



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.08.2021

PRONOUNCED ON : 23.08.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.5228 of 2020

and

W.M.P.Nos.6172, 6173 & 21932 of 2020

M.Prabakaran

.. Petitioner

vs

1. The Director of Town Panchayats,
MRC Nagar, Chennai 600 028.

2. The Collector,
Erode District,
Erode.

3. The District Social Welfare Officer,
Erode District, Collectorate Office,
Erode.

.. Respondents

Prayer:

Writ petition 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 charge memo issued in Na.Ka.No.11443/2019/A1 dated 19.02.2020 on the file of the 1st respondent and quash the same and direct the respondents to permit the petitioner to go on peaceful retirement from service.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate.

O R D E R

The petitioner has challenged the impugned Charge Memo issued under provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. The impugned charge memo is allegedly based on an oral and internal compliant of the staffs and public wherein it has been alleged that the petitioner was



involved in Sexual harassment of women at work place.

2. The impugned Charge Memo was issued to the petitioner by the 1st respondent and is challenged primarily on the ground that there is not only material irregularity in the constitution of the Local Committee constituted under Section 7 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 but also on the ground that the Committee enquired into the alleged offence without there being a written complaint under Section 9 of the Act.

3. The learned Senior Counsel for the petitioner submits that as per Section 7 of the aforesaid Act, the Chairman of the Committee has to be necessarily a woman. That apart, the Committee also should have a woman nominated from Non-Governmental Organisation or Association committed to the case of women or a person familiar with the issues relating to Sexual Harassment which may be prescribed.

4. He further submits that the concerned officer dealing with the Social Welfare Women and Child Development in the District shall be an ex-official member of the local committee.

5. It is submitted that the local committee constituted by the District Collector does not meet the requirements of Section 7 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013. The impugned charge memo is also questioned on the ground that the edifice of the charge memo was based on a non-existing complaint of woman any particular allegedly aggrieved by the alleged sexual harassment in the work place.

6. The learned counsel for the petitioner specifically drew attention, to the counter filed by the 1st respondent in Paragraph 7 wherein it has been stated as under:-

'The averments of petitioner that none of the women servants working under him made any complaint to any authorities, no complaint was enclosed of sexual harassment or any witness is cited to support the charge, since no complaint is available, some of the superior officers who were affected by his made arrangements to collect complaint from public etc, in order to prevent him from retiring peacefully, are denied as false and concocted story and contrary to facts.'

7. He submits that the entire proceedings is predicated on



arrangements made to collect complaint from public etc., in order to prevent the petitioner from retiring peacefully.

8. Defending the impugned disciplinary proceedings initiated against the petitioner in the impugned Charge Memo, the learned Government Advocate submits that the petitioner has participated in the enquiry conducted under the provisions of the 2013 enactment and therefore the petitioner had acquired into the aforesaid proceedings and was bound by the findings given by the committee and therefore the petitioner has to be necessarily answer to the charges framed against him in the departmental proceeding.

9. He further submits that considering the nature of offence committed by the petitioner many of the victims were apprehensive of coming forward to make their written complaint against the petitioner herein fearing reprisal against them in the society and family.

10. By way of rejoinder, the learned counsel for the petitioner submits that a copy of the enquiry report was also not furnished to the petitioner as his mandatory under Section 13 of the aforesaid Act.

11. Facts are not in dispute. The Local Committee was constituted under the provisions of Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 and had inquired and submitted an enquiry report to the 2nd respondent on 8.6.2018. The local Committee had advised the 2nd respondent to initiate appropriate departmental proceedings against the petitioner in the aforesaid recommendation/report.

12. Pursuant to the above proceedings, the petitioner was issued with the 1st charge memo dated 26.7.2018 to impose minor punishment under rule 17 (a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. Petitioner also acquired into the same and gave a reply/explanation after a lapse of 9 months on 23.5.2019.

13. After the petitioner gave the reply to the impugned charge memo, the impugned charge memo dated 19.2.2020 was issued to punish the petitioner major punishment under rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. The impugned charge memo dated 19.02.2020 was issued to the petitioner, just about 9 days before the date of superannuation of the petitioner.

14. The question therefore that arises for consideration in



the present case is whether the respondents were justified in issuing the impugned charge memo dated 19.2.2020 to impose major penalty in place of 1st charge memo dated 26.7.2018.

15. In *S. Mahesh v. Neyveli Lignite Corpn. Ltd.*, (2019) 14 SCC 812, the Court held that the entire action of the Corporation starting from issuance of second charge memo dated 11-8-1995 and ending by passing the order dated 7-7-2010 was arbitrary, unreasonable, and malafide exercise of the powers by the Corporation against the appellant and hence the same is not sustainable in law. The Hon'ble Supreme Court therefore held that the order dated 7-7-2010 which was subject-matter of the appeal was wholly arbitrary, unreasonable and is not legally sustainable.

