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W.P(MD) No.18501 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.01.2022

Pronounced on : 15.02.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) No.18501 of 2013 and  
M.P(MD) .Nos.1 of 2013 and 1 of 2014

S. Durairaju

:Petitioner

..VS..

1.The Secretary to Government of Tamil Nadu,  
Rural Development and Panchayat Raj Department,  
Secretariat, Chennai - 600 009.

2. The Director,  
Rural Development and Panchayat Raj,  
Panagal Building, Saidapet,  
Chennai.

3.The District Collector,  
Trichirappalli District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorari to call for the records relating to the impugned charge memo issued by the third respondent in his proceedings in Na.Ka.No.R1/22345/2005, dated 15.05.2006 under Rule 9A of the Tamilnadu Civil Services (Discipline & Appeal) Rules, 1955 and quash the same.

For Petitioner : Mr. T. Lajapathi Roy

For Respondents : Mr. Veera Kathiravan  
Additional Advocate General  
Assisted by M/s. D. Farjana Ghoushia  
Special Government Pleader



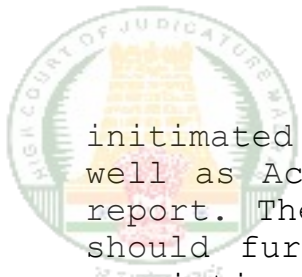
**O R D E R**

This Writ Petition is filed challenging the charge memo issued by the third respondent, dated 15.05.2006 under Rule 9A of Tamil Nadu Civil Services (Discipline & Appeal) Rules, 1955 on the ground of jurisdiction.

2. The petitioner was appointed as Junior Assistant in the year 1968. Subsequently, he was promoted as Block Development Officer in the year 2000. On 26.05.2005 a charge memo dated was issued for the alleged delinquency in the year 2000. The said charge memo was issued four days prior to the superannuation. The petitioner was placed under suspension under 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules, 1955 and on 31.05.2005 and he was retained in service under FR 56(1) (C).

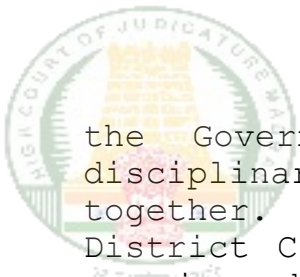
3. The contention of the petitioner is that in suspension order there are two references. With regard to 1<sup>st</sup> reference the 3<sup>rd</sup> respondent issued charges on 26.05.2005. In 2<sup>nd</sup> reference disciplinary proceedings had been taken under 9A of Tamil Nadu Civil Service (Discipline & Appeal) Rules, 1955, wherein the Highways Department has issued a charge memo vide his proceedings in Na.Ka.No.3564/H.L/2006, dated 29.03.2006. The petitioner further contended as per G.O. Ms. No. 216 P & AR Department, dated 01.09.1988 the third respondent District Collector has power to serve the order on behalf of the first respondent under F.R. 56(1) (C). But the final order would be passed only by the first respondent only, why because the petitioner attained superannuation on 31.05.2005. Therefore, the third respondent District Collector before initiating the disciplinary proceedings and to retain the Government Servant under FR 56(1) (C) has to obtain prior permission from the Government. The contention of the petitioner that the first respondent did not give any prior permission to take disciplinary proceedings and to retain under Fundamental Rules which is evident from the letter furnished by the first respondent in Letter No.16977/E6/2013-1, dated 17.07.2013. Therefore, the third respondent has violated the G.O.Ms.No.439 P & AR Department, dated 27.07.1989 and the Government Letter No.4/N/2000 P and AR Department, dated 21.07.2000.

