

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.06.2021
CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P. No. 12508 of 2021
and
W.M.P. Nos. 13279 and 13280 of 2021

R.K.Thandavamoorthy,
S/o.R.Kandasamy,
6/3, Prasath Street,
Ayyappa Nagar, KK Nagar,
Trichy-21. .. Petitioner

-vs-

- 1.The Commissioner of Municipal Administration,
No.78, Urban Administrative Building,
Santhome High Road, Chennai-28.
- 2.The Commissioner,
Perambalur Municipality,
Perambalur District. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records pertaining to the impugned order in Na.Ka.No.E1/2839/2021 dated 27.05.2021 on the file of the Respondent No.2 and quash the same as illegal.

For Petitioner : Mr.T.Aswin Rajasimman
for Mr.T.Lajapathi Roy

For R1 : Mr.C.Harasha Raja,
Government Advocate

For R2 : Mr.P.Srinivas,
Standing Counsel

WEB COPY
ORDER

The Writ on hand is filed challenging the memorandum of charges issued by the second respondent in proceedings dated 27.05.2021.

2.The writ petitioner was holding the post of Assistant Engineer at Karur Municipality and now working in Perambalur Municipality, Perambalur District under the control of the second respondent.

3.The second respondent, Commissioner, Perambalur Municipality instituted disciplinary proceedings against the writ petitioner and framed charges and thereafter communicated the charges as well as the connected files to the first respondent to continue the disciplinary proceedings in accordance with the rules in force.

4.The charges framed against the writ petitioner reveal that the allegations are very serious warranting an enquiry and therefore, quashing of the charges, at this juncture, cannot be considered by this Court, merely on the ground that the second respondent instituted disciplinary proceedings.

5.The learned counsel for the writ petitioner relied on Rule 4 of the Tamil Nadu Municipal Service (Discipline and Appeal) Rules, 1970 (hereinafter referred to as "the Rules") and sub-Clauses states that the authority competent to impose penalty in respect of the petitioner, who is working in the post of Assistant Engineer shall be the appointing authority. Therefore, the appointing authority, the first respondent alone is competent to institute disciplinary proceedings and frame charges and therefore, the impugned charge memo is liable to be set aside.

6.It is a settled principle of law that initiation of disciplinary proceedings shall be done by the immediate superior officer, under whom the delinquent official is working and thereafter, the files are to be communicated for further continuation to the Disciplinary Authority as per the Rules in force. Thus, it is not necessary that an order of suspension or initiation of disciplinary proceedings itself should be done by the Appointing Authority. Initiation, including issuance of an order of suspension, shall be issued by the immediate superior, under whom the delinquent official is working and after framing of charges and on receipt of the explanation from the delinquent official, the files are to be forwarded to the competent authority/Disciplinary Authority for further action on the file.

7.The respective learned counsel appearing on behalf of respondents 1 and 2 clarified that on initiation of disciplinary proceedings, the second respondent has communicated the files to the first respondent for further action. Now, the files are under the consideration of the first respondent for the continuation of the disciplinary proceedings initiated against the writ petitioner.

8.Perusal of the allegations set out in the charge memo reveals that sixteen charges are framed. All the allegations

are serious in nature. Annexure 2 to the charge memo provides statement of allegations and Annexure 3 to the charge memo denotes list of documents relied upon. Thus, there is no infirmity as such in respect of the charge memorandum issued against the writ petitioner. The petitioner is bound to defend his case by availing the opportunities provided under the Rules.

9.A writ against the charge memo cannot be entertained by the High Court in a routine manner. A writ against a charge memo shall be entertained, if there is a definite ground regarding the jurisdiction or mala fide intention is established. Even in case of raising an allegation of mala fide intention, the authority against whom such allegation is raised must be impleaded as party respondent in his personal capacity. In the present case, the petitioner raised a point of jurisdiction by stating that the second respondent, who is the subordinate authority, initiated the disciplinary proceedings and framed the charge memorandum. However, the said ground deserves no merit consideration, as the initiation of disciplinary proceedings shall be done by the immediate superior officer under whom the delinquent official is working and thereafter, the files are to be communicated to the Disciplinary Authority for continuation of disciplinary proceedings and to pass final orders by following the procedures contemplated. Thus, there is no impediment for the controlling authority to institute disciplinary proceedings and frame charges.

10.In the present case, the learned counsel appearing on behalf of the second respondent made clear that the second respondent framed the charges and communicated the files to the first respondent, who is the appointing authority for further action in the disciplinary proceedings. Thus, there is no infirmity as such in respect of the procedures followed and therefore, the charge memo which is impugned in the writ petition cannot be set aside. The petitioner has to participate in the process of disciplinary proceedings and prove his innocence or otherwise by submitting his explanation, filing documents or evidences and the authorities competent on initiation of charges, must ensure that the disciplinary proceedings are completed and the final order is passed as expeditiously as possible, in view of the fact that long pendency of the disciplinary proceedings would cause prejudice to the service rights of the employees. Thus, in all cases of disciplinary proceedings, the authority must ensure that the proceedings are concluded as early as possible. Long pendency of disciplinary proceedings would deprive an employee from getting his promotional opportunity and to get other service benefits. Thus, in the present case, the respondents are directed to proceed with the departmental disciplinary proceedings and conclude the same as expeditiously as possible by affording opportunity to the petitioner.

11.The petitioner is directed to co-operate for the early disposal of the disciplinary proceedings. Prolongation or protraction of disciplinary proceedings, at the instance of the delinquent official, can never be encouraged. The Disciplinary Authority shall avoid grant of unnecessary adjournments for flimsy reasons. In the event of non-cooperation on the part of the petitioner, the same shall be recorded in the proceedings itself by the authority competent.

12.With the above observations and directions, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

abr/maya
To

1.The Commissioner of Municipal Administration,
No.78, Urban Administrative Building,
Santhome High Road, Chennai-28.

2.The Commissioner,
Perambalur Municipality,
Perambalur District.

+1 cc to Government Pleader Sr.No.27655

RSV(CO)
A.SK(12.07.2021)

सत्यमेव जयते

W.P. No. 12508 of 2021

WEB COPY