



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.03.2022
CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) Nos.18253 of 2019 & 18388 of 2020

and

W.M.P. (MD) Nos.14697 of 2019 & 15366 of 2020

WEB COPY

W.P. (MD) No.18253 of 2019 :-

M.Ravichandran

... Petitioner

-vs-

1.State of Tamil Nadu,
Rep. by its Principal Secretary,
Department of School Education,
Fort St. George, Chennai-600 009.

2.The Director of School Education,
O/o. The Director of School Education,
DPI Campus, Chennai-600 006.

3.The Joint Director of School
Education (Higher Secondary),
O/o. The Joint Director of School
Education (Higher Secondary),
DPI Campus, Chennai-600 006.

4.The Chief Educational Officer,
O/o. The Chief Educational Officer,
Thanjavur, Thanjavur District.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records pertaining to the Impugned Order in Na.Ka.No.022153/W1-E3/2019 dated 31.07.2019 on the file of the Respondent No.2 and quash the same as illegal.

For Petitioner	:	Mr.T.Aswin Rajasimman for Mr.T.Lajapathi Roy
For Respondents	:	Mr.G.V.Vairam Santhosh, Additional Government Pleader

W.P. (MD) No.18388 of 2020 :-

M.Ravichandran

... Petitioner

-vs-

1.State of Tamil Nadu,
Rep. by its Principal Secretary,
Department of School Education,



Fort St. George, Chennai-600 009.

2.The Director of School Education,
O/o. The Director of School Education,
DPI Campus, Chennai-600 006.

3.Mr.P.Ponnaiah,
Enquiry Officer/The Joint Director of School
Education (Personnel),
O/o. The Joint Director of School
Education (Personnel),
DPI Campus, Chennai-600 006.

4.The Chief Educational Officer,
O/o. The Chief Educational Officer,
Thanjavur, Thanjavur District.

... 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 pertaining to the Impugned Order in Na.Ka.No.22153/W1/E3/2019 dated 23.11.2020 on the file of the Respondent No.2 and quash the same as illegal and consequently for a direction forbearing the Respondent No.2 and 3 from conducting enquiry based on vague charges in violation of the dictum of the Honourable Supreme Court in Anand Kulkarni Vs. Y.P. Education Society reported in (2013) 6 SCC 515.

For Petitioner :	Mr.T.Aswin Rajasimman
For RR1, 2 & 4 :	Mr.G.VVairam Santhosh, Additional Government Peader
For R3 :	No appearance

COMMON ORDER

W.P.(MD) No.18253 of 2019 is filed challenging the charge memo, dated 31.07.2019 issued by the 2nd respondent/Director of School Education, DPI Campus, Chennai.

2.W.P.(MD) No.18388 of 2020 is filed challenging the order, dated 23.11.2020 issued by the 2nd respondent/Director of School Education, DPI Campus, Chennai, in and by which, the Director of School Education, appointed one Mr.P.Ponnaiah, Joint Director of School Education (Personnel), DPI Campus, Chennai, as the Enquiry Officer.

3.The writ petitioner is serving as Head Master of Government Higher Secondary School, Maniyeripatti, Thanjavur. He is the President of a registered Association by name Tamil Nadu Higher Secondary School Head Master Association affiliated to School Teachers Federation of India.



4.The charge against the writ petitioner is that he has sent SMS criticising the Government welfare schemes through mobile messages and Whatsapp to many persons throughout the State to the higher Officials and Teachers and the said act of criticising the Government welfare schemes through mobile messages and whatsapp to the officials and Teachers across the State is a misconduct under the Tamil Nadu Government Servants Conduct Rules, 1973 (hereinafter referred to as "the Rules" for brevity).

5.The learned counsel for the petitioner mainly contended that the charges against the petitioner are vague in nature. What all are the messages communicated by the writ petitioner and how such messages have offended the Government, are to be stated in the charge memo.

6.The learned Additional Government Pleader appearing on behalf of the respondents mainly contended that the petitioner has involved in criticising the Government and its policies and welfare schemes, which is of serious in nature. The petitioner, being a Head Master of the Higher Secondary School, should be a role model to others. Although he is a responsible Government servant, the petitioner has criticised the Government and its welfare schemes. It is evident from the SMS sent by the petitioner, in the guise of Association, that he involved in the activities of criticising the Government as well as the policies and welfare schemes of the Government. The petitioner has further admitted in para 14 of the affidavit as if he expressed his views as a President of the Association. However the respondents have stated that the petitioner has severely criticised the welfare schemes of the Government and has sent SMS to the officials and Teachers and created a panicky situation. Therefore, in his capacity as a President of Head Masters Association, he has exceeded his limit.