4. The further contention of the petitioner that Auditors Report for the financial year 2004-2005 will be published after consolidating the 4<sup>th</sup> audit quarters respectively. But based on the instigation of the black listed contractors gave the false complaint to the third respondent. Subsequently, the Assistant Director Panchayat conducted an enquiry based on the contractors' petition dated 05.12.2005, wherein it was concluded that there was loss in the Pullambadi Panchayat Union. Then the government should be



initiated by the 3<sup>rd</sup> respondent to the Head of the Department as well as Accountant General along with the preliminary fact finding report. Then HOD should report to Government and the 1<sup>st</sup> respondent should further initiate. Further contended that on 15.02.2008 the appointing authorities should initiate disciplinary proceedings. Prior to that the powers have been exercised only by the first respondent alone. The petitioner relied on G.O.Ms.No.26, P & AR (N) DEPT., dated 15.02.2008. But the third respondent superseded the Government orders and without jurisdiction initiated disciplinary proceedings under Rule 9A of Tamil Nadu Civil Service (Discipline & Appeal) Rules, 1955 and G.O.Ms.No.223 P & AR Department, dated 26.06.1993 and issued a charge memo dated 15.05.2006. The petitioner has submitted an explanation on 02.06.2006 and the enquiry was conducted on 06.11.2006 by the Assistant Director (Audit). The enquiry officer has submitted her enquiry report on 27.12.2007. Thereafter, the petitioner has submitted further representation dated 18.02.2008 so far the final orders have been passed since 2008. On 25.10.2012 the petitioner submitted a representation to the first respondent for passing final order. In the meanwhile, the petitioner applied under Right to Information Act and obtained information from respondents 1 to 3. The third respondent's letter dated 21.01.2006 reveals that the first respondent is the competent authority to frame charges under Rule 9A of Tamil Nadu Civil Service (Discipline & Appeal) Rules, 1955 and G.O. Ms. No. 223 P & AR Department, dated 26.06.1993, because one among the three delinquents attained superannuation on 31.05.2005. Moreover, the second respondent's letter dated 21.01.2006 reveals that the 3<sup>rd</sup> respondent is the appointing authority to all the delinquents, one among the three has attained superannuation on 31.05.2005. Moreover, the second respondent given instructions to the third respondent that since the 3<sup>rd</sup> respondent have initiated the disciplinary proceedings under Rule 9A of Tamil Nadu Civil Service (Discipline & Appeal) Rules, 1955 and to proceed the action at his level and remit the paper to the government for passing final order. Further, the first respondent vide letter dated 02.09.2013 reveals that with regard to charge memo dated 02.09.2013 reveals that with regard to the charge memo dated 15.06.2006 issued by the 3<sup>rd</sup> respondent under Rule 9A, no order was issued by the 1<sup>st</sup> respondent. Hence, the petitioner has challenged the charge memo stating the third respondent is not having any power to issue charge memo since the petitioner is retired from service on attaining superannuation and prayed to quash the impugned charge memo.

5. The respondents have filed counter stating under Rule 9A of Tamil Nadu Civil Service (Discipline & Appeal) Rules has been stated in any case where more than one Government Servant on the same Department are involved, the authority competent to take disciplinary proceedings and impose any of the penalties specified in Rule 8 shall be the authority in that Department in respect of



the Government Servant who holds the highest post and the disciplinary proceedings against all of them shall be taken together. In the present case, three delinquents are there and the District Collector is the highest post and hence, the charge memo was issued by the District Collector. The amendment of Rule 9(A) which came into effect on 15.02.2008 is that the competent authority who institute the disciplinary proceedings shall be the immediate higher authority in the Department in respect of Government servants who holds the highest post among such Government servants. Therefore, there is no interference in the charge memo issued by the third respondent.

6. Heard Mr. Lajapathi Roy, the Learned Counsel appearing for the petitioner and Mr. Veera Kathiravan, the Learned Additional Advocate General and perused the materials available on record.

