



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) Nos.9829 & 12094 of 2021

and

W.M.P. (MD) Nos.7552, 7553, 9505, 9506, 18020 & 18026 of 2021

W.P. (MD) No.9829 of 2021:

Dr.M.Chellamuthu

... Petitioner

vs.

1.The Gandhigram Institute of
Rural Health and Family Welfare Trust
Rep.by its Chairman
Soundaram Nagar, Gandhigram Post
Dindigul District

2.The Director
The Gandhigram Institute of
Rural Health and Family Welfare Trust
Rep.by its Chairman
Soundaram Nagar, Gandhigram Post
Dindigul District

3.S.Seethalakshmi
Director
The Gandhigram Institute of
Rural Health and Family Welfare Trust
Rep.by its Chairman
Soundaram Nagar, Gandhigram Post
Dindigul District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records pertaining to the impugned order of the second respondent in REF:GIRH/ESTT/2019-20/0863, dated 28.01.2020 and quash the same.

For Petitioner : Mr.Ramasundarvijayraj.S.

For Respondents : Mr.Vijay Shankar



W.P. (MD) No.12094 of 2021:

Dr.M.Chellamuthu

... Petitioner

vs.

1.The Gandhigram Institute of
Rural Health and Family Welfare Trust
Rep.by its Chairman
Soundaram Nagar, Gandhigram Post
Dindigul District

2.The Director
The Gandhigram Institute of
Rural Health and Family Welfare Trust
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3.S.Seethalakshmi
Director
The Gandhigram Institute of
Rural Health and Family Welfare Trust
Rep.by its Chairman
Soundaram Nagar, Gandhigram Post
Dindigul District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records pertaining to the impugned order of the second respondent in REF:GIRH/ESTT/2021-2022/0139, dated 01.07.2021 and REF:GIRH/ESTT/2021-2022/0173, dated 09.07.2021 and quash the same.

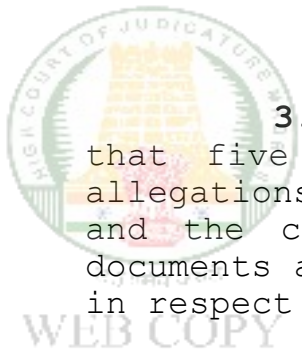
For Petitioner : Mr.Ramasundarvijayraj.S.

For Respondents : Mr.Vijay Shankar

C O M M O N O R D E R

Since the issue involved in both cases are interlinked, they have been clubbed together, heard together and are being disposed of by this common order.

2. W.P.(MD) No.9829 of 2021 has been filed challenging the charge memo, dated 28.01.2021 and W.P.(MD) No.12094 of 2021 has been filed challenging the order of appointment of Enquiry Officer, dated 01.07.2021 and the consequential order, passed by the Director, Gandhigram Institute of Rural Health and Family Trust.



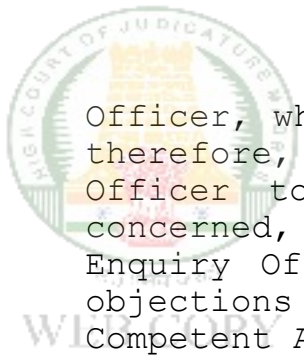
3. The impugned charge sheet, dated 28.01.2020, reveals that five charges are framed against the petitioner. Certain allegations are made against the petitioner based on the complaint and the charge memo contains statement of allegations, list of documents and witnesses to be examined. Thus, there is no infirmity in respect of the charge memorandum issued to the petitioner.

4. The learned counsel for the petitioner mainly contended that the third respondent has been appointed as Director of the Institute in violation of the Rules and the petitioner with the assistance of the Staff Association has challenged the said appointment of the third respondent as Director by filing a writ petition before this Court and in the said writ petition an interim order has also been granted. Subsequently, the Rule itself has been amended and the third respondent is continuing as Director. Subsequent to the amendment of the Rule, the writ petition challenging the appointment of the third respondent as Director has been disposed of and the writ appeal challenging the interim order granted in the said writ petition is pending. Citing the said factum, the learned counsel for the petitioner made a submission that there is a *mala fide* intention on the part of the third respondent and therefore, the impugned charge sheet is to be quashed.

5. A perusal of the impugned charge sheet reveals that there are other complaints given by the staff members, based on which the impugned charge sheet has been issued. However, there is no charge with reference to filing of case or with reference to the appointment of the third respondent as Director of Institute. Under these circumstances, this Court cannot draw adverse inference with reference to the writ petition filed by the petitioner with the assistance of Staff Association challenging the appointment of the third respondent as Director of the Institute. Unless *mala fide* is established, the impugned charge sheet cannot be quashed. In the present case, the charges against the petitioner are framed based on the complaint given by the other staff of the Institute and therefore, an enquiry is to be conducted.

