



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.14079 of 2019

and

W.M.P. (MD) Nos.10557, 10558 & 23631 of 2019

WEB COPY

K.Susila

... Petitioner

vs.

1.The Managing Director
Arasu Rubber Corporation Ltd.,
Nagercoil

2.The Vigilance Officer
Vigilance Office
Arasu Rubber Corporation Ltd.,
Kulasekharam
Kanyakumari 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 entire records pertaining to the rejection order passed by the second respondent dated 18.05.2019 and quash the same as illegal and consequently direct the second respondent to provide a copy of documents annexed along with charge memo vide Na.Ka.No.174/2019, dated 30.04.2019 in annexure-III to the petitioner within a stipulated period for submitting the explanation.

For Petitioner : Mr.K.P.Narayanakumar

For Respondents : Mr.P.Thilak Kumar, Government Pldader

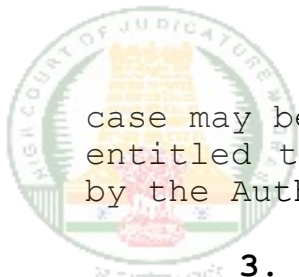
assisted by Mr.M.Ramesh, Government Advocate

O R D E R

The petitioner is working as Junior Assistant. Disciplinary proceedings were initiated against the petitioner and a charge memo was issued vide proceedings dated 30.04.2019. The charges are relating to misconduct. The petitioner, instead of submitting her explanation to the charge memo, submitted a representation to the first respondent to furnish the copy of the documents. The Authorities returned the application by stating that the petitioner has to submit her explanation by filling up the form annexed to the charge memo and after appointment of Enquiry Officer, documents will be furnished for the purpose of defending the case.



2. 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.

3. 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.

4. 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.

5. Therefore, the petitioner is at liberty to submit her explanation to the charge memo and based on that the Authorities competent have to decide as to whether to proceed with or to drop the disciplinary proceedings. If they take a decision to proceed with the proceedings, then on appointment of the Enquiry Officer, the petitioner must be permitted to peruse the documents or receive copy of the documents, as the case may be, for the purpose of defending her case. The Disciplinary Authority is directed to



conclude the disciplinary proceedings as expeditiously as possible.

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

Sd/-

Assistant Registrar (A.D.I)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

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To:

1.The Managing Director,
Arasu Rubber Corporation Ltd.,
Nagercoil.

2.The Vigilance Officer,
Vigilance Office,
Arasu Rubber Corporation Ltd.,
Kulasekharam,
Kanyakumari District.

+1 CC to M/s.A.BALAKRISHNAN, Advocate (SR-6018[F] dated
14/02/2022)

+1 CC to M/s.SPL GP (SR-5973[F] dated 14/02/2022)

W.P.(MD) No.14079 of 2019 and
W.M.P.(MD) Nos.10557, 10558 & 23631 of 2019
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RD(28.02.2022) 4P 5C