



IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 14.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.15404 of 2018
and
W.M.P.No.18292 of 2018

S.Viswanathan

...Petitioner

Vs

1.The Principal Secretary to Government,
Rural Development & Panchayat Raj
(E2) Department,
Secretariat,
Chennai-600009.

2.The Commissioner,
Tribunal for Disciplinary Proceedings,
No.5/1842-A, Trichy Road,
Ramanathapuram,
Coimbatore-641 045.

...Respondents

PRAYER: 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 formulated by the second respondent herein in his T.D.P. Case No.8/2016 Roc.No.432/2016/A2 dated 20.02.2018 and quash the same in so far the petitioner is concerned.

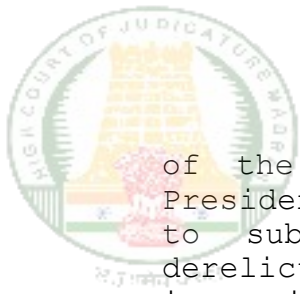
For Petitioner : Mr.Ravi Shanmugam

For Respondents : Mr.K.V.Sajeev Kumar,
Government Counsel

ORDER

By consent of both the parties, this writ petition is taken up for final disposal.

2. The impugned charge memo pertains to certain dereliction on the part of the petitioner/Accused Officer during his service under the department of the first respondent herein. The charge memo is to the effect that the petitioner had not adhered to the instructions of the Government by not verifying the genuineness



of the beneficiaries, which resulted in the then Panchayat President of Kamakkapalayam Village, Thalaivasal Panchayat Union to substitute individuals of her choice. Owing to such dereliction of duty, the petitioner was charged to have failed in maintaining absolute integrity and devotion to duty. Apparently, the charges levelled against the petitioner is not one of corruption.

3. The impugned charge memo has been levelled against the petitioner by the second respondent herein/Tribunal for Disciplinary Proceedings (hereinafter referred to as 'TDP').

4. Rule 4 of the Tamil Nadu Civil Service (Disciplinary Proceedings Tribunal) Rules, 1955, provides for the nature of cases that could be referred to the Tribunal. The said rule reads thus:

4. (1) The Government shall, subject to the provisions of rule 5, refer the following cases to the Tribunal, namely:-

(a) Cases relating to Officers of the State Services in respect of matters involving corruption on the part of such Officers; and

(b) All appeals or petitions to the Government against orders passed on charges of corruption and all disciplinary cases in which the Government propose to revise original orders passed on such charges;

Provided that it shall not be necessary to consult the Tribunal-

(i) in any case in which the Tribunal has, at any previous stage, given advice in regard to the order to be passed and no fresh question has thereafter arisen for determination; or

(ii) where the Government propose to pass orders rejecting such appeal or petition.

(2) The Government may, subject to the provisions of rule 5, also refer to the Tribunal any other case of class of cases which they consider should be dealt with by the Tribunal and the Government, in exercising the power conferred by this sub-rule, shall have regard to the nature and gravity of the charge, the grade or rank of the officer charged and the organisational strength of the department concerned in handling cases involving interpretation of rules regulating conditions of service of Government Servants.



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(3) Notwithstanding anything contained in sub-rule (1) or sub-rule(2), cases arising in the Judicial Department shall not be referred to the Tribunal.

(4) The Executive authority of a local authority may, with the sanction of the Government and shall, if so required by the Government, refer to the Tribunal cases of servants of the local authority when they are involved in charges of corruption jointly with Government servants whose cases are referred to the Tribunal under this rule. The cases so referred shall be enquired into by the Tribunal in accordance with the rules relating to appointment and punishment of officers and servants of the local authority.

(5) The Tamil Nadu Public Service Commission may, without reference to the Government, directly refer to the Tribunal cases relating to the Secretary (except when he is a member of the Indian Administrative Service) or a Joint Secretary or a Deputy Secretary or an Under Secretary to that Commission or a member of the staff of that Commission in respect of matters involving corruption or corruption combined with other charges on the part of the officers aforesaid and members of the staff of the Commission and that Tribunal shall conduct the inquiry in accordance with rule 7 of Annexure-II or, as the case may be, rule 4A of Annexure-V to the Tamil Nadu Public Service Commission Regulations, 1954.

Thus, it is seen that as per Rule 4, cases that pertain only to matters involving corruption could be dealt with by the T.D.P. Rule 8(a) deals with the procedures to be adopted by the Tribunal and the rule expands the nature of cases to be dealt with by the Tribunal, to include cases of corruption combined with other charges. Rule 8(d) specifically provides that the procedures to be adopted in cases other than those of corruption, whereby, the provisions of the Tamil Nadu Civil Service (Disciplinary Proceedings Tribunal) rules, have been made applicable.

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 second respondent/TDP to initiate departmental action by framing of charges.

7. In the instant case, the charges levelled against the petitioner are not either of corruption or other charges combined with corruption. When the charges do not pertain to corruption, initiation of the departmental action, by framing of charges by the TDP, is without jurisdiction, in view of Rule 4 of the aforesaid rules. The appropriate action that ought to have been initiated in the present case would be by framing of charges either under Rule 17(a) or 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. Apparently, the present impugned charges levelled against the petitioner by the second respondent herein/TDP lacks 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.

9. In view of the aforesaid discussion, the impugned order cannot be sustained. Nevertheless, if the first respondent herein is granted liberty to proceed with the disciplinary action, if they choose to do so, in accordance with the provisions of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, the ends of justice could be secured.

10. In the light of the above observations, the impugned charge memo of the second respondent dated 20.02.2018, is quashed. However, the first respondent herein is directed to proceed against the petitioner herein under the relevant provisions of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, in case they opt to do so. It is made clear that in case the first respondent intends to proceed against the petitioner herein, such a decision shall be taken, atleast within a period of twelve weeks from the date of receipt of copy of this order.



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11. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sbn

To

1. The Principal Secretary to Government,
Rural Development & Panchayat Raj
(E2) Department,
Secretariat, Chennai-600009.
2. The Commissioner,
Tribunal for Disciplinary Proceedings,
No.5/1842-A, Trichy Road,
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SPD(CO)
CT/17/08/2021