



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.7540 of 2019

W.M.P (MD).Nos.6019 & 14633 of 2019

WEB COPY

M.Vijayan Mathamadakki

... Petitioner

Vs.

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

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records pertaining to the impugned order passed by the respondent in his proceedings in Na.Ka.No.15069/Ce.Ka.2/1/2019 dated 22.03.2019 and quash the same as illegal, arbitrary and without jurisdiction.

For Petitioner : Mr.B.Saravanan
For Respondents : Mr.M.Ramesh
Government Advocate

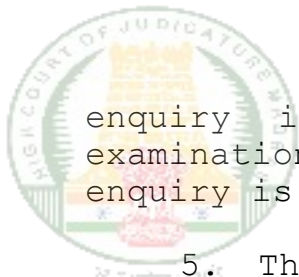
O R D E R

This Writ Petition is filed challenging the charge memo dated 22.03.2019.

2. The charges against the petitioner reveals that the petitioner has behaved in a manner which caused mental agony to one R.Myithili, who was working as Hospital Superintendent at Government Hospital, Karaikudi. Therefore, they have formed an opinion that the petitioner has committed an act of sexual harassment to the woman at work place. Annexure-II to the charge memo provides the statement of allegations and imputation of misconduct. Annexure-III provides list of documents. Annexure-IV stipulates the witnesses to be examined. Thus, there is no infirmity as such in respect of the charge memo issued.

3. The petitioner raised several grounds attacking the charge memo and mainly that the provision of the Act is improperly included in the charge memo. Therefore, the charge memo is to be quashed.

4. This Court is of the opinion that all such defences are to be enquired into by the Competent Authority for the purpose of forming a final opinion and this Court cannot conduct a roving

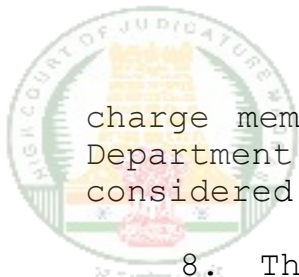


enquiry in respect of such allegations as it involves the examination of evidences including oral evidences. Therefore, an enquiry is warranted.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ssb

To

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

+1 CC to M/s.B.SARAVANAN, Advocate (SR-11982[F] dated 14/03/2022)

+1 CC to M/s.SPL GP (SR-11853[F] dated 14/03/2022)

W.P.(MD) No.7540 of 2019

11.03.2022

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