BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD).No.3703 of 2018 and
W.M.P.(MD).No.3845 of 2018

M.Jothi ... Petitioner

Vs.

1. The Principal Secretary/Commissioner,
   Revenue Administration,
   Chepauk, Chennai – 600 005.

2. The District Collector,
   Nagapattinam District,
   Nagapattinam.

3. The Revenue Divisional Officer,
   Office of Revenue Divisional Officer,
   Nagapattinam District,
   Nagapattinam. ... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, to call for the records of the 1st respondent's impugned Charge Memo in Ser(2)/13874/2016, dated 08.01.2018 and quash the same.

For Petitioner : Mr.D.Sasikumar
For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

O R D E R

Heard Mr.D.Sasikumar, learned counsel appearing for the petitioner and Mrs.J.Padmavathi Devi, learned Special Government Pleader, appearing for the respondents.

2.For an incident, which occurred in the year 2010-2011, the impugned charge memo, dated 08.01.2018, has been issued. The nature of charges are to the effect that the petitioner is alleged to have filed an incomplete report of illicit cutting trees; including 11 persons as authorised vendors instead of two persons; failed to note the date of illicit cutting; under quoted the value of illicit cut trees and thereby, caused revenue loss to the Government. The petitioner was a Deputy Tahsildar at the time of the issuance of the charge memo. He was due for retirement on 30.04.2018 and just about three months before his retirement, the charge sheet has been filed for an incident that had occurred eight years before.

3.The learned Special Government Pleader, placed reliance on the counter affidavit filed by the respondents and submitted that the charges are serious in nature and therefore, the petitioner should be subjected to departmental action. It is a settled proposition of law that a charge memo would not be interfered by the High Court exercising its power under Article 226 of the Constitution of India, but on very limited exceptions like incompetency of the authority or malafides, etc.,.

4.Insofar as the delay in initiating the departmental action is concerned, the Honourable Apex Court in the case of ***the Secretary of Ministry of Defence and others Vs. Prabash Chandra Mirdha*** reported in ***(2012) 11 SCC 565*** has held that the charge memo would not be liable to be quashed on the grounds that the proceedings had been initiated at the belated stage, unless the delay creates prejudice to the delinquent employee. The relevant portion of the order reads thus:

> *"13. Thus, the law on the issue can be summarised to the effect that charge sheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings"*

5.Thus, the legal proposition is when charge memo is issued belatedly and such belated issuance results in serious prejudice to the delinquent employee, then the High Court would be justified in exercising of its power under Article 226 of the Constitution of India. In the instant case, the incident of illicit cutting of trees occurred in the year 2010 and it is alleged in the impugned charge memo that the report was submitted by the petitioner in February 2011 and all the charges are based on that incident. Nothing prevented the respondents from having initiated the charges from February 2011 till the beginning of the year 2018. In normal circumstances, this Court may have also taken a second thought in interfering with the delay, but for the reason that the petitioner was due to retire on 30th April 2018 and at that fag end of his career, the charge memo was brought into light. Apparently, the charge memo would have caused serious prejudice to the petitioner. It is needless to point out that the charge memo is only the initiation and that the conclusion of the departmental proceedings would take much time and therefore, there was every possibility that the departmental proceedings would have exceeded the date of superannuation of the petitioner, but for the interim stay granted by this Court.

6.In view of the prejudice that has been caused to the petitioner and by applying the ratio laid down by the Honourable Apex Court in Prabash Chandra Mirdha referred supra, the impugned Charge Memo in Ser(2)/13874/2016, dated 08.01.2018, issued by the first respondent stands quashed.

7.This writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

// True Copy //

/ /2021
Sub Assistant Registrar(CS-)

Note: *In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.*

To

1. The Principal Secretary/Commissioner,
   Revenue Administration,
   Chepauk, Chennai - 600 005.

2. The District Collector,
   Nagapattinam District, Nagapattinam.

3. The Revenue Divisional Officer,
   Office of Revenue Divisional Officer,
   Nagapattinam District,Nagapattinam.

+1 CC to SPECIAL GOVERNMENT PLEADER IN SR Nos.SR-3976 & 3992[F]
+1 CC to Mr.D.SASI KUMAR, Advocate (SR-4176[F] dated 10/02/2021)

TM
TE: 01/03/2021 : 3P/6C

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08.02.2021