



W.P.No.42402 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.42402 of 2016
and W.M.P. No.36288 of 2016

D.I.Anni Rosari Uma

... Petitioner

Vs.

1.The Director of Elementary Education,
College Road, Nungambakkam,
Chennai – 600 006.

2.The District Elementary Education Officer,
Cuddalore.

3.The Assistant District Elementary Education Officer,
Cuddalore Block,
Cuddalore.

... 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 2nd respondent herein in Na.Ka.No.2714/ A4/2016 dated 11.11.2016 and quash the same.

For Petitioner

: Mr.S.V.Karthikeyan



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For Respondents : Mrs.S.Mythreye Chandru
Special Government Pleader

ORDER

The charge memo dated 11.11.2016, issued under Rule 17(b) of the Tamilnadu Subordinate Service (D & A) Rules is sought to be quashed in the present writ petition.

2.The petitioner states that she joined as Secondary Grade Teacher and on promotion was holding the post of Head Mistress in Panchayat Union Middle School at Semmamkuppam, Cuddalore Block. The impugned charge memorandum was issued under Rule 17(b) of the Tamilnadu Subordinate Service (D & A) Rules with an allegation that the Panchayat Union Middle School at Semmamkuppam, Cuddalore Block was closed on 13.07.2016, when the District Elementary School Educational Officer, Cuddalore had gone for inspection. An explanation was sought for from the Headmaster who in turn submitted the same, stating that the school was closed at 4.10 p.m.

3.The learned Special Government Pleader appearing on behalf of the



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respondents states that the school must be kept open till 4.10 p.m. and thereafter only the Headmaster has to disperse the children and close the school. Therefore, it may not be possible to close the school at 4.10 p.m. One can presume that if the school is to be kept open till 4.10 p.m., it will take further time for the children to disperse and therefore, the very facts stated by the writ petitioner that the school was closed at 4.10 p.m. cannot be accepted. Thus, the authorities framed the charges for conducting an enquiry. The petitioner instead of defending her case approached this Court by challenging the said memorandum. The charge memorandum provides the statement of allegations and imputations of misconduct. Annexure-3 provides the list of documents relied on for the purpose of establishing the charges. Thus, there is no infirmity in respect of the charge memorandum issued against the writ petitioner.

4. The charges are grave in nature as the petitioner was holding the post of Headmaster, closed the school in advance and when the District Elementary Educational Officer came for inspection, he found that the school was closed.



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The allegations being serious in nature, an enquiry is certainly warranted. High Court cannot adjudicate the disputed issues with reference to the charges. The petitioner submitted his explanation and therefore, the enquiry is to be conducted regarding the allegations set out in the impugned charge memorandum.

5. Though the writ against a charge memo is entertainable in a routine manner, a writ against a charge memo needs to be entertained only if allegations are tainted with malafides or the memorandum was issued by an incompetent authority having no jurisdiction but not otherwise. Even in case, where allegations of malafides are raised, then also the authority against whom such allegation are raised is to be impleaded as party respondent in person to establish the same. Thus, this Court is of the opinion that in all other circumstances, the charged officials have to defend thier case by availing the opportunities to be provided in accordance with the Discipline and Appeal Rules in force.



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6.This Court in an earlier occasion, in the case of S.Dhayalan vs. The Director Collector (Development Section), Salem, Salem District (W.P.No.18204 of 2018, dated 11.03.2019) held as follows:

10. The Honourable Supreme Court of India ***in the case of Union of India and others Vs. Upendra Singh, reported in (1994) 3 SCC 357*** and the paragraph 6 which is extracted hereunder:

“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



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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



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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



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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



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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 chargesheet 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] .)



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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:-



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“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



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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.”

7.In the present case, pursuant to the pendency of the present writ petition, the enquiry has not proceeded. Thus, the respondents are directed to continue the departmental disciplinary proceedings by following the procedures as contemplated under the Discipline and Appeal Rules and by affording opportunities to the writ petitioner to defend her case in the manner known to law. The petitioner is also directed to co-operate for the earlier disposal of the departmental disciplinary proceedings. Unnecessary adjournments cannot be granted. The respondents shall continue the proceedings and conclude the same, as expeditiously as possible.



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8. With these observations, this writ petition stands dismissed. No Costs.

Consequently, connected miscellaneous petition is closed.

23.09.2022

Index : Yes
Internet : Yes
Speaking order
ssr

To

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S.M.SUBRAMANIAM, J.

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