



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) Nos.7536 of 2019 & 9972 of 2021

W.M.P(MD).Nos.14647 & 6018 of 2019, 7676 of 2021

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M.Vijayan Mathamadakki ... Petitioner in both petitions
Vs.

1.The Director,
Department of Medical and
Rural Health Services,
DMS Campus,Teynampet,
Chennai.

... Respondent
in W.P(MD).No.7536 of 2019
and R1 in W.P(MD).No.9972 of 2021

2.The Accountant General (A&E),
Chennai.

...R2 in W.P(MD).No.9972 of 2021

3.The Joint Director of Health Services,
Sivagangai District,
Sivagangai.

...R3 in W.P(MD).No.9972 of 2021

PRAYER in W.P(MD).No.7536 of 2019: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to the impugned charge memo issued by the respondent in his proceedings in Na.Ka.No.15234/Ce.Ka.2/1/2019 dated 22.03.2019 and quash the same as illegal, arbitrary.

PRAYER in W.P(MD).No.9972 of 2021: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents 1 and 3 to disburse provisional pension to the tune of Rs.77 950/- with effect from 01/04/2019 onwards and provisional DCRG (Death Gum Retirement Gratuity) of Rs.20 Lakhs to the petitioner based on the proceedings of the 2nd respondent in AG (A and E) / PEN / P14 / 11419232 / 4 / R1419232 dated 09/10/2020 including arrears with interest at the rate of 18% p.a. within a time frame fixed by this Honble Court.

For Petitioner : Mr.B.Saravanan
For Respondent : Mr.M.Ramesh,
in W.P(MD).No. Government Advocate
7536 of 2019
and RR1 and 3 in
W.P(MD).No.
9972 of 2021
For R2 : Mr.P.Gunasekaran

Standing Counsel for R2



O R D E R

The Writ Petition in W.P(MD).No.7536 of 2019 has been filed as against the charge memo issued by the respondent in proceedings Na.Ka.No.15234/Ce.Ka.2/1/2019 dated 22.03.2019.

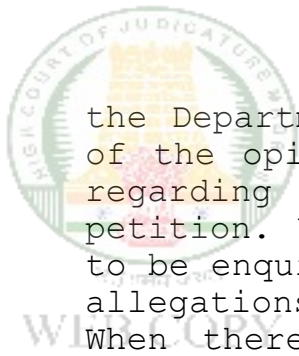
2. The Writ Petition in W.P(MD).No.9972 of 2021 has been filed to direct the respondents 1 and 3 to disburse provisional pension to the tune of Rs.77 950/- with effect from 01.04.2019 and provisional DCRG (Death Gum Retirement Gratuity) of Rs.20,00,000/-, to the petitioner, based on the proceedings of the 2nd respondent dated 09.10.2020 including the arrears with interest at the rate of 18% per annum.

3. The petitioner was holding the post of Joint Director of Health Services and on account of certain allegations of administrative irregularities, the charge memorandum was issued.

4. The learned counsel appearing for the petitioner mainly contended that the charges are flimsy, vague and incapable of being enquired into. It is further contended that at the instance of some outsider, the charge memo has been issued. More specifically, the District SC/ST Association made a complaint in support of one R.Govindasamy, who was working as Administrative Officer in the office of the Joint Director. Therefore, the charges are untenable and liable to be set aside. It is contended that in respect of charges framed against other employees, enquiry was conducted and there is a categorical finding that the instructions/Office orders from the Joint Director are not required for maintenance of files by the Administrative Officer. Therefore, the charges are incapable of being proceeded with.

5. A perusal of the charge memo reveals that the two charges were framed. Both are relating to the administrative affairs. Annexure-II to the charge memo provides the statement of allegations and imputation of misconducts. Annexure-III denotes the list of documents relied upon. Annexure-IV provides list of witnesses to be examined. Pertinently, one Mr R.Govindasamy, who is working as Administrative Officer, against whom actions were earlier initiated, is also one of the witnesses cited in the charge memo issued to the petitioner. In fact, the separate charge memo was issued as against the said Administrative Officer and he has also challenged the said charge memo in other writ petition.

