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W.P. (MD) No.4277 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD) No.4277 of 2016

and

W.M.P. (MD) No.3810 of 2016

A.Mathuram

.. Petitioner

Vs.

The Commissioner,
Madurai Municipal Corporation,
Madurai-625 002.

.. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorari, calling for the records relating to the impugned charge memo issued by the respondent in his proceedings No.V.O.2/26430/2008 dated 02.07.2015 and quash the same as illegal.

For Petitioner : Mr.K.M.Vijayan
(Senior Counsel)
for M/s.B.Saravanan

For Respondent : Mr.T.S.Mohamed Mohideen
(Standing Counsel)

ORDER

The writ petition has been filed challenging the charge memo issued by the respondent in his proceedings No.V.O.2/26430/2008 dated 02.07.2015.

2. The case of the petitioner is that the petitioner is working as City Engineer in the respondent Corporation. He was appointed as Assistant Engineer in the Corporation of Chennai in the year 1990. Later on he was transferred to the Madurai Corporation in the year 1993. Thereafter he was promoted to the post of Assistant Executive Engineer in the year 2001 and subsequently, promoted as Executive Engineer in the respondent Corporation. He was discharging his duties to the utmost satisfaction to the superiors and to the public without any deviation. While so, the respondent issued a charge memo on 02.07.2015 to hold an enquiry against the petitioner under Rule 8 (2) of Madurai Corporation Services (Discipline and Appeal) Rules 1975. The substance of the charge memo are as follows:

<https://hcservices.ecoindia.org/>



Charge No.1: During 2003-2004, Tr.A.Maduram/the petitioner herein, Assistant Executive Engineer, Madurai Corporation has committed malpractices in the purchase of ROBOT vehicle for corporation by not following the tender procedure.

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Charge No.2: That during the aforesaid period and while functioning as Assistant Executive Engineer, the petitioner failed to get fitness certificate and delay in registration of the corporation vehicles in time, causing the corporation to pay extra cost of 5.56 lakhs.

Charge No.3: During the aforesaid period and while functioning as Assistant Executive Engineer, the petitioner improperly maintained the Quality Control Register.

Charge No.4: That during the aforesaid period and while functioning as Assistant Executive Engineer, the petitioner received travel advance of Rs.10,000/- to attend training at Goa from 25.05.2004 to 28.05.2004 but it was not adjusted till date as he did not undergo the training and he has cancelled the flight ticket.

Charge No.5: That during the aforesaid period, the petitioner, while functioning as Assistant Executive Engineer failed to show complete integrity and devotion to duty as required from the government service as per CCA Rules 20 read with the Madurai Corporation Service Rules, 36.

3.Immediately after the charge memo, the petitioner submitted his representation on 06.08.2015 denying the charges levelled against the petitioner. However, the respondent did not consider his representation. Hence, challenging the above impugned charge memo, the petitioner filed the present writ petition.

4. Mr.K.M.Vijayan, learned Senior Counsel appearing for the petitioner would submit that in respect of the first charge, the petitioner is not the competent authority to purchase the ROBOT to the Corporation and he is only a technical person, however, the purchase was approved by the Municipal Authorities and after getting approval for purchasing order by way of resolution, the Corporation placed the purchase order. Without making allegation against the person, who purchased the ROBOT, making allegation against the petitioner after lapse of 12 years is not sustainable one. Further as against the second charge, the learned Senior Counsel would submit that the said vehicles were transferred to the Corporation in the year 1994-1995 from the PWD Department and he was appointed as Assistant Engineer only in the year 2001 and at the relevant point of time, the officials of the concerned



Department had not taken effective steps to rectify the defects. Hence, the allegation against the petitioner is not sustainable one. Further, in respect of the third charge, as if the petitioner was not maintained the Quality Control Register in a proper manner, however, in the said charge also there is no detail and no specific period is maintained in the charge memo and hence the charge is vague. Further, with regard to the fourth charge, as if the petitioner after receiving the travel advance of Rs.10,000/- not attended the training programme at Goa and he has also cancelled the flight tickets and the said amount was not adjusted. But the fact remains that the petitioner attended the Solid Waste Management Training at Goa along with the Commissioner of respondent Corporation from 24.05.2004 to 28.05.2004. The air ticket booked for the flight dated 24.05.2004 was cancelled and a sum of Rs.7,200/- was refunded and the amount of Rs.10,000/- received as advance was not adjusted till date. Hence, the allegation is vague and without substance. The last charge is with respect to the conduct of the petitioner, however, all the allegations levelled against the petitioner in the year 2003-2004 and the charge memo issued only in the year 2015 and the delay in issuing the charge memo was not properly explained in the charge memo and almost all the charges are vague and no charge is alleged as misappropriation of corporation fund and in the absence of serious allegations, issuance of the charge memo against the petitioner after lapse of 12 years is not sustainable one. Further the learned Senior Counsel for the petitioner would submit that though the respondent filed a counter and stated that they conducted a primary enquiry and after receiving the enquiry report, charge memo was issued, however, in this regard, no averments are available in the impugned charge memo. Hence, the charge memo is liable to be set aside. In support of his contention, the learned Senior Counsel relied upon the judgment of the Hon'ble Apex Court in the case of ***P.V.Mahadevan vs. MD, TN Housing Board, reported in 2005(6)SCC 636***, wherein in paragraph Nos.8 to 10 it has been held as follows:

" 8.Our attention was also drawn to the counter-affidavit filed by the respondent Board in this appeal. Though some explanation was given, the explanation offered is not at all convincing. It is stated in the counter-affidavit for the first time that the irregularity during the year 1990, for which disciplinary action had been initiated against the appellant in the year 2000, came to light in the audit report for the second half of 1994-95.

