



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 11.02.2022
CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WEB COPY

W.P.(MD) No.7360 of 2019
and
W.M.P.(MD) No.5870 of 2019

M.Subramanian

... Petitioner

-vs-

1.The Director of Rural Development
and Panchayat Raj,
O/o.The Director of Rural Development
and Panchayat Raj Department,
Panagal Building, Saidapet, Chennai-15.

2.The District Collector,
Madurai District, Madurai.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records relating to the impugned order passed by the 2nd respondent in his proceedings ந.க.எண்.4526/2019/ஊ.வ.5, dated 18.03.2019 and the consequential charge memo issued by the 2nd respondent vide his impugned proceedings ந.க.எண்.4526/2019/ஊ.வ.5, dated 18.03.2019 and quash the same as illegal.

For Petitioner : Mr.MOHAMED IMRAN, Advocate
for M/s.Ajmal Associates

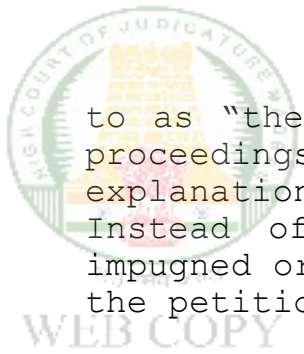
For Respondents : Mr.D.S.NEDUNCHEZHIAN,
Government Advocate

ORDER

The order dated 18.03.2019 passed by the 2nd respondent and the Charge Memo dated 18.03.2019 are under challenge in the present writ petition.

2.The writ petitioner, who was working as Junior Engineer/Union Engineer, was not allowed to retire from service and was placed under suspension on account of initiation of departmental disciplinary proceedings.

3.A Charge Memo under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 (hereinafter referred



to as "the Rules" for brevity) was issued by the 2nd respondent in proceedings dated 03.02.2019. The petitioner submitted his explanation to the show cause notice issued under Rule 17(a). Instead of passing final orders, the 2nd respondent issued the impugned order converting the 17(a) charges as 17(b) charges. Thus, the petitioner has chosen to file the present writ petition.

4.Learned counsel appearing for the petitioner mainly contended that no show cause notice was issued before passing the order of conversion and therefore, the impugned order is liable to be set aside. This apart, the charges are also not grave in nature warranting action under Rule 17(b) and on that ground also, the order impugned is to be quashed.

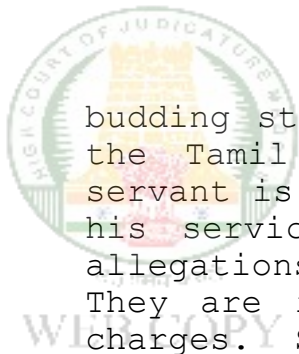
5.Learned Government Advocate appearing for the respondents objected to the said contention by stating that conversion would not affect the rights of an employee. Further, the nature of allegations are falling under Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules and therefore, the erroneous initiation of disciplinary proceedings under Rule 17(b) was corrected by the authorities by converting the charges into 17(b) and thus, the writ petition is to be rejected.

6.The question to be considered is whether conversion of charges is permissible or not. If so, whether it infringes the rights of a public servant or not. The power of judicial review is trite and is not directed against the decision, but is confined to the decision making process. The purpose of judicial review under Article 226 of the Constitution of India is to ensure that the individual receives fair treatment and not to ensure that the authority after affording fair treatment reaches on a matter which it is authorized by law to decide a conclusion, which is correct in the eyes of the Court.

7.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 right of person is infringed. The charge sheet 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 sheet by itself is not maintainable.

8.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 to frame certain charges against the employee concerned. Mere framing of the charge 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.

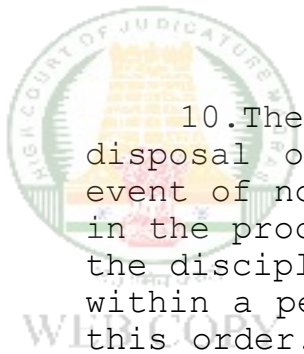
<https://hccasesearch.gov.in/hccservices/> the disciplinary proceedings are quashed at the



budding stage, the rights of the Department are 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 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 the charges would not cause any prejudice, nor provide any cause of action for the purpose of instituting a writ petition. Therefore, framing of the charge 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 High Court while entertaining a writ petition.

9. In the present case, 17(a) charges were framed. The petitioner submitted explanation. The authorities converted the 17 (a) charges into 17(b) charges. The situation has not changed. The allegations remain one and the same. The petitioner's explanation stands as explanation for 17(b) charges also. In addition, if he want to submit further explanation, he is at liberty to do so and an enquiry is required to be conducted in respect of 17(b) charges and he will be getting furthermore opportunity to defend his charges. Thus, this Court do not understand what prejudice has caused to the employee. Contrarily, if the Department is precluded, then prejudice would cause to the Department to exercise the lawful powers conferred under the Rules. Thus, in all circumstances, High Court is expected to consider the prejudice to be caused to the either parties in the event of entertaining a writ petition. Balancing and pragmatic approach is imminent for the purpose of providing complete justice to the parties. Therefore, this Court is of the considered opinion that the conversion of charges would not cause any prejudice to the employee and therefore, the petitioner is at liberty to defend his case by availing the opportunities provided under the Rules. However, it is to be made clear that on initiation of departmental disciplinary proceedings, the authorities are expected to conclude the same as expeditiously as possible. The long pendency of disciplinary proceedings may cause prejudice to the interest of the employee. Therefore, all disciplinary proceedings are to be concluded as expeditiously as possible and only in case of any impediment, the delay may be considered, but not otherwise. Therefore, if there is no impediment for the authorities, they are bound to proceed with the departmental disciplinary proceedings and

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



10.The petitioner is directed to cooperate for the early disposal of the departmental disciplinary proceedings and in the event of non-cooperation, the said non-cooperation is to be recorded in the proceedings itself. The authorities are directed to conclude the disciplinary proceedings as expeditiously as possible preferably within a period of four weeks from the date of receipt of a copy of this order. In the event of non-cooperation, the petitioner is not entitled to take advantage of the time limit fixed by this Court and on that ground, he cannot file any writ petition for the purpose of quashing the charges.

11.With the above observations and directions, this Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AD-I)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

To

1.The Director of Rural Development and Panchayat Raj,
O/o.The Director of Rural Development
and Panchayat Raj Department,
Panagal Building, Saidapet, Chennai-15.

2.The District Collector,
Madurai District, Madurai.

+1 cc to M/s.AJMAL ASSOCIATES, SR.No.5860

+CC to Special Government Pleader, SR.No.5944

W.P. (MD) No.7360 of 2019
and
W.M.P. (MD) No.5870 of 2019
Date:11.02.2022

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