7. The contention of the petitioner is that Rule 9A of Tamil Nadu Civil Service (Discipline & Appeal) Rules, 1955, prior to amendment states, the authorities who is holding the **highest posts** shall take disciplinary proceedings. In the amended Rule it has been stated the competent authority to institute disciplinary proceedings shall be "**immediate highest authority**". Under G.O. Ms. No. 223 Personnel and Administrative Reforms (Per-N) Department dated 26.07.1993, the Rule 9A was amended is as under:

*"9A. In any case where more than one Government Servant of the same Department are involved the authority competent to institute disciplinary proceedings and impose any of the penalties specified in rule 8 shall be authority in that department in respect of the government servant who holds the highest post and the disciplinary proceedings against all of them shall be taken together.*

*Provided that in the case of Government servants belonging to different department who are jointly involved or whose cases are interconnected, the Government shall be the authority competent to initiate disciplinary proceedings and impose any of the penalties specified in rule 8 and in such cases the administrative department of Secretariat in respect of the Government servant who holds the highest post initiate such disciplinary proceedings and issue final orders after complying with the entire procedure in these rules"*

Under G.O. Ms. No. 89 Personnel and Administrative Reforms (N) Department dated 16.07.2009 with effect from 11.02.2008 the Rule 9A was amended as under:

<https://hcservices.ecourts.gov.in/hcservices/>



"9A. In any case where more than one Government Servant of the same Department are jointly involved or whose cases are interconnected, the authority competent to institute disciplinary proceedings shall be immediate higher authority in that department in respect of the government servant who holds the higher post among such government servants and the disciplinary proceedings against all of them shall be taken together. Where inquiry is to be conducted in terms of Rule 17(b), the said authority may either himself conduct the inquiry or get the inquiry conducted by an Inquiry Officer appointed by the authority competent to impose major penalty in respect of the Government servant who holds the highest post among such Government servants. The said authority shall remit the case, at the appropriate stage to the authority competent to impose any of the penalties specified in rule in respect of the government servant who holds the highest post among such Government servants in that Department for passing final orders:

8. The petitioner is interpreting the word "highest post" and submitted it indicates the Director of the Rural Development and Panchayat Raj, since he is the highest authority in the entire department. The petitioner by relying on the amended Rule 9(A), which states the competent authority to institute disciplinary proceedings is "immediate highest authority", submitted that the District Collector is having power after amendment and not prior to amendment.

9. The respondents submitted that both the provisions pre amendment and post amendment, the District Collector is the competent authority since the provisions states about the appointing authority and not higher authority. The provision also clearly states the "highest post" referring only to the delinquent and not the Director. In the department in respect of the Government servants who holds the highest post among such Governments servants, means among the delinquents who is holding highest post and his appointing authority would be the authority to initiate disciplinary proceedings.

10. On perusing the provisions, the phrase used is "**shall be authority in that department in respect of the government servant who holds the highest post**". It is not "**shall be authority who holds the highest post**". Therefore, the highest post is referring to the group of delinquents and not the highest post in the Department. For example, in this present case two officers are Extension Officers



and one person is the Block Development Officer and the highest post is the Block Development Officer among three delinquents. Therefore, the higher post is the Block Development Officer's appointing authority namely "the District Collector" is competent person to take action.

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11. This Court is convinced that the highest post among the delinquents and not the disciplinary authority. Therefore, the charge memo has been rightly issued by the District Collector and there is no discrepancy. Therefore, the writ petition is liable to be dismissed.

12. The respondents are directed to complete the disciplinary proceedings within a period of six months.

13. Hence, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS II)

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/ /2022

Sub Assistant Registrar(CS)

trp

To

1.The Secretary to Government of Tamil Nadu,  
Rural Development and Panchayat Raj Department,  
Secretariat, Chennai - 600 009.

2.The Director,  
Rural Development and Panchayat Raj,  
Panagal Building, Saidapet,  
Chennai.

3.The District Collector,  
Trichirappalli District.

+1 CC to M/s.SPL GP ( SR-6460[F] & SR-6491[F]dated 16/02/2022 )

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M.P(MD) .Nos.1 of 2013 and 1 of 2014  
15.02.2022

MGJ(02.03.2022) 6P 5C