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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.03.2022
CORAM:
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.10755 of 2021
and
W.M.P.(MD) Nos.8370, 14131 & 18138 of 2021 and 1964 of 2022

D.S.Radhika ... Petitioner

vs.

1.The State
rep.by the Secretary to Government
Health, Medical and Family Welfare Department
Fort St.George, Chennai-600 009

2.The Director of Public Health and Preventive Medicine
Directorate of Public Health and Preventive Medicine
DMS Campus, Teynampet
Chennai-600 006

3.The Director
Tamil Nadu State Health Transport Department
Guindy, Chennai-600 032

4.The Workshop Superintendent
Office of the Workshop Superintendent
Regional Workshop (Health)
Tiruchirappalli-620 007

5.M.Vijay Anand ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records relating to the impugned charge memo issued by the second respondent in Memo R.No.94508/DA/S1/2020, dated 24.05.2021 and quash the same.

For Petitioner : Mr.D.Sivaraman
For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader for R1 to R4
Mr.R.R.Kannan for R5

O R D E R

The charge memo, dated 24.05.2021, issued by the second respondent under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, is under challenge in this writ petition.

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2. The charge framed against the petitioner is in Annexure-I, which is extracted hereunder:

> *"Statement of charges framed against Tmt.D.S.Rathika, Superintendent, office of the Workshop Superintendent, Regional Workshop (Health), Trichy.*
>
> ***Charge-1:*** *Tmt.D.S.Rathika, Superintendent, while working at the Office of the Workshop Superintendent, Regional Workshop (Health), Trichy on her transfer to Government Primary Health Centre, Pullambadi, has refused to receive the relieve orders intended to her and proceeded on medical leave initially and proceeded on unauthorized absence from duty from 01.11.2019 to 18.11.2020.*
>
> *Thus Tmt.D.S.Rathika, Superintendent, Office of the Workshop Superintendent, Regional Workshop (Health), Trichy has exhibited utter disregard to her duties by refusing to get relieved on transfer and was on unauthorized absence. Thereby she has violated Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973."*

3. Annexure-II to the impugned charge memo provides statement of allegations in respect of the charge framed against the petitioner and Annexure-III contains list of documents relied for the purpose of establishing the charge. Thus, there is no infirmity as such in respect of the impugned charge memorandum.

4. The charge against the petitioner is unauthorized absence from duty from 01.11.2019 to 18.11.2020 nearly about one year and thereby, she has exhibited utter disregard to her duties to receive relieving order and thereby violated Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973.

5. With reference to the above charge, an enquiry is warranted. This Court cannot go into the factual details offered by the delinquent official as such details are to be adjudicated with reference to the documents and evidences. High Court cannot conduct a roving enquiry in respect of the disputed facts between the parties. Thus, all such pleadings and evidences placed by the delinquent official are to be adjudicated before the Authority Competent for the purpose of establishing their case.

6. A charge memo is not liable to be quashed as 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

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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.

7. 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. He / she is duty bound to establish his / her 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.

8. In view of the fact that the charge framed against the petitioner is regarding unauthorized absence and dereliction of duties, this Court is of the considered opinion that the respondents shall proceed with the departmental disciplinary proceedings by appointing any suitable impartial Enquiry Officer and conclude the same as expeditiously as possible.

9. In view of the fact that the learned counsel for the petitioner has raised several doubts regarding the Authorities, the Head of the Department should ensure that an independent Enquiry Officer is appointed for the purpose of conducting enquiry proceedings. It is made clear that the respondents shall proceed with the enquiry proceedings and conclude the same as expeditiously as possible.

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10. There are representations from the delinquent officials that along with the charge memo, all the documents relied on by the Department are to be furnished. Such a procedure is not contemplated. The employee is no doubt entitled to defend his / her case by perusing all relevant documents. Thus, the procedure to be followed is that on issuance of charges, the employee can submit his / her defence with reference to the facts in his knowledge and with the documents available with him / her. However, all other documents relied on by the Department have to be presented through the Presenting Officer at the time of conducting enquiry before the Enquiry Officer. Once the relevant documents are presented before the Enquiry Officer, then the delinquent official is entitled to get copies of all the documents for the purpose of defending his / her case. If confidential documents are involved, the Enquiry Officer must permit the delinquent official to peruse the documents for the purpose of defending his / her case. Therefore, it is made clear once the relevant documents involved in the charges are submitted by the Presenting Officer before the Enquiry Officer, then copies of the documents must be furnished to the delinquent official either by the Presenting officer or Enquiry Officer at the first instance and thereafter, they should continue the disciplinary proceedings.

11. This being the factum, the petitioner is at liberty to defend her case by availing the opportunity to be provided by the Authority Competent. The official respondents are directed to proceed with the enquiry proceedings and conclude the same as expeditiously as possible by following the procedure contemplated and by affording due opportunity to the petitioner.

12. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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To:

1.The Secretary to Government,
Health, Medical and Family Welfare Department,
Fort St.George, Chennai-600 009.

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4.The Workshop Superintendent,
Office of the Workshop Superintendent,
Regional Workshop (Health),
Tiruchirappalli-620 007.

+1 CC to M/s.R.R.KANNAN, Advocate (SR-11955[F] dated 14/03/2022)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-11970[F] dated 14/03/2022)

+1 CC to M/s.SPL GP (SR-12140[F] dated 15/03/2022)

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KG(CO)
GC(22.03.2022) 5P 8C

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