



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.16329 of 2021

and

W.M.P.(MD) No.13183 of 2021

G.Sivasankaran

... Petitioner

-vs-

1.The Deputy Inspector General of Police,
Thanjavur Range, Thanjavur District.

2.The Superintendent of Police,
Thanjavur, Thanjavur District.

3.The Commissioner of Police,
Greater Chennai Police, Chennai.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned charge memo issued by the 1st respondent in his proceedings in Thanjavur District Tha.Pa.No.27/2021 dt. 11.08.2021 and quash the same.

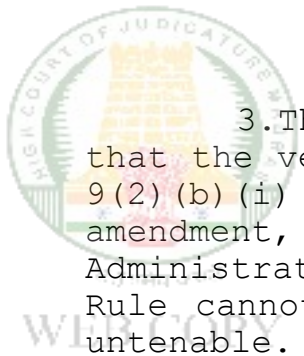
For Petitioner : Mr.K.Mahendran

For Respondents: Mr.D.Sadiq Raja,
Additional Government Pleader

O R D E R

The Charge Memo dated 11.08.2021 issued under Rule 9(2) (b) (i) of the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as "the Rules" for brevity) is under challenge in the present writ petition.

2.The petitioner was working as Special Sub-Inspector of Police and retired from service voluntarily on 01.10.2020. After the voluntary retirement of the petitioner, the impugned Charge Memo has been issued by invoking the provisions of the Rules.



3.The learned counsel for the petitioner mainly contended that the very initiation is untenable in view of the fact that Rule 9(2)(b)(i) of the Rules is no more in force and further, after amendment, issued to Rule 9 in G.O.(Ms) No.31, Personnel and Administrative Reforms (N) Department dated, 23.02.2012, the said Rule cannot be invoked at all. Therefore, the very initiation is untenable.

4.The learned counsel for the petitioner made a submission that the petitioner is a Special Sub-Inspector of Police and throughout his service, from the initial category, was working sincerely and had clean records of service. The charge itself is motivated and after allowing the petitioner to retire from service voluntarily, the Charge Memo has been issued. In respect of the phone calls to the accused person, the learned counsel for the petitioner reiterated that to conduct investigation, the petitioner was calling the accused person and without doing so, he cannot form an opinion in respect of the facts and circumstances involved in the criminal cases. It is contended that in G.O.(Ms) No.31, dated 23.02.2012 modification to Rule 9 of the Rules was issued wherein, Rule 9(2)(b)(i) of the Rules was deleted. Therefore, the impugned Charge Memo is liable to be set aside.

5.The learned Additional Government Pleader appearing for the respondents objected the said contention by stating that the allegations against the petitioner are serious in nature. The petitioner was working as a Special Sub-Inspector of Police in Special Branch Crime Investigation Department, Pattukottai Sub-Division, Thanjavur District and he has certain involvement in illegal activities and the 1st respondent found that during the period from 01.01.2020 to 18.08.2020, the petitioner contacted the accused through his mobile number for 338 times. The 1st respondent has confirmed the contacts through the CDR of the mobile number of the above police personnel. Under those circumstances, the petitioner voluntarily retired and thus, the Department initiated disciplinary action by invoking the Rules.

6.Regarding the tenability of the Charge Memo, the learned Additional Government Pleader contended that while sending the Charge Memo to Greater Chennai Police, the respondents came to know that the voluntary retirement application submitted by the writ petitioner was accepted. Thereafter, the Charge Memo framed against the writ petitioner under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 (hereinafter referred to as "the TNPSS (D&A) Rules") was cancelled and a fresh Charge Memo was issued under Rule 9(2)(b)(i) of the Pension Rules on 11.08.2021. On receipt of the Charge Memo, the petitioner instead of cooperating for the disposal of the Charge Memo, filed the present writ petition.



