IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.40558 of 2016
and
W.M.P.Nos.34564 & 34565 of 2016
and
W.M.P.No.25269 of 2017

R.S.Rajan ...Petitioner

Vs.

1.The Inspector General of Registration,
Santhome High Road, Chennai.

2.The Secretary to Government of Tamilnadu,
Commercial Taxes and Registration Department,
Fort St' George, Chennai – 9. ..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 1st respondent in its No:37361/V3/2016 dated 12.08.2016 and quash the same.

For Petitioner : Mr.V.Vijay Shankar

For R1 and R2 : Mr.E.Sundaram
Government Advocate

ORDER

The charge memo issued under Rule 17 (b) of the Tamil Nadu Civil Supplies (Discipline and Appeal) Rules in proceedings dated 12.08.2016 is under challenge in the present writ petition.

2. The petitioner, while working as District Registrar, Chengalpet in August 2016, a charge memo dated 12.08.2016 was issued with an allegation that he caused huge financial loss to the tune of Rs.23,47,310/- by undervaluing the documents, which all are registered under the Statutes. Regarding the undervaluation, an audit objection was raised and consequently, a charge memo was issued in proceedings dated 12.08.2016. The charge against the writ petitioner reveals that the documents, which were registered were undervalued, resulted in financial loss to the tune of Rs.23,47,310/-. Annexure-II to the charge memo provides statement of allegations and imputation of misconduct. Annexure-III denotes the list of Documents relied on for the purpose of establishing the allegations against the writ petitioner. Thus, this Court do not find any infirmity in respect of the charge memorandum issued against the writ petitioner.

3. The learned counsel for the writ petitioner mainly relied on the orders passed by the District Revenue Officer (Stamps), who is the Controlling authority under Section 47 (A) of the Indian Stamp Act. As per the said proceedings, the writ petitioner has not undervalued those documents, which were registered, when he was holding the post of District Registrar. It is contended that separate orders were passed under Section 47 (A) of the Indian Stamp Act and thus, the allegations against the writ petitioner cannot be sustained.

4. The learned Government Advocate appearing on behalf of the respondents objected the said contention by stating that the allegations of undervaluation must be enquired into with reference to the documents and the order relied on by the petitioner alone cannot be relied on for the purpose of forming a final opinion. The allegations against the writ petitioner are serious and the financial loss to the tune of about Rs.23,47,310/- was set out in the charge memo and therefore, the petitioner has to establish his case before the departmental enquiry proceedings.

5. A charge memo is not liable to be quashed as it does not adversely affect the rights of an employee and does not give rise to any cause of action. A writ lies only when some rights of a person are infringed. The charge memo does not infringe the rights of a person / employee. It is only when a final order imposing punishment or otherwise is passed, it may give a cause of action. Thus, the writ petition challenging the charge memo by itself is not maintainable.

6. Let us now consider the situations, where, an employee is issued with a charge memo. On initiation of disciplinary proceedings, charge memo is the first step taken by the Authority concerned to frame certain charges against the employee concerned. Mere framing of charges would not cause any prejudice to the Government employee. He is duty bound to establish his innocence or otherwise with reference to the documents and evidences available. Contrarily, if the disciplinary proceedings are quashed at the budding stage, the rights of the Departments will be prejudiced.

7. Under the Tamil Nadu Government Servants Conduct Rules, a Government servant is bound to maintain a good conduct and integrity throughout his service both inside and outside the office. While so, certain

allegations are brought to the notice of the competent Authorities. They are initiating action under the Rules and they are framing charges. Such framing of charges would not cause any prejudice nor provide any cause of action for the purpose of instituting a writ petition. Therefore, framing of charges itself would not provide a cause of action for entertaining a writ petition.

8. No writ against a charge memo is entertainable in a routine manner. A writ against the charge memo can be entertained only if the allegations are tainted with the *malafides* or the charge memo was issued by an incompetent authority having no jurisdiction. In all other circumstances, the charged official has to submit his explanation and defend his innocence or otherwise by participating in the process of enquiry. High Court cannot adjudicate the disputed issues in a writ proceedings under Article 226 of the Constitution. The merits involved in the allegations cannot be adjudicated as it requires detailed scrutinization of the documents in original and the evidences to be placed before the competent authorities.

9. 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 competent authorities in accordance with the Statutes and rules in force, not

the decision itself. Thus, the High Court cannot conduct a Roving enquiry with reference to the disputed allegations and in this regard, the parties have to establish their respective cases before the enquiry proceedings, which is to be conducted by following the procedures as contemplated under the Discipline and Appeal Rules.

10. ***In the case of Union of India and others Vs. Upendra Singh, reported in (1994) 3 SCC 357,*** the Honourable Supreme Court of India held as follows:

> *"6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case*

may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8)

> *"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."*

11. ***In the case of Secretary, Ministry of Defence and Others Vs. Prabhash Chandra Mirdha [Civil Appeal No.2333 of 2007, Decided on May 29, 2012],*** the Apex Court of India held that normally, a Charge sheet is

not liable to be quashed as it does not adversely affect the rights of an employee and does not give rise to any cause of action. A writ lies only when some right of a party is infringed. The charge sheet does not infringe the right of a party. It is only when a final order imposing punishment or otherwise, it may have a cause of action. Hence, writ petition challenging charge sheet by itself is not maintainable. However, it can be quashed on the ground that issuing authority being not competent to issue the same.

12. ***In the case of Union of India vs. Kunishetty Satyanarayana [(2006) 12 SCC 28]***, it was held that writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not be ordinarily exercised by quashing a charge sheet. No doubt, in some very rare and exceptional cases, the High Court can quash a charge sheet if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal.

13. 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. 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."*

14. In the case of ***Union of India and another Vs. Kunisetty Satyanarayana, reported in 2006 12 SCC 28***, the Hon'ble Supreme Court of India, 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 v. Ramesh Kumar Singh [(1996) 1 SCC 327 : JT (1995) 8 SC 331] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3*

SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] , Ulagappa v. Divisional Commr., Mysore [(2001) 10 SCC 639] , State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , etc.

***14.** 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 petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. 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."*

15. Therefore, the contentions raised on behalf of the petitioner regarding the facts and the other orders passed by the authorities under Section 47(A) of the Indian Stamp Act are to be considered by the competent authorities at the time of conducting an enquiry.

16. Thus, the petitioner is at liberty to participate in the process of enquiry and defend his case by availing the opportunities to be provided under the Discipline and Appeal Rules.

17. It is needless to state that the explanation to be submitted by the petitioner is to be considered by the competent authorities with reference to the documents and the evidences available at the time of conducting an enquiry. The petitioner has already reached the age of superannuation and therefore, the enquiry proceedings are to be concluded as expeditiously as possible. No doubt, the delay caused at the instance of the petitioner since the writ petition is pending for the past about 6 years. However, the enquiry proceedings shall be continued and to be disposed of at the earliest possible.

18. In view of the facts and circumstances, the respondents are directed to proceed with the enquiry by following the procedures as contemplated and by affording an opportunity to the writ petitioner and conclude the same and pass final orders as expeditiously as possible.

19. With these directions, the writ petition stands dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.

11.10.2022

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Speaking order:Yes
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To

1.The Inspector General of Registration,
Santhome High Road, Chennai.

2.The Secretary to Government of Tamilnadu,
Commercial Taxes and Registration Department,
Fort St' George, Chennai – 9.

S.M.SUBRAMANIAM, J.

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