



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.12.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.24071 of 2021

and

W.M.P.No.25389 of 2021

M.Rameshkumar,
S/o (Late) R.Mylsamy

... Petitioner

Vs.

1. The District Collector,
Collectorate,
Tiruppur District,
@ Tiruppur.

2. The Assistant Project Officer,
(Accounts & Administration),
District Project Management Unit,
Tamil Nadu State Rural Livelihood Mission,
Tiruppur District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records pertaining to the charge memo issued by the first respondent herein in his Na.Ka.No.71/2019/V1, dated 19.08.2021 and the consequential order of the first respondent herein passed in his Roc.No.71/2019/V1, dated 12.10.2021 appointing the second respondent herein as Inquiry Officer and quash the same.

For petitioner : Mr.Ravi Shanmugam

For respondents: Mr.G.Nanmaran, Spl.G.P.

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorari to call for the records pertaining to the charge memo issued by the first respondent herein in his Na.Ka.No.71/2019/V1, dated 19.08.2021 and the consequential order of the first respondent herein passed in his



Roc.No.71/2019/V1, dated 12.10.2021 appointing the second respondent herein as Enquiry Officer and quash the same.

2. The petitioner has joined originally as Junior Assistant under the services of the respondent(s) on 25.01.1993 and was promoted as Assistant in 2001. He was further promoted as Deputy Block Development Officer in 2008 and as Block Development Officer in the year 2017. On 03.01.2019, an FIR was registered against the petitioner under the provisions of the Prevention of Corruption Act, 1988 (as amended). A charge-sheet was filed against him in Spl.C.C.No.3/2020 on 10.11.2020 before the Special Court-cum-Chief Judicial Magistrate, Tiruppur District.

3. The respondents-Department simultaneously framed charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, against the petitioner. In response to the charge memo, the petitioner submitted his explanation on 13.09.2021 to the first respondent. The first respondent has appointed the second respondent as Enquiry Officer, vide proceedings dated 12.10.2021. Challenging the departmental enquiry proceedings initiated against the petitioner, he has come forward with the present Writ Petition for the relief stated supra.

4. The learned counsel straightaway drew the attention of this Court to the impugned charge memo, by which charges under Rule 17(b) of the said Rules, were framed. He further submitted that the framing of charges, is invalid. He also referred to a recent decision of this Court in W.P.Nos.354 and 357 of 2019, dated 06.08.2021, relating to identical circumstances in which this Court allowed the said Writ Petitions, relevant portion of which, is extracted hereunder:

"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:-



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"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.?"



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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 Gurjarat in TNLJ 2006 (3) 457.



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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."

5. The learned counsel for the petitioner also relied on another earlier decision of this Court, dated 15.07.2021 passed in W.P.No.516 of 2019, in which, he referred to paragraph 2 onwards, which are extracted hereunder:

"2. The impugned charge memo pertains to certain dereliction on the part of the petitioner, who was a Head Constable in the Video Piracy Cell, CBCID, Coimbatore, wherein on a set of charges, which includes the charge that the petitioner had demanded an accepted bribe of Rs.10,000/- for booking a case under a minor section in Crime No.18/2009 of Video Piracy Cell and thereby, reduced the gravity of the offence, in order to favour the complainant.

3. The impugned charge memo has been levelled against the petitioner by the Additional Director General of Police, Crime, Chennai, who is the respondent herein.

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:



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"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.

(3) Notwithstanding anything contained in sub~rule (1) or sub~rule(2), cases arising in the Judicial Department shall not be



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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



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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 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



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of Tamil Nadu Vs. D.Subramanyan Rajadevan reported in AIR 1996 SCC 2634.

9. In view of the aforesaid discussions, the impugned order cannot be sustained. Nevertheless, if the respondent herein is granted liberty to proceed with the disciplinary action by taking recourse of framing the relevant charges by the Tribunal for Disciplinary Proceedings, if they choose to do so, in accordance with the provisions of the Tamil Nadu Civil Service (Disciplinary Proceedings Tribunal) Rules, the ends of justice could be secured.

10. In the light of the above observations, the impugned charge memo of the respondent dated 24.12.2018, is quashed. However, the respondent herein is granted liberty to proceed against the petitioner herein under the relevant provisions of the Tamil Nadu Civil Service (Disciplinary Proceedings Tribunal) 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.

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

6. On behalf of the respondents, a detailed counter affidavit has been filed disputing the averments of the petitioner.

7. Heard both sides and perused the materials available on record.

8. It is to be noted that challenge to the charge memo and the disciplinary proceedings, is on the basis of the well settled legal position that the charge memo issued under Rule 17(b) of the said Rules, is not maintainable and such charge(s) had to be framed only by the Tribunal concerned, which is vested with the power in corruption cases.



9. As rightly contended by the learned counsel for the petitioner, the issue involved in this Writ Petition is squarely and directly covered in favour of the petitioner based on the above extracted orders of this Court. This Court has to necessarily hold that the impugned charge memo is wholly without authority of law and the same is invalid and liable to be quashed.

10. In the said circumstances, this Writ Petition is allowed. The impugned charge memo dated 19.08.2021 passed by the first respondent in Na.Ka.No.71/2019/V1, and the consequential order appointing the second respondent as Enquiry Officer, in Roc.No.71/2019/V1, dated 12.10.2021, are set aside. The respondents are at liberty to proceed against the petitioner by invoking the correct provision of law, if so advised, as criminal proceedings now initiated against the petitioner under the provisions of the Prevention of Corruption Act, as amended, cannot be invoked against the petitioner, more particularly, under the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

11. No costs. Consequently, W.M.P. is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

CS
To

1. The District Collector,
Collectorate,
Tiruppur District, @ Tiruppur.
2. The Assistant Project Officer,
(Accounts & Administration),
District Project Management Unit,
Tamil Nadu State Rural Livelihood Mission,
Tiruppur District.

+1cc to the Government Pleader SR.66137

W.P.No.24071 of 2021

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