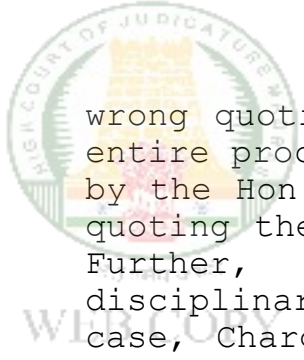
7.The learned Additional Government Pleader reiterated that the allegations are serious warranting an enquiry. The Government servant facing disciplinary action, if attains the age of superannuation, is liable to be prosecuted under the Rules. The contention of the learned counsel for the petitioner that a prior sanction of the Government is required is incorrect. As per G.O. (Ms) No.31, dated 23.02.2012, there is no need to obtain sanction of the Government to initiate disciplinary action against subordinate officials. Only in respect of the State service authorities, such sanctions are required. Thus, there is no infirmity in respect of the disciplinary action initiated against the petitioner without obtaining sanction from the Government.

8.Considering the arguments, let us now consider the nature of the allegations. Perusal of the charges reveal that there is an allegation of collusion with the accused persons. Frequent calls to the accused persons by the petitioner reveal certain facts to the higher authorities. In view of the fact that the allegations are very serious, the charges are to be enquired into with reference to the documents and evidences. The charges are unambiguous. Annexure-II to the Charge Memo provides statement of allegations and imputation of misconduct. Annexure-III denotes list of documents relied upon by the Department. Annexure-IV provides list of witnesses to be examined to establish the charges. Thus, there is no infirmity as such in respect of the Charge Memo issued to the writ petitioner.

9.The contentions raised by the petitioner that actions under the Pension Rules are untenable is incorrect. Actions were initiated against the petitioner under the TNPSS (D&A) Rules. Meanwhile, he submitted a voluntary retirement application, which was accepted and knowing the fact that the VRS application of the petitioner was accepted, the Charge Memo framed against him under Rule 3(b) of the TNPSS (D&A) Rules was cancelled and a fresh Charge Memo under the Pension Rules was issued.

10.The learned counsel for the petitioner made a submission that Rule 9(2)(b)(i) of the Rules has been deleted and therefore, actions are untenable. However, Rule 9(2)(a) stipulates that the departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

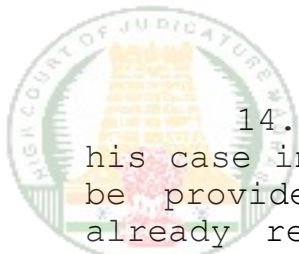
11.No doubt, the 1st respondent has misquoted the provisions of the Pension Rules and such misquoting would not be a ground to seek exoneration from the disciplinary proceedings. Misquoting or



wrong quoting of the provisions of the Rules would not vitiate the entire proceedings. The legal principles in this regard are settled by the Hon'ble Apex Court of India. Thus, the mistake committed in quoting the provisions cannot be a ground to quash the Charge Memo. Further, the rule contemplates continuation of departmental disciplinary proceedings even after retirement and in the present case, Charge Memo framed under Rule 3(b) was cancelled and it was continued under the Tamil Nadu Pension Rules after accepting the voluntary retirement application of the petitioner. Thus, there is no infirmity as such in respect of the initiation of disciplinary proceedings.

12.This Court is of the considered opinion that 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 a person is 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.

13.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. Contrarily, if the disciplinary proceedings are quashed at the budding stage, the rights of the Department are prejudiced. 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 an 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.



14. In the light of the above, the petitioner has to defend his case in the manner known to law by availing the opportunities to be provided by the competent authorities. The petitioner has already retired from service and therefore, the respondents are bound to continue the departmental disciplinary proceedings and conclude the same as expeditiously as possible by following the procedures as contemplated and by affording opportunity to the writ petitioner to defend his case in consonance with the Rules. However, the petitioner has not established any ground for the purpose of quashing the Charge Memo. Thus, the petitioner has to participate in the process of enquiry and extend cooperation for early disposal, as he has already retired from service.

15. With the above observations, this Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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To

1. The Deputy Inspector General of Police,
Thanjavur Range, Thanjavur District.

2. The Superintendent of Police,
Thanjavur, Thanjavur District.

3. The Commissioner of Police,
Greater Chennai Police, Chennai.

+1 CC to M/s.K.MAHENDRAN, Advocate (SR-11468[F] dated 11/03/2022)

+1 CC to M/s.SPL GP (SR-11522[F] dated 11/03/2022)

W.P. (MD) No.16329 of 2021

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