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W.P.No.35683 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.35683 of 2016
and
W.M.P.Nos.30669 & 30670 of 2016
and
W.M.P.No.26413 of 2017

S.Gopinathan

...Petitioner

Vs.

1.The Transport Commissioner,
Ezhilzgam,
Chepauk,
Chennai – 600 005.

2.The Regional Transport Officer,
Office of the Regional Transport Office,
Nallur Village,
Redhills,
Chennai – 600 067.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned charge memo No.72768/B1/2009 dated 10.8.2016 passed by the 2nd respondent and quash the same and direct the respondents to issue a posting order to the petitioner for the post of Junior Assistant by regularising his absent periods with all service and monetary benefits.



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For Petitioner : Mr.N.S.Sivakumar
For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

The charge memo dated 10.08.2016 issued by the second respondent is sought to be quashed in the present writ petition.

2. The petitioner was appointed as Record Clerk in the Regional Transport Office, Dharmapuri and subsequently promoted to the post of Junior Assistant in February 2002. The petitioner was transferred to Pethikuppam Check post of Regional Transport Office and he joined duty on 15.05.2007. The petitioner states that due to certain personal reasons and on account of the illness of his mother, he was unable to report for duty and consequently, the impugned charge memorandum has been issued for unauthorized absence. The petitioner submitted his explanation on 25.11.2008. The order of suspension initially issued was revoked and the writ petitioner was reinstated during the pendency of the departmental disciplinary proceedings. However, the departmental enquiry had not yet commenced.



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3. The learned counsel for the petitioner made a submission that the first charge memorandum under Rule 17(a) was issued for the disobedience of the orders of the authority in not joining duty in the transferred place. For the unauthorized absence for a period of about one year, the charge under Rule 17(b) was issued against the writ petitioner. The writ petitioner raises several grounds on factual aspects, which cannot be adjudicated by the High Court in a writ proceedings as it involves adjudication of documents and evidences.

4. A charge memo can be challenged on limited grounds. If the charge memo is tainted with the allegation of *malafides* or issued by an incompetent authority having no jurisdiction, then alone, the High Court can entertain a writ against a charge memo, but not otherwise. In the present case, the petitioner raised several grounds on merits, which deserves an enquiry to be conducted and the petitioner has to defend his case by participating in the departmental disciplinary proceedings.

5. The power of judicial review under Article 226 of the Constitution of India is to ensure the processes, through which, a decision is taken by the



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competent authorities in consonance with the Statutes and Rules in force, but not the decision itself. The disputed facts cannot be adjudicated and it is to be adjudicated with reference to the documents and evidences.

6. In the present case, the petitioner instead of participating in the process of departmental enquiry, has to file the present writ petition on merits and therefore, this Court is not inclined to consider the relief as such sought for in the present writ petition. However, the petitioner is at liberty to participate in the departmental disciplinary proceedings, defend his case in order to establish his innocence or otherwise.

7. The charge memorandum is pending for about 5 ½ years and therefore, the respondents have to proceed with the disciplinary proceedings, conclude the same and pass final orders as expeditiously as possible. Long pendency of the departmental disciplinary proceedings would cause prejudice to the interest of the employees as they are deprived of their promotional opportunities and other service benefits. Thus, the respondents have to dispose of the departmental disciplinary proceedings as expeditiously as possible.



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WEB COPY 8. With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

14.10.2022

Index : Yes
Speaking order: Yes
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To

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S.M.SUBRAMANIAM, J.

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