



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2022

CORAM:

THE HONOURABLE **MR. JUSTICE S.M.SUBRAMANIAM**

WEB COPY

W.P. (MD) Nos. 12248 and 12698 of 2021

and

W.M.P (MD) Nos. 9895 and 19617, 9634, 9635 and 12413 of 2021

1. R. Ganapathy Murugan : Petitioner in W.P (MD) No. 12248/21
2. A. Vairavan : Petitioner in W.P (MD) No. 12698/21

Vs.

1. The Commissioner of Disciplinary Proceedings,
Thirunelveli,
4/929, Rahmath Nagar,
Maharaja Nagar Post,
Thirunelveli District.

2. The State of Tamil Nadu,
Through its Secretary to Government,
Tourism, Culture and Religious Endowments
(RE 2-1) Department,
Fort St. George, Secretariat,
Chennai.

3. The Commissioner,
Hindu Religious and Charitable Endowments
Department,
Uthamar Gandhi Salai,
Chennai.

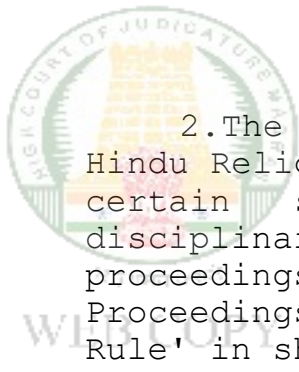
... Respondents in both W.Ps

COMMON PRAYER: Writ Petitions under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings in Roc.No.A2/03/2021 (TDP No.05/2021), dated 08.07.2021 on the file of 1st Respondent and quash the same as illegal as against the petitioner alone.

For Petitioner : Mr. VR. Shanmuganathan
For Respondents : Mr. D.S. Nedunchezian
Government Advocate

COMMON ORDER

The charge sheet issued by the Commissioner of Disciplinary Proceedings, Tirunelveli, in proceedings dated 08.07.2021, is under challenge in these writ petitions.



2.The petitioners are working as Executive Officer Grade-I in Hindu Religious and Charitable Endowments Department. On account of certain serious allegations, the department referred the disciplinary proceedings to the Tribunal for disciplinary proceedings, under the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules 1955(hereinafter referred to as 'the Rule' in short).

3.The learned counsel for the petitioners mainly raised a ground that the Tribunal has no jurisdiction to conduct an enquiry in respect of the misconduct under Tamil Nadu Government Servant Conduct Rules, 1973, as there is no allegation of corruption or misappropriation of the amounts of the Temple or otherwise. In this regard, the learned counsel for the petitioners referred Rule 4 of the said Rule, which states that the Government shall, subject to the provisions of Rule 5, refer the following cases to the Tribunal, namely:-

(a)Cases relating to Officers of the State Services in respect of matters involving corruption on the part of such Officer; and

(b)All appeals or petitions to the Government against orders passed on charges of corruption and all disciplinary cases in which the Government propose to revise original orders passed on such charges;

Provided that it shall not be necessary to consult the Tribunal.

(i)in any case in which the Tribunal has, at any previous stage, given advice in regard to the order to be passed and no fresh question has thereafter arisen for determination; or

(ii)Where the Government propose to pass orders rejecting such appeal or petition.

(2)The Government may, subject to the provisions of Rule 5, also refer to the Tribunal any other case or class of cases which they consider should be dealt with by the Tribunal and the Government, in exercising the power conferred by this sub-rule, shall have regard to the nature and gravity of the charge, the grade or rank of the officer charged and the organisational strength of the department concerned in handling cases involving interpretation of rules regulating conditions of service of Government servants.

(3)Notwithstanding anything contained in sub-rule(1) or sub-rule(2), cases arising in the Judicial Department shall not be referred to the Tribunal.

(4)The executive authority of a local authority may, with the sanction of the Government and shall, if so required by the Government, refer to the Tribunal cases of servants of the local authority when they are involved in



charges of corruption jointly with Government servants whose cases are referred to the Tribunal under this rule. The cases so referred shall be enquired into by the Tribunal in accordance with the rules relating to appointment and punishment of officers and servants of the local authority.

(5) The Tamil Nadu Public Service Commission may, without reference to the Government, directly refer to the Tribunal cases relating to the Secretary (except when he is a member of the Indian Administrative Service) or a Joint Secretary or a Deputy Secretary or an Under Secretary to that Commission or a member of the staff of that Commission in respect of matters involving corruption or corruption combined with other charges on the part of the officers aforesaid and members of the staff of the Commission and the Tribunal shall conduct the inquiry in accordance with rule 7 of Annexure-II or, as the case may be, rule 4A or Annexure-V to the Tamil Nadu Public Service Commission Regulations, 1954."

4. The learned counsel for the petitioners reiterated that the Tribunal has no jurisdiction to conduct trial in respect of the charges, as there is no allegation of misappropriation or corruption in the charges. Therefore, the enquiry if at all is to be conducted, it must be conducted by the disciplinary authority of the HR&CE Department and not by the Tribunal for disciplinary proceedings.