7.It is contended that with reference to the grounds raised by the petitioner that fair criticism is permissible under Rule 12 (1) of the Rules, the respondents have stated that the petitioner is a responsible official and he has to protect the welfare programmes of the Government. When the statement is made in a different manner with a motive, then it is to be construed as misconduct. The SMS sent by the writ petitioner had created an unwanted situation resulting spread of wilful statement of opinion against the welfare schemes of the Government. The facts regarding the charges are given to the petitioner and the evidences and documents in this regard will be furnished by the Presenting Officer at the time of enquiry.

8.This Court is of the considered opinion that the Courts have held that the charges must be specific. Any charge framed against a Government servant must be specific capable of being defended. In the present case, the charge framed against the

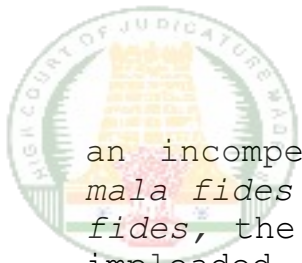


petitioner is that he has sent SMS throughout the State through mobile phones to the officials and teachers. This charge cannot be said to be vague, as the evidences are to be produced before the Enquiry Officer at the time of conduct of enquiry. The Presenting Officer of the Department has to produce all the documents and evidences before the Enquiry officer for the purpose of conducting enquiry and to provide an opportunity to the writ petitioner to defend his case. This apart, the petitioner is also aware of the SMS sent through the mobile phones. The petitioner is defining the messages. The petitioner is aware of the allegations in view of the fact that he is relying on Rule 12 of the Rules and states that the messages sent by him are not offending the Government and it is a fair criticism and therefore, the charge is untenable.

9. Such a statement on merits is to be adjudicated. Whether the messages sent are with fairness or not bona fide or otherwise are to be adjudicated by the competent authority with reference to the documents and evidences. This Court cannot form an opinion at this stage, as the writ petition in W.P.(MD) No.18253 of 2019 is filed challenging the very charges.

10. 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 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.

11. 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 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.

12. Therefore, this Court is of the considered opinion that charges cannot be construed as vague so as to quash the charges itself. Charge specifically states that the petitioner sent SMS through mobile phones to all the officials and Teachers across the State of Tamil Nadu which created panicky situation and further, he criticised the Government welfare schemes and thereby, attempted to defame the Government policies and schemes. Under these circumstances, the petitioner has to establish his innocence or otherwise before the competent authority by producing documents and evidences. Contrarily, High Court cannot adjudicate the disputed issues in a writ proceedings.

13. The power of judicial review under Article 226 of the Constitution of India is to ensure the processes through which a decision is taken in consonance with the statutes and rules, but not the decision itself. Therefore, the scope of judicial review cannot be expanded for the purpose of conducting an elaborate enquiry in respect of such disputed issues more specifically, with reference to the charges in disciplinary proceedings. Thus, the petitioner is at liberty to defend the charges in the manner known to law by availing the opportunities to be provided to him.

14. It is needless to state that the petitioner is entitled to defend his case by availing the opportunities. The Presenting Officer of the Department has to produce all the documents for the purpose of establishing the charges and the petitioner must be provided with an opportunity to peruse the records and documents for the purpose of defending his case. Thus, all such opportunities are to be provided to the writ petitioner at the time of conduct of enquiry, as the Enquiry Officer has already been appointed and challenging the said appointment of the Enquiry Officer, the petitioner has filed W.P.(MD) No.18388 of 2020. The Disciplinary Authority, on initiation of disciplinary proceedings, must ensure that all such proceedings are concluded as expeditiously as possible. Long pendency or prolongation of the departmental disciplinary proceedings would cause prejudice to the employees also. Thus, the respondents are directed to complete the enquiry proceedings as expeditiously as possible. The petitioner is directed to cooperate for the early disposal of the enquiry proceedings. He cannot seek any adjournment on flimsy grounds. In



may be recorded in the proceedings itself and in such circumstances, the petitioner is not entitled to seek any relief on the ground of delay in disposal of the disciplinary proceedings.

15. With the above observations, both the writ petitions stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai-600 009.
2. The Director of School Education,
O/o. The Director of School Education,
DPI Campus, Chennai-600 006.
3. The Joint Director of School
Education (Higher Secondary),
O/o. The Joint Director of School
Education (Higher Secondary),
DPI Campus, Chennai-600 006.
4. The Chief Educational Officer,
O/o. The Chief Educational Officer,
Thanjavur, Thanjavur District.

+2 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-13721[F],13722 dated 23/03/2022)

+1CC M/s.SPL GP, Advocate, SR.No. 13518 dated 22/03/2022

W.P. (MD) Nos.18253 of 2019 &
18388 of 2020
21.03.2022

KG(CO)

KB(01.04.2022) 6P 8C