



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:08.03.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**
W.P. (MD)Nos.8986 of 2021 and 17435 of 2020

and

W.M.P (MD)Nos.6769 and 6770 of 2021 & 14579 of 2020

V.Kaliappan

... Petitioner in
both W.Ps.

Vs.

1.The District Collector
Dindigul
Dindigul District.

... Respondent in
both W.Ps.

2.The Personal Assistant (Development)
to District Collector, Dindigul
Dindigul District.

... Respondent
W.P.No.8986/2021

2.The Block Development Officer
Oddanchatram Panchayat Union,
Oddanchatram Taluk
Dindigul District.

... Respondent in
W.P.No.17435/2020

PRAYER in W.P.No.8986/2021: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned charge memo issued by the 1st respondent in Na.Ka.No.6914/2020/R.D.4 dated 21.12.2020 and quash the same as illegal and without jurisdiction.

PRAYER in W.P.No.17435/2020: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records pertaining to the impugned order passed by the 1st respondent in Roc.NO.6914/2020/RD.4 dated 16.11.2020 and quash the same.

For Petitioner	: Mr.AL.Kannan for Mr.K.Gladwin in WP(MD)No.8689 of 2021 Mr.C.Mohankumar in WP(MD)No.17435 of 2020
For Respondents	: Mr.Veera Kathiravan Additional Advocate General assisted by Mr.A.K.Manikkam Special Government Pleader



ORDER

W.P. (MD) NO.8986/2021

The charge memo dated 21.12.2020 is under challenge in the present writ petition.

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2. The petitioner was working as Panchayat Secretary and on account of certain allegations, a show cause notice was issued on 30.09.2013. An enquiry was conducted and a final order was passed imposing punishment of censure in proceedings dated 09.03.2015. Thereafter, the petitioner was allotted to join duty and was continued. While so, again after five years, the petitioner was placed under suspension in proceedings dated 16.11.2020 and the impugned charge memo has been issued on 21.12.2020. The petitioner submitted an explanation on 03.01.2021.

3. The learned counsel for the petitioner mainly contended that in respect of the same set of charges, the impugned charge memo has been issued and the charges were already enquired into and a punishment of censure was issued and therefore, the second charge memo on the same set of allegations are liable to be set aside.

4. The learned Additional Advocate General appearing on behalf of the respondents objected the said contention by stating that no doubt the allegations seems to be similar, however, the fact remains that the first show cause notice dated 30.09.2013 was issued with reference to the allegations of supervisory lapses and in respect of supervisory lapses, an enquiry was conducted and the punishment of censure was issued. Thereafter the Vigilance and Anti Corruption conducted the investigation elaborately and found that there are fraudulent and forged activities. Therefore, the department issued the charge memo under the relevant rules and a criminal case was also subsequently registered against the petitioner in C.C.No.1 of 2021. Based on the subsequent investigation regarding the misappropriation, fraudulent activities, specific charges were framed. Thus, though the allegations are interconnected, initially charge memo was issued only on supervisory lapses, but after investigation by the Vigilance and Anti Corruption Department, detailed charges are issued and thus, the petitioner has to participate in the departmental proceedings for the purpose of defending his case.

5. Considering the arguments, this Court is of the opinion that the allegations are similar, however, the various developments in the matter of investigation prompted the authorities to frame the second set of charges. Perusal of the first charge dated 30.09.2013 reveals that the allegations raised against the petitioner was only supervisory lapses and there was no allegation of misappropriation of funds or fraudulent activities or otherwise. However, the fact remains that subsequently the issues were investigated by the



Vigilance and Anti Corruption Department, who in turn register a criminal case and therefore, a fresh charge memo was issued with an allegation of misappropriation of funds and certain fraudulent activities. Thus, this Court is of the opinion that the very contention that the charge memo on the same set of allegations cannot be sustained, in view of the fact that subsequently an investigation was conducted by the Vigilance Department and a criminal case was registered. Under such circumstances, the petitioner cannot be allowed to escape from the departmental proceedings, as it will result in miscarriage of justice and such grounds are permissible in the event of any further investigation or otherwise.

6. The learned counsel for the petitioner made a submission that the petitioner raised an objection in this regard and the same is to be decided as a preliminary issue by the disciplinary authority. Relying on the Enquiry Officer's report, the petitioner has stated that the second charge memo is to be set aside. This Court is of the considered opinion that the authorities are bound to consider all the defence statement made by the petitioner with reference to the documents and evidences. If at all, the petitioner states that on the same set of allegations, a second charge memo was issued and further enquiry is impermissible. The said contention is also to be considered and the charges are bound to distinguish the developments and the necessity for framing of the second charge memo on facts and circumstances.

7. In view of the facts and circumstances, this Court is of the considered opinion that the petitioner has to defend his case before the disciplinary authority by placing all the documents and evidences. The authorities competent are bound to afford an opportunity to the petitioner and bound to consider the objections, if any, raised and decide the same on merits and in accordance with law. Thus, the petitioner is at liberty to do so and the competent authorities are directed to proceed with the enquiry and dispose of the enquiry as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order.

8. The petitioner is directed to cooperate with the disciplinary authority for early disposal of the disciplinary proceedings. In the event of non cooperation on the part of the petitioner, the petitioner is not entitled to claim any relief merely based on the delay in disposing the disciplinary proceedings.

9. Accordingly, W.P.(MD) No.8986 of 2021 stands disposed of.

W.P. (MD) No.17435/2020

In view of the fact that this Court has already directed the respondents to conclude the enquiry within six months, no further consideration is required in respect of the writ petition



challenging the order of suspension. Thus, the writ petition stands disposed of. If at all, the subsistence allowance dues are there, the authorities are bound to settle the same so long as the petitioner is under suspension. No costs. Consequently connected Miscellaneous Petitions are closed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

RR

To

1.The District Collector
Dindigul
Dindigul District.

2.The Personal Assistant (Development)
to District Collector, Dindigul
Dindigul District.

3.The Block Development Officer
Oddanchatram Panchayat Union,
Oddanchatram Taluk
Dindigul District.

+1cc to Mr.G.MOHANKUMAR,Advocate, SR.No. 10667 DATED:08.03.2022

+1 CC to M/s.SPL.GP (SR-10999[F] dated 09/03/2022)

W.P. (MD) Nos.8986 of 2021 and 17435 of 2020

08.03.2022

KG(CO)

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