6 When there are certain irregularities in the Government office, and the Joint Director and the Administrative Officer, who are all holding the responsible post at the District Level, has involved in certain administrative irregularities and the Head of



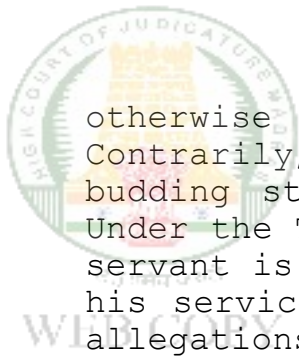
the Department framed charges against both officials, this Court is of the opinion that an enquiry is warranted to cull out the truth regarding the allegations and the defence raised in this writ petition. Whether the charges are based on some evidence or not is to be enquired into as the charge memo contemplates the statement of allegations, list of documents and list of witnesses to be examined. When there is no infirmity in respect of the charge memorandum issued, this Court is of the opinion that an enquiry is to be conducted for the purpose of arriving a conclusion. Contrarily, High Court cannot consider those allegations on merits with reference to the defence furnished in the writ petition. Such an enquiry is impermissible under Article 226 of the Constitution of India.

7. The power of judicial review under Article 226 of the Constitution of India is to ensure that the process through which a decision is taken by the Competent Authorities, is in consonance with the provisions of the Statute and Rules, but not the decision itself. Therefore, the interference in charge memo cases is to be exercised cautiously. Only if the charge memo is tainted with malafide which is established beyond any pale of doubt or the charge memorandum was issued without any jurisdiction, then the relief is to be considered. In all other circumstances, the enquiry is to be conducted for the purpose of considering the facts, circumstances as well as the evidence taken by the delinquent officials.

8. When the other officials against whom charge memo has been issued, also filed the writ petitions and the writ petitioner, who was holding the post of Joint Director, was allowed to retire from service, without prejudice to the departmental disciplinary proceedings initiated against him, the petitioner has to participate in the process of enquiry and establish his innocence or otherwise by availing the opportunities to be provided by the Competent Authorities under the Discipline and Appeal Rules.

9. 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.

10. 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

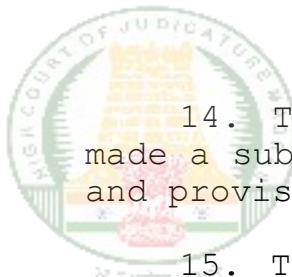


otherwise with reference to the documents and evidences available. Contrarily, if the disciplinary proceedings are quashed at the budding stage, the rights of the Departments will be prejudiced. Under the Tamil Nadu Government Servants Conduct Rules, a Government servant is bound to maintain a good conduct 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.

11. The learned counsel appearing for the petitioner contended that there is no evidence to establish the charges as the charges itself are vague.

12. All such defence statements are to be placed before the Competent Authority for consideration as the charge per se would not provide a cause of action for moving a writ petition and furthermore, the High Court cannot adjudicate the merits for the purpose of forming an opinion with reference to the allegations.

13. In the case of the writ petitioner, it is contended that an enquiry was conducted and the petitioner was issued with warning. However, it is for the Authorities to take a decision on these facts, in view of the situation where 17(b) charges are now issued with definite allegations along with statements, documents and evidences. Therefore, the full-fledged enquiry under the Rules by following the procedures are necessary for the purpose of forming a clear opinion and this Court do not find any infirmity in respect of charge memo issued against the petitioner. The petitioner is at liberty to defend his case by producing all the documents, evidences etc., and the Authorities Competent are bound to conduct enquiry by following the procedures and by affording opportunity to the petitioner and dispose of the disciplinary proceedings within a period of four months from the date of receipt of a copy of this order. However, it is made clear that the petitioner is entitled for provisional pension as he is allowed to retire from service without prejudice to the departmental disciplinary proceedings.



14. The learned counsel appearing for the Accountant General made a submission that the provisional Death Gum Retirement Gratuity and provisional pension are to be paid to the petitioner.

15. Thus, the first respondent has to take steps to sanction the provisional pension and provisional Death Gum Retirement Gratuity to the petitioner within a period of four weeks without causing any undue delay as the said benefits are the entitlements and thereafter the Accountant General may issue necessary orders for disbursement as early as possible.

16. Accordingly, the Writ Petition stands disposed of. However, there shall be no order as to costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

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Sub Assistant Registrar(CS)

ssb

To

1. The Director,
Department of Medical and Rural Health Services,
DMS Campus,
Teynampet,
Chennai.

2.The Accountant General (A&E),
Chennai.

3.The Joint Director of Health Services,
Sivagangai District,
Sivagangai.

+1 CC to M/s.B.SARAVANAN, Advocate (SR-11981[F] dated 14/03/2022)

+1 CC to M/s.SPL GP (SR-11865[F] dated 14/03/2022)

W.P.(MD) No.7536 of 2019& 9972 of 2021

11.03.2022

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