16. In *State of U.P. v. Madhav Prasad Sharma*, (2011) 2 SCC 212, the Hon'ble Supreme Court reiterated that the doctrine of double jeopardy enshrined in Article 20 (2) of the Constitution of India has no application in the event of there being only one punishment awarded to the respondent under the Rules on charges being proved during the course of disciplinary enquiry.

17. In *Nanda Kumar Verma v. State of Jharkhand*, (2012) 3 SCC 580, the Court held that there is no justification for conducting a second enquiry on the very charges, which have been dropped earlier. The Court further held that even though the principle of double jeopardy is not applicable, the law permits only disciplinary proceedings and not harassment. Allowing such practice is not in the interest of public service.

18. Though the petitioner has questioned the Constitution of the local committee and absence of the complaint by the persons who had allegedly suffered, sexual harassment in the workplace by the petitioner and failure on the part of the 2nd respondent to furnish a copy of the enquiry report, but so do which the 1st charge memo dated 26.7.2018, was issued to the petitioner, which also forms the basis of the impugned 2nd charge memo dated 19.2.2020, such an argument is not available.

19. It is to be held that at the disciplinary proceedings initiated by the authorities cannot be questioned on the ground that there was a failure on the part of the District Collector to constitute a proper local committee at this distant point of time, particularly, in the light of the fact that the petitioner had himself participated in the aforesaid proceeding and had also reply to the 1st charge memo dated 26.7.2018 vide reply



dated 24.5.2019 after a lapse of 9 months of its issue.

20. However, issue of the 2nd charge memo, which has been impugned in the present petition appears to be motivated and arbitrary, particularly in the light of the fact that for the very same offence/delinquency, the 2nd respondent had issued the 1st charge memo dated 26.7.2018 under Rule 17 (a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955.

21. The 1st respondent as the appointing authority has advised the 2nd respondent to issue the impugned charge memo dated 19.2.2020 when indeed, the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 does not contemplate for such procedure. The disciplinary proceedings have to proceed in accordance with the provisions of the aforesaid rules and not otherwise as there is an every possibility of the abusive proceedings being initiated particularly with a view to harass an employee who may have or may not have committed acts of delinquency.

22. As a matter of fact, the Tamil Nadu Government Servants' Conduct Rules, 1973, Rule 20-B of the Prohibition of Sexual Harassment of Working Women at the work place. The said Rule 20-B specifically, Prohibits, a government servant from indulging in sexual harassment of any women at the workplace. It also casts a duty on every government servant in charge of a workplace to take appropriate steps to prevent sexual harassment of any women at such workplace. Explanation, which reads as follows:

For the purpose of this rule, "sexual harassment" include such unwelcome sexually determined behaviour, whether directly or by implication as:-

- (a) physical contact and advances; or
- (b) demand or request for sexual favours; or
- (c) sexually coloured remarks; or
- (d) showing any pornography; or
- (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature". @ [Added in G.O.Ms.No.239, P&AR (A) Department, dated. 5-10-98].

23. The aforesaid rules also explains the scope of the meaning of the word "sexual harassment". This rule was



incorporated after the Honourable Supreme Court gave its verdict in Vishaka vs. State of Rajasthan AIR 1997 SC 3011. The Government of Tamil Nadu in its Letter No.41367/A/2006-6 dated 29.12.2000 has also made it clear that where the conduct of an employee amounts to misconduct in employment as defined in the relevant rules, the employer may also initiate appropriate disciplinary proceeding for good and sufficient reasons, though no complaint is made to the Complaints Committee.

24. Having issued the 1st charge memo under Rule 17 (a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 to the petitioner, it was not open to the 1st respondent to issue the 2nd charge memo on 19.2.2020. The 2nd Charge Memo is also based on the same allegation in the earlier charge memo and issue just few days of the superannuation appears to be clearly arbitrary and capricious.

25. Therefore, the impugned charge memo dated 19.2.2020 issued to the petitioner is liable to be quashed by directing the 2nd respondent to proceed with the 1st charge memo dated 26.7.2018 issued to the petitioner under Rule 17 (a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 to complete the same within a period of six months from the date of receipt of a copy of this order.

26. Accordingly, this writ petition stands partly allowed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Director of Town Panchayats,
MRC Nagar, Chennai 600 028.



2. The Collector,
Erode District,
Erode.

3. The District Social Welfare Officer,
Erode District, Collectorate Office,
Erode.

+1cc to the Government Pleader, S.R.No.42629

W.P.No.5228 of 2018
and

W.M.P.Nos.6172, 6173 & 21932 of 2020

AK-II (CO)
CS/17/09/2021