9. Section 118 and 119 of the Tamil Nadu State Housing Board Act, 1961 (Tamil Nadu Act No. 17 of 1961 read thus :

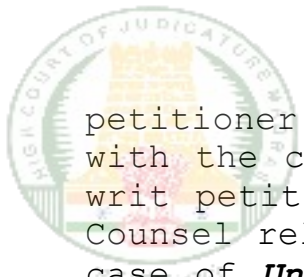


"118. At the end of every year, the Board shall submit to the Government an abstract of the accounts of its receipts and expenditure for such year.

119. The accounts of the Board shall be examined and audited once in every year by such auditor as the Government may appoint in this behalf."

10. Section 118 specifically provides for submission of the abstracts of the accounts at the end of every year and Section 119 relates to annual audit of accounts. These two statutory provisions have not been complied with at all. In the instant case the transaction took place in the year 1990. The expenditure ought to have been considered in the accounts of the succeeding year. In the instant case the audit report was ultimately released in the 1994-1995. The explanation offered for the delay in finalising the audit account cannot stand scrutiny in view of the above two provisions of the Tamil Nadu Act 17. It is now stated that the appellant has retired from service. There is also no acceptable explanation on the side of the respondent explaining the inordinate delay in initiating departmental disciplinary proceedings. Mr. R. Venkataramani, learned Senior counsel is appearing for the respondent. His submission that the period from the date of commission of the irregularities by the appellant to the date on which it came to the knowledge of the Housing Board cannot be reckoned for the purpose of ascertaining whether there was any delay on the part of the Board in initiating disciplinary proceedings against the appellant has no merit and force. The stand now taken by the respondent in this Court in the counter affidavit is not convincing and is only an afterthought to give some explanation for the delay."

5. Per contra, the learned Standing Counsel for the respondent would submit that the charges levelled against the petitioner though it relates to 2003-2004, thereafter, the competent authority conducted a preliminary enquiry against the petitioner as well as the officer, who was in-charge at the relevant point of time and based on the preliminary enquiry report, charge memo was issued. Mere delay in the issuance of charge memo is not a ground for quashing the charge memo. The petitioner had already participated in the enquiry proceedings and submitted his explanation to the competent authority and the competent authority finalized the charge memo within a period as fixed by this Court and the charges levelled against the



petitioner are serious one hence this Court need not interfere with the charge memo. Accordingly, he prays for dismissal of this writ petition. In support of his submission, the learned Standing Counsel relied upon the judgment of the Hon'ble Apex Court in the case of **Union of India and another vs. Kunisetty Satyanarayana, reported in 2006 (12) SCC 28**, wherein in paragraph Nos.13 to 15 it has been held as follows:

" 13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide *Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others JT 1995 (8) SC 331*, *Special Director and another vs. Mohd. Ghulam Ghouse and another AIR 2004 SC 1467*, *Ulagappa and others vs. Divisional Commissioner, Mysore and others 2001(10) SCC 639*, *State of U.P. vs. Brahm Datt Sharma and another AIR 1987 SC 943* etc. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

14. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

15. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."



6. Heard the learned Counsel on either side and carefully perused the materials available on record.

7. In the present case, admittedly, while the petitioner was working under the respondent Corporation as Assistant Engineer, the impugned charge memo was issued and the sum and substance of the charge memo is as stated supra. As per the charges, the petitioner has caused huge loss to the Madurai Corporation by not registering the corporation vehicles in time and purchasing the ROBOT vehicle by not following the procedure and after receiving the travel advance, he neither attended the training programme nor adjusted the amount. Except the above said three charges, other charges are related to improper maintenance of the records and violation of Conduct Rules. However, on perusal of the entire charge memo, there is no allegation against the petitioner as if he misappropriated the Corporation amount and the allegation against the petitioner is only for improper maintenance of the account and failed to follow the tender procedure. However, the fact remains that the purchase order for ROBOT vehicles was approved by the resolution of the Madurai Corporation and after approval of the Commissioner of Corporation, the said ROBOT vehicles were purchased by the Corporation. With regard to the first charge, there is no allegation against the petitioner that the petitioner is solely responsible for not following the tender process and there is a collective responsibility of other officers in the purchase of the ROBOT vehicles. But the charge memo did not reveal the action taken against the officers, who are involved in the purchase of ROBOT vehicles and failed to get fitness certificate from the Government. Further, though the said allegation relates to the year 2003-2004, however, the charge memo issued in the year 2015, ie., after a lapse of 11 years and there is no proper explanation for the delay in issuing the charge memo. In this background, it is necessary to refer the decision of the Hon'ble Apex Court relied on by the learned Senior Counsel, which is squarely applicable to this case. Hence, the impugned charge memo is liable to be quashed.

8. In view of the above observations, the writ petition is allowed and the impugned charge memo dated 02.07.2015 is hereby quashed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.



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Sd/-
Assistant Registrar ()

// True Copy //

/ /2021
Sub Assistant Registrar (CS)

PJL

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
The Commissioner,
Madurai Municipal Corporation,
Madurai-625 002.

+1 CC to M/s.T.S.MOHAMED MOHIDHEEN, Advocate (SR-7809[F] dated 01/03/2021)

+1 CC to M/s.B.SARAVANAN, Advocate (SR-8255[F] dated 02/03/2021)

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01.03.2021

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