



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2021

CORAM

THE HON'BLE MR. JUSTICE C.SARAVANAN

W.P.Nos.354 & 357 of 2019
and
W.M.P.Nos.356 & 360 of 2019

(Through Video Conferencing)

1.M.Arumugam ... Petitioner in W.P.No.354 of 2019

2.M.Selvaraj ... Petitioner in W.P.No.357 of 2019

Vs

The Additional Director General of Police,
Crime,
Chennai - 600 008.

... Respondent in both W.Ps.

Prayer in W.P.No.354 of 2019: 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 charge memo issued by the respondent herein in his P.R.No.10/2018 u/r 3(b) dated 24.12.2018 and quash the same.

Prayer in W.P.No.357 of 2019: 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 charge memo issued by the respondent herein in his P.R.No.11/2018 u/r 3(b) dated 24.12.2018 and quash the same.

For Petitioner : Mr.Ravi Shanmugam
(in both W.Ps)

For Respondents : Mr.L.S.M Hasan Fizal
(in both W.Ps) Government Advocate

ORDER

The petitioners have challenged the impugned charge memos in P.R.Nos.10 & 11/2018 dated 24.12.2018. Another person named



M.Mohamed Khan was issued with charge memo P.R.No.9/2018 dated 24.12.2018.

2. The delinquent in P.R.No.9 of 2018 had filed W.P.No.516 of 2019. By an order dated 15.07.2021, the Charge Memo No.9/2018 dated 24.12.2018 has been quashed with liberty to the respondents to initiate appropriate proceedings in terms of Tamil Nadu Civil Service (Disciplinary Proceedings Tribunal) Rules, 1955.

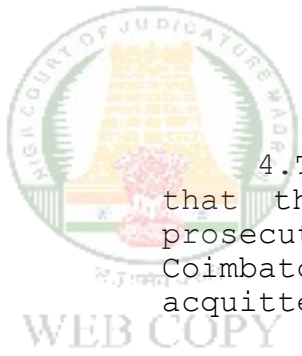
3. The operative portion of the aforesaid order reads as follows:-

"5. A combined reading of all the aforesaid provisions reveals that, whenever the delinquent is levelled with charges of corruption or the charges of corruption are combined with other charges, the T.D.P would be the appropriate authority to deal with the disciplinary proceedings and in all other cases, the provisions of Tamil Nadu Civil Service (Discipline and Appeal) Rules, shall apply. Apparently, rule 17(a) and (b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, deals with the procedures to be adopted in cases, where such disciplinary action is adopted.

6. The learned counsel for the petitioner had questioned the jurisdiction of the respondent herein to initiate departmental action by framing of charges.

7. In the instant case, the charges levelled against the petitioner by the respondent herein pertains to corruption and other charges and in view of Rule 4 of the Tamil Nadu Civil Service (Disciplinary Proceedings Tribunal) Rules, 1955, the Tribunal for Disciplinary Proceedings would be the appropriate authority to frame the charges. As such, the impugned charges levelled by the respondent herein, is without jurisdiction.

8. It is a well settled proposition of law that when the charge memo lacks jurisdiction, the High Court, exercising its power under Article 226 of the Constitution of India, will be entitled to interfere with such disciplinary action. Such a proposition has been laid down by the Hon'ble Supreme Court in the case of Secretary to Government of Tamil Nadu Vs. D.Subramanyan Rajadevan reported in AIR 1996 SCC 2634."



4. The learned counsel for the petitioners further submits that the petitioners and the said M.Mohamed Khan were also prosecuted in S.C.C.No.74 of 2011 before the Sub Court, Coimbatore and in the aforesaid proceedings they have been acquitted by an order dated 28.12.2017.

5. The learned counsel for the petitioners submits that in the teeth of acquittal in S.C.C.No.74 of 2011 order dated 28.12.2017 also, the impugned charge memos are unsustainable. The learned counsel for the petitioners further submits that the order passed by this Court in W.P.No.516 of 2019 vide order dated 15.07.2021 may be followed by giving liberty to the respondents to initiate appropriate proceedings in terms of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955.

6. Defending the impugned charge memo, the learned counsel for the respondents submits that the respondent could not proceed with the disciplinary proceedings due to the stay obtained by the petitioner in this writ petition. He submits that, a mere acquittal of the petitioners in S.C.C.No.74 of 2011 by the Special Court vide order dated 28.12.2017 by itself would not absolve the petitioners' of the delinquency in the disciplinary proceedings. He therefore submits that even in the case of co-accused M.Mohamed Khan, this Court has merely quashed the Charge Memo in P.R.No.11 of 2018 dated 24.12.2018 with a liberty to proceed against the said co-accused under the provisions of the Tamil Nadu Civil Service (Disciplinary Proceedings Tribunal) Rules, 1955 if the case is made out.

7. The learned counsel for the petitioner relied upon two decisions of the Hon'ble Supreme Court in M.Paul Anthony Vs. Bharat Gold Mines Ltd 1999 3 SCC 679 and G.M.Tank Vs. State of Gujarat in TNLJ 2006 (3) 457.

8. Heard the learned counsel for the petitioner and the respondent.

9. It is noticed that in an identical case arising out of the same delinquency, this Court has quashed the Charge Memo issued to a co-accused in P.R.No.11 of 18 dated 24.12.2018 in W.P.No.516 of 2016. Relevant portion of the said order in W.P.No.516 of 2019 dated 15.07.2021 has already been extracted.

10. Since already an order has been passed in a similar proceedings, this writ petition is allowed in terms of the above order. Writ petition stands disposed with liberty to the department to consider and take a decision as to whether fresh disciplinary proceedings should be initiated against the petitioner.



11. Writ Petition stand disposed of. No costs.
Consequently, connected Miscellaneous Petitions are closed.

WEB COPY

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

jas

To

The Additional Director General of Police,
Crime,
Chennai - 600 008

W.P.Nos.354 & 357 of 2019 and
W.M.P.Nos.356 & 360 of 2019

BP (CO)
CT (29/09/2021)