5. The charge reveals that certain transactions were done by the petitioners in Temple accounts. Based on the charge, the petitioners are raising a ground that it is not relatable to corruption or misappropriation of funds. This Court is of the considered opinion that such averment is misconceived, in view of the fact that the nature of transaction, details of accounts, the manner in which the money was deposited or transacted and other aspects are to be gone into with reference to the documents and evidence in original. Unless an enquiry into the allegations are conducted, the Court cannot form an opinion, merely based on the charges framed, as the charges *per se* would not constitute a cause for challenging the same. The findings are to be given, after conducting an enquiry. Therefore, findings in an enquiry cannot be compared with charge.

6. When the matter stands as this, it is relevant to consider Rule 5 of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, which reads as under:

"5(a) In every case referred to in clause (a) of sub-rule (1) and sub-rule (2) of rule 4, on completion of investigation, the Directorate of Vigilance and Anti-Corruption or any other Branch of the Police or other authority concerned, shall forward to the



Government all the records of the case;

Provided that the Directorate of Vigilance and Anti-Corruption shall forward its records to the Government through the Vigilance Commissioner, Chennai.

Explanation:-For the purpose of this clause investigation includes investigation made under the General Law or any special enactment.

(b)(i)Notwithstanding anything contained in rule 4, the Government shall after consulting the head of the department concerned, if necessary, decide whether the case shall be tried in a Court of law or by the Tribunal or by the departmental authority concerned.

(ii)In exercising the power conferred by clause(i), the Government shall have regard to-

(a)the nature and gravity of the charge;

(b)the grade or rank of the officer charged; and

(c)any other circumstances relevant to the case.

(C)If the Government decide that the case shall be tried by the Tribunal, they shall send the records to the Tribunal.

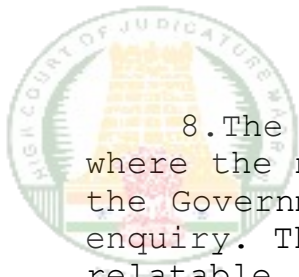
(d)In any case where the head of the department is not consulted, he shall be informed of the action that is being taken.

(e)When the Tribunal is seized of the case, the staff of the Directorate of Vigilance and Anti Corruption and of the Police and concerned departments shall help the Tribunal in securing the necessary documents, in the production of witnesses and in such other ways as the Tribunal may desire.

(f)The prosecutor for Disciplinary Proceedings or such other person as the Government may appoint in respect of any particular case shall conduct enquires on behalf of Government in disciplinary cases before the Tribunal and the accused officer concerned shall be allowed to be represented by counsel.

(g)Notwithstanding anything contained in sub-rule(f), it shall be in the discretion of the Tribunal concerned to allow the accused officer concerned to be represented by counsel."

7.Rule 4 of the said Rule contemplates that the Government shall subject to the provisions of Rule 5 of the Rule refer the cases to the Tribunal. Therefore, Rule 5 of the Rule is also to be read cogently along with Rule 4 of the Rule. Rule 5(b)(i) contemplates that notwithstanding anything contained in Rule 4, the Government shall after consulting the head of the department concerned, if necessary, decide whether the case shall be tried in a Court of law or by the Tribunal or by the departmental authority concerned.



8.The scope of Rule 9 is wider enough to consider the cases where the nature of allegations are grave and in such circumstances, the Government is empowered to refer the matter to the Tribunal for enquiry. Therefore, it is not necessary that the allegations must be relatable only to corruption and misappropriation. Rule 5(b)(i) unambiguously stipulates that notwithstanding contained in Rule 4, the Government after consulting the head of the department shall take a decision and refer the matter for adjudication before the Tribunal for disciplinary proceedings.

9.The competent authority of the Government, considering the cadre, in which the delinquent officer is working and the nature of the allegations, is referring the matters to the Tribunal for disciplinary proceedings. Such a power has been vested to the Government under Rule 5 of the Rules and therefore, the subject matters are not strictly restricted to the corruption and misappropriation cases, but with reference to the other cases, where the Government formed an opinion that the gravity and nature of charges, required a trial natured enquiry, then also such matters shall be referred to the Tribunal for disciplinary proceedings, for conduct of enquiry.

10.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. 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.

11.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 to be 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 about 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*. 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.

12.This being the scope of the rules, this Court is of the considered opinion that all the grounds raised by the petitioners are on merits and in respect of the legal grounds, they are at liberty to raise before the Tribunal for effective adjudication of the charges framed against the writ petitioners. This Court cannot conduct a roving enquiry in respect of the allegations set out in the charge sheet by the Tribunal for disciplinary proceedings.

13.In view of the facts and circumstances, the petitioners are bound to co-operate for early disposal of the disciplinary proceedings by the Tribunal and the Tribunal is also requested to conclude the proceedings as expeditiously as possible by following the procedures as contemplated.

14.With these observations, these Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

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To

1. The Commissioner of Disciplinary Proceedings,
Thirunelveli,
4/929, Rahmath Nagar,
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Thirunelveli District.

2. The Secretary to Government,
The State of Tamil Nadu,
Tourism, Culture and Religious Endowments
(RE 2-1) Department,

<https://hcservices.ecourts.gov.in/hcservices/>



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+1 CC to M/s.VR.SHANMUGANATHAN, Advocate (SR-14610[F] dated
25/03/2022)

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