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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD)Nos.6792 & 6793 of 2018

and W.M.P. (MD) Nos.20293 & 20294 of 2018

(Through Video Conference)

N.Ganesan ... Petitioner in W.P.(MD).No.6792 of 2018
Arumugam ... Petitioner in W.P.(MD).No.6793 of 2018

Vs

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Tahsildar,
Devakottai Taluk,
Devakottai,
Sivagangai District.

3.Mr.Sivasambo ... Respondents in both writ petitions

PRAYER: Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the proceedings of the 2nd respondent made in Na.Ka.No.Aa3/4497/2017, dated 16.03.2018 and Na.Ka.No.Aa3/13083/2016, dated 27.02.2018 and Na.Ka.No.Aa3/3932/2017, dated 28.02.2018 and quash the same.

For Petitioner : Mr.R.Murali (in both cases)

For Respondents : Mr.P.Mahendran for R1 & R2
Additional Government Pleader
No Appearance for R3 (in both cases)

C O M M O N O R D E R

Heard Mr.R.Murali, learned counsel for the petitioner and Mr.P.Mahendran, learned Additional Government Pleader, for the respondents 1 and 2.

2.The petitioners herein are Village Assistants. On allegations of involvement in a criminal case registered in Cr.No.447 of 2017 for alleged offence under Section 120(b), 447, 294(b), 186 and 506 (ii) IPC, the petitioners herein, together with three other Village Assistants, were arrayed as accused. In view of their involvement in the offence as well as for other charges, the present



impugned charge memo dated 16.03.2018, has been issued on the petitioners.

3.Mr.R.Murali, learned counsel for the petitioner would submit that among the five Village Assistants, who have been implicated in the criminal case, the respondents have picked and chosen the petitioners herein as well as one Radakrishnan alone to undergo Departmental action, while the other two Village Assistants were not chosen to be proceeded against such Departmental Enquiry. He would further state that in respect of the other Village Assistant namely Radakrishnan, who was also proceeded departmentally, his departmental action has been quashed by this Court and the punishment of dismissal from service has also been set aside. The learned counsel would therefore submit that the entire procedure of the departmental action would be futile and hence the charge memo requires to be set aside.

4.Per contra, Mr.P.Mahendran, learned Additional Government Pleader, placed reliance on the averments made in the counter affidavit and submitted that the charges against the petitioners herein are serious in nature. It is also submitted that insofar as co-delinquent Radakrishnan is concerned, he was proceeded with departmental action and after the Enquiry officer had found the charges proved, he was imposed with the punishment of dismissal from service. In this background, the learned Additional Government Pleader, submitted that if at all the petitioners are of the view that they are not guilty of the charges levelled against them, it would always be open to them to establish the same during the course of enquiry.

5.I have given careful consideration to the submissions made by the respective counsels.

6.The scope of interference to a charge memo in a departmental action by exercising powers under Article 226 of Constitution of India, is very limited and the exceptions to such interference have been spelt out in various decisions of the Honourable Apex Court, as well as by this Court. Among such exceptions, if the delay in the proceedings causes prejudice to the party and by taking into account the gravity of offence, this Court would be justified in interfering with the charge memo, as held in the case of ***the Secretary, Ministry of Defence and others Vs. Prabhas Chandra Mirdha*** reported in ***(2012) 11 SCC 564***. Likewise, in ***Union of India and others Vs. Upendra Singh*** reported ***(1994) 3 SCC 357***, it was held that the High Court can interfere with the charge memo, if the charges framed do not construe any misconduct or irregularity or is contrary to law. Likewise, the incompetency of authority and *malafides* have also been held as exceptions in ***K.Thirumurugan Vs. Additional Chief Secretary*** reported in ***CDJ 2019 MHC 2167***.



7. In the instant case, though the petitioner has raised several grounds touching upon certain factual matrix, which seems to be plausible, this Court is unable to appreciate the same, in view of the well laid down principles on the scope of Article 226 of the Constitution of India for such interference.

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8. The learned counsel for the petitioner had made an earnest effort to impress upon the Court that the action on the part of the respondent in omitting to subject the two other village Assistants, who were also involved in the criminal case for disciplinary action, would amount to malafides. In case of departmental action, the overt acts attributed to delinquent may vary from one person to another person and if at all a delinquent is of the view that similar overt acts have been attributed to the other two Village Assistants and the respondents have chosen to proceed only against three out of the five Village Assistants, it would always be open to him to establish such grounds of discrimination before the Enquiry Officer. This Court refrains from analysing as to whether this is a case of discrimination and it would be appropriate that such a task be left open to the Enquiry Officer to attend to.

9. So far as the merits of the grounds are concerned, this Court intends to direct the Enquiry Officer to proceed with the Departmental action and therefore, any comments or observation made on the grounds raised in this present writ petition, may have a direct bearing on the departmental action and consequently, this Court consciously refrains from making any such observations in this regard.

10. For all the foregoing reasons, no interference would be required to the impugned charge memos and consequently, the writ petitions stand dismissed. However, the Enquiry Officer, while proceeding with the departmental action, shall extend due opportunities to the petitioners herein, by complying with the principles of natural justice and thereafter, pass a reasoned order, by taking into account the evidences available on record. The Enquiry Officer shall endeavour to complete the enquiry proceedings as expeditiously as possible. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

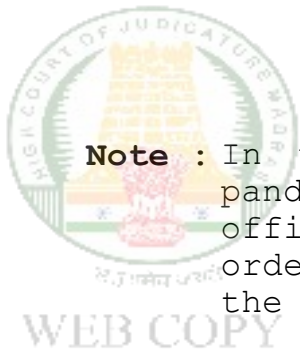
Assistant Registrar(CS-I)

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/ /2021

Sub Assistant Registrar(CS)

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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 District Collector,
Sivagangai District,
Sivagangai.

2.The Tahsildar,
Devakottai Taluk,
Devakottai,
Sivagangai District.

+1 CC to M/s.M.SURESH KUMAR, Advocate (SR-8044[F] dated 02/03/2021)

+1 CC to M/s.SPL GP (SR-8168[F] dated 02/03/2021)

Order made in
W.P. (MD)Nos.6792 & 6793 of 2018
Dated: 01.03.2021

PM(CO)
TR(25.03.2021) 4P 5C