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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.06.2022

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.16408 of 2022 and
WMP 15704 of 2022

M.Kalyanasundaram

.... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Environmental and Forest Department,
St. George Fort, Secretariat,
Chennai 600 009.
2. The Chief Principal Conservator of Forests,
Head of Forest Force, Panagal Maligai,
Saidapet, Chennai 600 015.
3. The Conservator of Forests,
Dharmapuri Circle, Dharmapuri,
Dharmapuri District.
4. The District Forest Officer,
Dharmapuri Forest Division,
Dharmapuri, Dharmapuri District.

.. Respondents

Prayer : This writ petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned charge memo dated 27.05.2022 in Na.Ka.No.4469/2022/Po4 issued by the third respondent and quash the same, consequently direct the respondents 2 to 4 to promote the petitioner as Forester, as per the panel of year 2021-2022.

For Petitioner : Mr.M.R.Jothimanian
For Respondents : Mr.T.Arunkumar,
Addl.Govt.Pleader

ORDER

This petition has been filed to issue a Writ of Certiorarified Mandamus, quashing the impugned charge memo dated 27.05.2022 issued by the third respondent and consequently direct the respondents 2 to 4 to promote the petitioner as Forester, as per the panel of year 2021-2022.



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2. By consent of counsels for both the parties, this writ petition is disposed of at the admission stage itself

3. Heard the learned counsel for both parties.

4. In this writ petition, the petitioner seeks to quash charge memo and consequently, promote the petitioner as Forester. At this juncture, it is worthwhile to mention that, the Hon'ble Supreme Court, in the case of Union of India vs. Kunishetty Satyanarayana [(2006) 12 SCC 28], held that writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not be ordinarily exercised by quashing a charge memo. No doubt, in some very rare and exceptional cases, the High Court can quash a charge memo, if it is found to be wholly without jurisdiction or if it is issued by non competent authority.

5. In the case of Secretary, Ministry of Defence and others Vs. Prabhash Chandra Mirdha, reported in 2012 11 SCC 565, the Apex Court observed as follows:-

10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court. (Vide State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 -: (1987) 3 ATC 319 : AIR 1987 SC 943] , Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327] , Ulagappa v. Commr. [(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)] , Special Director v. Mohd.



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Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] and Union of India v. Kunisetty Satyanarayana [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] .) 11. In State of Orissa v. Sangram Keshari Misra [(2010) 13 SCC 311 : (2011) 1 SCC (L&S) 380] (SCC pp. 315-16, para 10) this Court held that normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority. (See also Union of India v. Upendra Singh [(1994) 3 SCC 357 : 1994 SCC (L&S) 768 : (1994) 27 ATC 200] .) 12. Thus, the law on the issue can be summarised to the effect that the 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.

6. In view of the legal principles settled, writ petition against the charge memo cannot be entertained in a routine manner and judicial review against the charge memo is certainly limited. This being the factum, the writ petitioner has to participate in the process of enquiry and it is for the competent authorities to take steps for an early disposal of the disciplinary proceedings as prolonged pendency is also against the delinquent officials. Therefore, this Court is not inclined to interfere with the charge memo.



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7. At this juncture, the learned counsel appearing for the petitioner submitted that the petitioner is ready and willing to co-operate for the enquiry and hence, it is suffice to direct the respondents concerned to conclude the disciplinary proceedings, within a stipulated time, as fixed by this court, since the petitioner's name has not been considered for promotion to the post of Forester.

8. The learned Additional Government Pleader appearing for the respondents submitted that the third respondent will conclude the disciplinary proceedings, within a stipulated time, as fixed by this Court.

9. Inview of the above submissions and also considering the facts and circumstances of the case, without expressing any opinion on merits, this court is inclined to pass the following order.

i) The third respondent is directed to complete the disciplinary proceedings, in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

ii) This Court makes it clear that the above period of twelve weeks is the outer time limit fixed, within which the disciplinary proceedings shall be completed.

10. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected writ miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mst

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+1 cc to Mr.M.R.Jothimanian, Advocate Sr.NO. 41781

W.P.No.16408 of 2022

EV(CO)

A.SK(05/07/2022)