



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

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W.P. (MD) Nos.11832 & 11833 of 2021

and

W.M.P. (MD) Nos.9293, 9298, 13583 & 13591 of 2021

W.P. (MD) No.11832 of 2021:

S.Krishnamoorthy

... Petitioner

vs.

1.The Superintendent of Police
Thoothukudi District
Thoothukudi

2.The Deputy Superintendent of Police
Rural Sub Division
Thoothukudi

... 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 order issued by the 1st respondent herein vide proceedings in Tha.Pa.No.118/2021, dated 29.06.2021, quash the same.

For Petitioner : Mr.Ajith Geethan.A.

For Respondents : Mr.N.Satheesh Kumar

Additional Government Pleader

W.P. (MD) No.11833 of 2021:

K.Saravanan

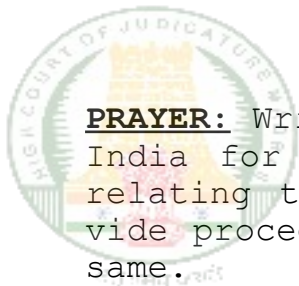
... Petitioner

vs.

1.The Superintendent of Police
Thoothukudi District
Thoothukudi

2.The Deputy Superintendent of Police
Rural Sub Division
Thoothukudi

... 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 order issued by the 1st respondent herein vide proceedings in Tha.Pa.No.117/2021, dated 29.06.2021, quash the same.

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For Petitioner : Mr.Ajith Geethan.A.

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader

C O M M O N O R D E R

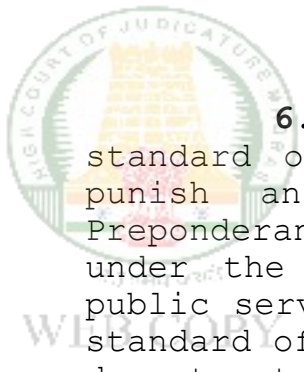
Since the issue involved in both cases are one and the same, they have been clubbed together, heard together and are being disposed of by this common order.

2. These two writ petitions are filed interestingly by the father and son as both are working in the Police Department. The father, who is the petitioner in W.P.(MD) No.11833 of 2021, is working as Special Sub Inspector of Police in Central Crime Branch, Thoothukudi, whereas his son, who is the petitioner in W.P.(MD) No.11832 of 2021, is working as Grade I Police Constable.

3. The wife of the petitioner (Krishnamoorthy) in W.P.(MD) No.11832 of 2021 lodged a criminal complaint of dowry harassment. Based on the said complaint, a criminal case was registered in Crime No.4 of 2021 against both the petitioners. Simultaneously, departmental disciplinary proceedings have also been initiated and charge memos have also been issued to the son as well as his father.

4. The main ground raised by the petitioners is that they have filed Crl.O.P.(MD) No.18902 of 2021 before this Court, wherein the parties have compromised the dispute amongst them and the petitioner - Krishnamoorthy settled a sum of Rs.7,00,000/- (Rupees seven lakhs only) to the *de facto* complainant and accordingly, the criminal original petition was allowed by order dated 07.12.2021.

5. Departmental disciplinary proceedings and the criminal proceedings are distinct and different. Mere exoneration from the criminal proceedings would not be a bar for the Authority Competent to continue the departmental disciplinary proceedings. Misconduct under the Tamil Nadu Police Conduct Rules is independent and therefore, the compromise entered into between the parties in the criminal case is not a ground for quashing the charge memo itself as it involves disciplinary matters connected with the Uniformed Services as both the petitioners are working in the Police Department.



6. To convict a person under the criminal law, high standard of proof is required, however, no such strict proof to punish an employee under the Discipline and Appeal Rules. Preponderance of probabilities are enough to punish an employee under the Discipline and Appeal Rules. Action unbecoming of a public servant is sufficient to punish an employee. Therefore, the standard of proof required for criminal case is not required for the departmental disciplinary proceedings. But, the delinquent employee may defend his case with reference to the allegations and the nature of settlement or compromise or otherwise. It is for the Authority Competent to take a decision regarding the moral turpitude involved or the discipline aspects involved. This Court cannot conduct an elaborate enquiry in those issues, which all are to be gone into with reference to the documents and evidence available and by considering the defence to be submitted by the delinquent employee, including settlement or compromise between the parties in respect of the criminal case or otherwise.

7. This Court is of the considered opinion that charge *per se* would not constitute a cause for moving a writ petition. It remains only as an allegation and such allegations are to be enquired into by affording opportunity to the delinquent officials.

8. 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 petitions challenging the charge memo by itself are not maintainable.

9. 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.

10. In view of the facts and circumstances, this Court is of the opinion that the enquiry proceedings may go on. The respondents are directed to conclude the proceedings and pass final orders as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order. The petitioners are directed to cooperate for early disposal of the disciplinary proceedings. In the event of any non-cooperation, the same may be recorded in the proceedings itself and in such circumstances, the petitioners are not entitled for any relief on the ground of delay in disposal of the disciplinary proceedings.

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

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

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To:

1.The Superintendent of Police,
Thoothukudi District,Thoothukudi.

2.The Deputy Superintendent of Police,
Rural Sub Division,Thoothukudi.

+1 CC to M/s.SPL.GP (SR-10996[F] dated 09/03/2022)

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