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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P(MD)NO.16787 of 2019

and

W.M.P(MD)Nos.13387 and 19751 of 2019

M.Baskaran

:Petitioner

.vs.

1.The Chief Engineer,
Tamil Nadu Generation and Power
Distribution Corporation Limited,
144, Anna Salai, Chennai - 600 015.

2.The Chief Engineer(Distribution),
Tamil Nadu Generation and Power Distribution
Corporation Limited,
Trichy Region,
Trichy.

3.B.Valarmathy
now holding the post of the Chief Engineer
(Distribution),
Tamil Nadu Generation and Power Distribution
Limited,
Trichy Region,
Trichy.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned charge memo issued by the second respondent in Ku.Aa.No.4503/303/Ni.Pi.Pi.1/2019-11, dated 10.07.2019 which was served on the Petitioner on 20.07.2019 and to quash the same as unconstitutional and illegal.

For Petitioner

:Mr.Niranjan S.Kumar
for Mr.C.Gangai Amaran
:Mr.S.Arivalagan

For Respondents
1 and 2

For Respondent-3

: No appearance



O R D E R

The charge memo dated 10.07.2019 issued by the Chief Engineer is under challenge in the present writ petition.

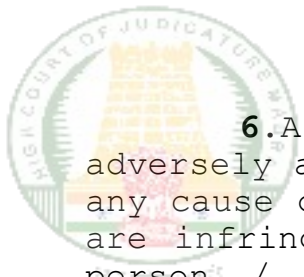
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2.The petitioner was appointed as casual labour on temporary basis and subsequently, absorbed as regular employment. On account of certain allegations, a charge memo has been issued against the writ petitioner. The charges are relating to excess fixation of pay to the contract labourers and disbursement of excess money to the labourers with knowledge. The fact that there was a typographical error in the order passed by the Executive Engineer, the petitioner has disbursed excess money to the contract labourers intentionally. The second charge reveals that the petitioner is having the habit of receiving bribe from the co-employees. Such money is received for the purpose of securing particular place on promotions. It is further contended that the petitioner, who is working as Commercial Inspector, demanded a sum of Rs.5 lakhs, as bribe for getting promotion to an employee.

3.No doubt the allegations are serious. Annexure-II to the charge memo provides statement of allegation and imputation of misconduct. Annexure-III, list of documents relied upon by the authority. Annexure-IV provides list of witnesses to be examined in the disciplinary proceedings. Thus, there is no infirmity in the charges framed against the petitioner.

4.The learned counsel for the petitioner states that the charge memo has been issued on malafide grounds. To substantiate the malafide grounds, the petitioner has stated that he has filed a writ petition before this Court in W.M.P(MD)No.9748 in W.P(MD)No.10659 of 2018 and obtained an order of stay of all further recoveries. In view of the fact that the petitioner has filed a writ petition and got an order of stay, the charge memorandum has been issued.

5.This Court is of the opinion that such unnecessary implications cannot be made without any concrete proof to establish the malafide intention on the part of the officials. To establish the malafide, there must be facts and circumstances which would establish that the authorities have initiated action in a vindictive manner or with an ulterior motive. The writ petition filed by the petitioner would not be considered as a ground to hold that the charge memo has been issued on malafied grounds. Thus, the petitioner has not substantiated the malafide grounds and the said grounds have no merit consideration. The petitioner has to defend his case by submitting his explanation/objections along with the documents if any and participate in the process of enquiry. The respondents are unable to continue the proceedings on account of the pendency of the writ petition. A perusal of the charges would reveal that the allegations are serious warranting an enquiry.



6. 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 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. In view of the fact that the petitioner has not established any acceptable grounds for the purpose of setting aside the charges, this Court directs the respondents to continue the departmental disciplinary proceedings and conclude the same as expeditiously as possible by affording an opportunity to the petitioner and by following the procedures as contemplated under the Discipline and Appeal Rule. The writ petitioner is also directed to co-operate for the early disposal of the departmental disciplinary proceedings. In the event of non-cooperation on the part of the petitioner, the same would be recorded in the proceedings itself and in such circumstances, the petitioner is not entitled to seek any relief merely on the ground of delay in disposal of the disciplinary proceedings.



9. With these directions, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CRL)

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/ /2022

Sub Assistant Registrar (CS)

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To

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2. The Chief Engineer (Distribution),
Tamil Nadu Generation and Power Distribution
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Trichy Region,
Trichy.

ORDER MADE IN
W.P (MD) NO.16787 of 2019
and
W.M.P (MD) Nos.13387 and 19751 of 2019

23.02.2022

PNK(12.03.2022) 4P 3C