



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.13530 of 2019

and

W.M.P. (MD) Nos.10075 & 10076 of 2019

P.Senthilkumar

... Petitioner

vs .

- 1.The Chief Engineer / Personnel
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
NPKRR Maligai
144, Anna Salai, Chennai-600 002
- 2.The Superintending Engineer
Tuticorin Electricity Distribution Circle /
TANGEDCO
Thoothukudi District
Thoothukudi
- 3.The Executive Engineer
Distribution / TANGEDCO
Kovilpatti Circle
Kovilpatti, Thoothukudi District
- 4.Assistant Executive Engineer
Distribution / TANGEDCO
Kayathar, Thoothukudi District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records on the file of the 3rd respondent in connection with the impugned charge memo issued by him vide his proceedings in Ku.No.0319/003/U.Ni.A/Ni.Pi/Ni.U.3/Ko.O.Na/2019, dated 20.05.2019 and quash the same as illegal, arbitrary and violation of G.O.(Ms). No.124, Personnel and Administrative Reforms (Per.N) Department, dated 22.02.1983 and consequently direct the respondents to issue the reposting order to the petitioner in the cadre of Assistant Engineer (Electrical) on par with his batchmates pursuant to the provisional selection list published by the first respondent vide his proceedings in Memo No.036905/G.13/G.131/2019, dated 29.05.2019, within the time stipulated by this Court.

For Petitioner : Mr.G.Thalaimutharasu, Advocate

For Respondents : Mr.S.Arivalagan, Advocate



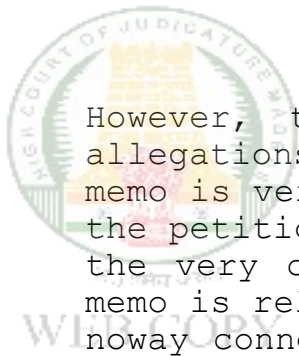
O R D E R

The charge memo, dated 20.05.2019, issued by the third respondent is under challenge in this writ petition.

2.The petitioner is working as Junior Engineer Grade-II in the respondent - Electricity Board. A criminal case was registered against the petitioner under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 2002 and also under Sections 294(b), 323 and 506(2) I.P.C. The allegations against the petitioner are that he failed to inform the Authorities competent about the registration of the criminal case and the release on conditional bail. The petitioner was absconded for twenty days from 23.08.2018 to 11.09.2018 and the same was suppressed. By suppressing the fact, the petitioner submitted a medical leave application and thereafter, he submitted an extension of leave application for the period from 12.09.2018 to 05.10.2018. In order to get anticipatory bail the petitioner was absconding during the above said period and submitted a leave application by suppressing the fact regarding registration of the criminal case. The charges framed against the petitioner are very specific and the statement of imputations, list of documents are also provided in the impugned charge memo. 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 made a submission that the petitioner's wife filed a complaint under the provisions of Tamil Nadu Prohibition of Harassment of Woman Act, 2002. It is the family dispute and therefore, the Authorities cannot issue a charge memo against the petitioner. Such a submission is absolutely misconception. A public servant has to maintain a good conduct both inside and outside the office as per the Conduct Rules. The wife of the petitioner filed complaint and such a complaint was registered and the petitioner was absconding by filing an anticipatory bail application before the Court, then the Authorities found that the petitioner suppressed the said fact and submitted a medical leave application and committed other irregularities. Therefore, the very contention of the learned counsel for the petitioner that the family dispute and registration of the criminal case cannot provide for any cause for institution of disciplinary proceedings is not in consonance with the Disciplinary and Appeal Rules and also the Conduct Rules in force.

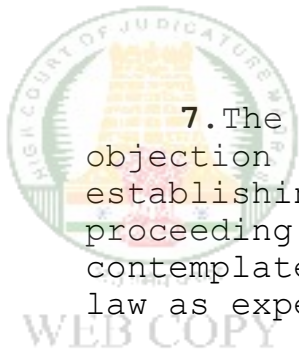
4.The charge memo, impugned in this writ petition, has not been issued only in respect of the family dispute. The charge memo is relating to the official misconduct of the petitioner. In respect of the family dispute, which resulted in registration of the criminal case, the petitioner has to establish his innocence before the competent Criminal Court of law. In the event of conviction, the Authority competent may institute action as per the Rules.



However, the impugned charge memo is noway connected with the allegations raised in the criminal complaint. The impugned charge memo is very specific regarding the official misconduct committed by the petitioner during the course of his official duties. Therefore, the very contention raised on behalf of the petitioner the charge memo is relating the family dispute is incorrect and the charges are noway connected with the family dispute and which is connected with the service conditions of the petitioner. Thus, there is no impediment for the Authorities competent in proceeding with the charge memo.

5.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.

6.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 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.



7.The petitioner is at liberty to submit his explanation / objection along with documents, if any, for the purpose of establishing his innocence. The Disciplinary Authority shall proceed with the enquiry by following the procedures as contemplated and pass final orders on merits and in accordance with law as expeditiously as possible.

8.Even in respect of the allegation raised by the wife of the Government employee regarding harassment, the wife is competent to give evidence before the Disciplinary Authority for the purpose of initiation of action. Therefore, the family disputes cannot be isolated as far as the public servants are concerned and thus, the Authorities competent are bound to examine the wife of the petitioner and other witnesses or otherwise, if necessary, for the purpose of considering the allegations.

9.With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

TO

+1 CC to M/s.S.ARIVALAGAN, Advocate (SR-6321[F] dated 15/02/2022)

+1 CC to M/s.G.THALAIMUTHARASU, Advocate (SR-5843[F] dated 14/02/2022)

**W.P. (MD) No.13530 of 2019
and**

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RS (25.02.2022) 4P-3C