



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.10901 of 2019

and

W.M.P. (MD) No.8342 of 2019

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M.Rengayyan

... Petitioner

vs.

1.The Director / Commissioner
Fisheries Department
Teynampet
D.M.S.Complex
Chennai-600 006

2.Deputy Director of Fisheries
Office of the Deputy Director of Fisheries
Kanyakumari
Nagercoil

3.Assistant Director of Fisheries
Kanyakumari

4.Assistant Director of Fisheries
Fisheries Department
Colachel

... 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 charge memo issued by the third respondent in Na.Ka.No.1244/A/2018, dated 22.04.2019 and quash the same.

For Petitioner : Mr.S.Conscious Ilango

For Respondents : Mr.D.Sadiq Raja

Additional Government Pleader

O R D E R

The charge memo, dated 22.04.2019, issued by the third respondent, is under challenge in this writ petition.

2. Annexure-I to the charge memo contains charges framed against the petitioner. Annexure-II provides the statement of allegations and the imputations and Annexure-III denotes the list of documents relied on for the purpose of establishing the charge memo.

Four documents were relied upon by the Department for the purpose of



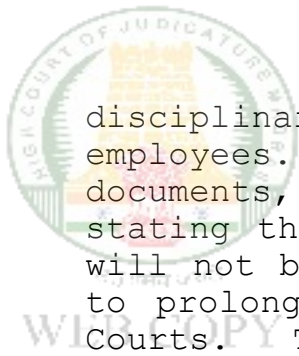
establishing the allegations. Annexure-IV provides the list of witnesses to be examined. Thus, there is no infirmity as such in respect of the impugned charge memo issued as against the petitioner.

3. The learned counsel for the petitioner mainly contended that the particular staff, who involved in the allegation, misbehaved with the petitioner and other staff members and warning was also issued by the third respondent to the petitioner as well as the other staff members. Relying on the said warning, the learned counsel for the petitioner reiterated that when a particular employee is having the habit of quarreling with the co-employees and a warning was issued to the said employee and also to the petitioner, for all purposes, the files were closed and therefore, issuance of a charge memo would not arise at all.

4. The learned Additional Government Pleader appearing for the respondents objected the said contention by stating that warning was issued to the petitioner. Therefore, the Authority concerned found that the petitioner has also involved in the misconduct of quarreling with the co-employees. Under these circumstances, the nature and seriousness of the employees cannot be gone into at this stage and the Authority concerned has to conduct enquiry as per the procedures contemplated in the Discipline and Appeal Rules, even in case warning was issued at the first instance. This Court cannot go into the details regarding the allegations set out in the charge memo. When the charges are framed in accordance with the Rules, it must reach the logical conclusion in accordance with the Rules in force.

5. The learned Additional Government Pleader clarified by stating that the warning was issued admittedly on 17.11.2018 and thereafter, a criminal case was registered against the petitioner on 06.02.2019 and based on the allegations in the criminal case, the impugned charge memo was issued under the Discipline and Appeal Rules. Therefore, the impugned charge memo is noway connected with the warning issued by the Authority concerned.

6. This Court of the considered opinion that there is a growing practice amongst the Government servants that soon after issuance of a charge memo, they submit a representation asking the Authorities to furnish all the documents. Such a procedure is not contemplated. First of all, the required informations are to be provided. The charge memo by itself would not provide any cause of action. Only on receipt of the explanation with reference to the charges and statement of allegations, the Authorities would be in a position to follow the procedures. Whenever the Enquiry Officer is appointed and on commencement of the enquiry, the employees will be permitted to peruse the relevant records or if necessary, documents will be furnished. With an intention to prolong and protect the



disciplinary proceedings, such representations are submitted by the employees. Simply by giving some representations for furnishing of documents, they approach the High Court by filing a writ petition stating that those documents are not furnished and therefore, they will not be in a position to submit explanation. It is an attempt to prolong the proceedings, which can never be encouraged by the Courts. The employees are not entitled to get documents at the first instance. Only at the time of conducting enquiry, the delinquent employees are entitled to peruse the documents and get copies of documents as per the procedures. As far as the allegations are concerned, the petitioner admittedly submitted an explanation regarding her defence. However, such explanations are subjected to enquiry. Therefore, the explanation submitted at the first instance to the charge memo is a preliminary step and based on such explanation, the Authority competent may either drop or proceed with the disciplinary proceedings. Only in the event of taking a decision to proceed the disciplinary proceedings, the delinquent employee will be entitled to get all the documents to defend her case before the Enquiry Officer. For more clarity, the Disciplinary Authority by merely issuing a charge memo cannot form an opinion regarding the allegations. Allegations are raised based on the complaint or information or based on some records. Therefore, such allegations cannot be construed as a final decision. The allegations can be denied or accepted. If they are accepted, the Authorities may proceed for imposing punishment. If they are denied by the employee, then an enquiry is to be conducted and at the time of conducting enquiry, the employee will have an opportunity to get documents to examine the witnesses, if any or to defend his / her case by availing the opportunity to be provided. Therefore, mere issuance of a charge memo will not confer any right to the employee to get documents in view of the fact that the explanation submitted to the charge memo is not a final stage. It is only a preliminary stage and based on the explanation, the Authority cannot come to a final conclusion. This being the principles to be followed, the representation submitted to furnish documents on issuance of a charge memo need not be entertained by the Authorities competent. Such representations are to be entertained only at the time of conducting domestic enquiry and therefore, the petitioner is entitled to get all the documents or peruse the documents, as the case may be, at the time of conducting enquiry and the petitioner is entitled to defend her case by availing the opportunities provided by the Authorities.

7. 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 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.

8. In view of the facts and circumstances, the petitioner is at liberty to submit his additional explanation / objection, if any, in addition to the original explanation submitted and thereafter, the respondents shall proceed with the enquiry proceedings by affording due opportunity to the petitioner and by following the procedures as contemplated under the Discipline and Appeal Rules and conclude the disciplinary proceedings as expeditiously as possible preferably within a period of four months from the date of receipt of a copy of this order.

9. The petitioner is directed to co-operate for the early disposal of the disciplinary proceedings. In the event of non-cooperation, the Authority concerned shall record such non-cooperation in the proceedings itself. In such circumstances, the petitioner is not entitled to take any undue advantage of his latches and seek further relief of quashing of the charge memo or otherwise.

10. With the above observations and directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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/ /2022

Sub Assistant Registrar(CS)

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To:

- 1.The Director / Commissioner,
Fisheries Department,
Teynampet,
D.M.S.Complex, Chennai-600 006.
- 2.Deputy Director of Fisheries,
Office of the Deputy Director of Fisheries,
Kanyakumari, Nagercoil.
- 3.Assistant Director of Fisheries,
Kanyakumari.



4.Assistant Director of Fisheries,
Fisheries Department, Colachel.

+1 CC to M/s.V.SASI KUMAR, Advocate (SR-6332[F] dated 15/02/2022)

+1 CC to M/s.SPL GP (SR-6215[F] dated 15/02/2022)

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