6. The learned counsel appearing for the respondent - Institute made a submission that the petitioner has not participated in the enquiry proceedings initially and the Enquiry Officer has proceeded with the enquiry and submitted a report.

7. The learned counsel for the petitioner made a submission that the Enquiry Officer one Dr.M.Sankarapandian and Ms.J.Punitha Selvi are not eligible to conduct enquiry as the said Dr.M.Sankarapandian is the signatory of the complaint given against the petitioner. However, it is clarified by the learned counsel for the respondent - Institute that the said Dr.M.Sankarapandian is not the Enquiry Officer and the said Ms.J.Punitha Selvi is the Enquiry

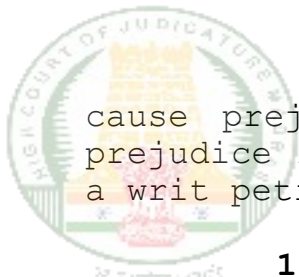


Officer, who is the Principal of the other Wing of the Institute and therefore, she is an independent officer appointed as Enquiry Officer to conduct enquiry. As far as Dr.M.Sankarapandian is concerned, he is only the Presenting Officer and he is not the Enquiry Officer. Therefore, the petitioner has to raise all his objections regarding the allegations made against him before the Competent Authority.

8. Mere filing of a writ petition would not be a ground to challenge the charge memo. The allegation of *mala fide* is to be substantiated to form an opinion that the Authority has issued the charge memo with some ulterior motive. In the present case, the impugned charge sheet has been issued based on the complaint given by the other staff members and therefore, it is not connected with the case filed challenging the appointment of the third respondent as Director of the respondent - Institute.

9. This Court is of the considered opinion that 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.

10. 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. The employee 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. 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. However, a writ petition against the charge memo may be entertained on certain exceptional circumstances, where the charge memo has been issued by an incompetent Authority having no jurisdiction or allegation of *mala fides* is raised. Even in case of raising an allegation of *mala fides*, the Authority against whom such an allegation raised must be impleaded as party respondent in his personal capacity. Except these circumstances, no writ needs to be entertained against the charge memo and such an entertaining would



cause prejudice to the Department and the likelihood of causing prejudice is also to be considered by the Court, while entertaining a writ petition.

11. In view of the facts and circumstances that *mala fide* intention on the part of the third respondent has not been established by the petitioner and further, the impugned charge memo has been issued based on the complaint given by the other staff members, the petitioner is at liberty to defend his case in the manner known to law. As far as the appointment of the Enquiry Officer is concerned, Dr.M.Sankarapandian is not the Enquiry Officer, but he is only the Presenting Officer and one Ms.J.Punitha Selvi, who is the Principal of the other Wing of the Institute, is the Enquiry Officer, and hence, there is no infirmity as such in the impugned appointment order of Enquiry Officer passed by the second respondent.

12. In view of the fact that disciplinary proceedings are pending for a long time, it is to be disposed of as expeditiously as possible.

13. At this juncture, the learned counsel appearing for the respondent - Institute made a submission that enquiry has been completed.

14. In such circumstances, the petitioner is at liberty to defend his case or otherwise, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the respondents shall proceed with the disciplinary proceedings and conclude the same in all respects as expeditiously as possible.

15. The learned counsel for the petitioner made a submission that the petitioner will co-operate for the enquiry proceedings.

16. The respondents are directed to provide opportunity to the petitioner and dispose of the disciplinary proceedings within a period of three months from the date of receipt of a copy of this order. The petitioner is directed to cooperate for early disposal of the enquiry proceedings. In the event of non-cooperation, the same shall be recorded in the proceedings itself and in such circumstances, the petitioner is not entitled to claim any relief on the ground of delay in the disposal of the disciplinary proceedings.

17. With the above observations and directions, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

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/ /2022

Sub Assistant Registrar(CS)



To

1.The Chairman,
Gandhigram Institute of
Rural Health and Family Welfare Trust
Rep.by its
Soundaram Nagar, Gandhigram Post
Dindigul District

2.The Director,
The Gandhigram Institute of
Rural Health and Family Welfare Trust
Rep.by its Chairman
Soundaram Nagar, Gandhigram Post
Dindigul District

+2 CC to M/s.S.RAMSUNDARVIJAYRAJ, Advocate (SR-10782[F] &
SR-10784[F]dated 09/03/2022)

+1 CC to M/s.V.KARTHIKEYAN, Advocate (SR-11124[F] dated
10/03/2022)

W.P. (MD) Nos.9829 & 12094 of 2021
and

W.M.P. (MD) Nos.7552, 7553, 9505, 9506,
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