Supreme Court, more particularly, when the Supreme Court has time and again held that interference by the Courts to the show cause notice or charge memo at the threshold, would be premature and 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.

6. It is stated that in this case, the petitioner has already submitted his explanation to the charge memo and about two witnesses have been examined. As stated earlier, as the disciplinary



proceeding is in initial stage and is under progress, this Court is not inclined to interfere with the impugned charge memo. However, as now almost two years have gone from the date of initiation the disciplinary proceedings, this Court is inclined to direct the respondents to complete the disciplinary proceedings on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

7. This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gcg

To

1.The General Manager,
TNSTC,
Nagercoil Division,
Rani Thottam,
Nagercoil,
Kanyakumari District.

2.The Managing Director,
TNSTC,
Tirunelveli Division,
KTC Nagar,
Tirunelveli -12.

+1 CC to M/s.R.RAJAMOHAN, Advocate (SR-10052[F] dated 04/03/2020)

+1 CC to M/s.P.THIRUMAHILMARAN, Advocate (SR-10064[F] dated 04/03/2020)

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KK/12.05.2020/ 4P- 5C