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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 27669 of 2017

S.Kaliyamoorthy

... Petitioner

-vs-

1. The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai - 600 009.
 2. The Director of School Education,
DPI Campus, College Road,
Chennai 600 006.
 3. The Chief Educational Officer,
Ariyalur District,
Ariyalur.
 4. The Headmaster,
Government Higher Secondary School,
Kalathur Thandalai,
Ariyalur District 621 803.
 5. The Regional Accounts Officer (Audit),
School Education Department,
Coimbatore 641 001.
- ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings issued by the Fifth Respondent in Na. Ka. No. 1341/Thi 21/2017, dated 05.05.2017, quash the same.

For Petitioner : Mr. R.N.Amarnath

For Respondents: Ms. P.Rajarajeswari,
Government Advocate

O R D E R

Heard Mr. R.N.Amarnath, Learned Counsel for the Petitioner and Ms.P.Rajarajeswari, Learned Government Advocate appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.



2. The Writ Petition challenges the Proceedings in Na. Ka. No. 1341/Thi 21/2017 dated 05.05.2017 of the Fifth Respondent requiring the Fourth Respondent to obtain explanation from the Petitioner as to why wrongful payment of incentive increments paid to him should not be recovered, which is apparently a show cause notice and cannot be treated as final decision. This Court at the time of admission on 30.10.2017 had passed an order of interim stay of recovery alone, which continues to be in force till date.

3. The consistent legal position has been reiterated by the Hon'ble Supreme Court of India in Union of India -vs- Kunisetty Satyanarayana [(2006) 12 SCC 28] that a charge memo or show-cause notice cannot be challenged before the completion of enquiry and the proceedings cannot be interdicted till it reaches its logical conclusion. It would be useful here to extract the relevant passages from the said decision which read 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 [JT 1995 (8) SC 331], Special Director -vs- Mohd. Ghulam Ghouse (AIR 2004 SC 1467), Ulagappa -vs- Divisional Commissioner, Mysore [2001(10) SCC 639], State of U.P. -vs- Brahm Datt Sharma (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 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.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause



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16. 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."

Having due regard to the aforesaid legal position, as there is nothing which precludes the Petitioner from raising the contentions in this Writ Petition in the reply to be submitted to the Respondent, who is bound to deal with the same before coming to any ultimate conclusion, there is no necessity for this Court to interfere at this pre-mature stage of the matter.

4. In such circumstances, the following order is passed:-

- (i) it shall be incumbent upon the Petitioner to submit his explanation to the show cause notice, which is impugned in the Writ Petition, to the concerned authorities by 31.07.2022;
- (ii) in the event of not being satisfied with the explanation submitted by the Petitioner, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioner to explain his position in that regard and a reasoned orders shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated under written acknowledgment; and
- (iv) if any adverse decision is taken, the Petitioner may pursue legal remedies in accordance with law and no view has been expressed by the Court on the merits of the controversy involved in the matter.

In fine, the Writ Petition is disposed on the aforesaid terms. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
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+1cc to Mr.R.N.Amarnath, Advocate, S.R.No. 16838

W.P. No. 27669 of 2017

JPL(CO)
GN(13/06/2022)