



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.18825 of 2021

W.M.P(MD).Nos.15643 & 18769 of 2021

K.S.Harikrishnan ... Petitioner

Vs.

- 1 The Deputy Inspector General of Police,
Tirunelveli Range, Tirunelveli.
- 2 The Additional Superintendent of Police,
Head Quarters,
Thoothukudi District,
Thoothukudi.
- 3 The Deputy Superintendent of Police,
Crime Branch Crime Investigation Department (CBCID),
Tirunelveli Range,
Tirunelveli.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the file of the 1st Respondent in connection with the impugned Charge Memo issued by him in P.R.No.129/2021 dated 06.07.2021 and the impugned notice for enquiry issued by the 2nd respondent vide his proceedings in Na.ka.No.2/2021 dated 20.09.2021 and quash the both as illegal and arbitrary in the light of the Deletion Report filed by the 3rd respondent along with the Final Report before the learned Judicial Magistrate No.I Kovilpatti in No.FR-2/2021 dated 15.03.2021 for the facts and circumstances of the case.

For Petitioner : Mr.G.Thalaimutharasu
For Respondents : Mr.A.K.Manikkam
Additional Government Pleader

O R D E R

The charge memo dated 06.07.2021 issued under Rule 3(B) of the Tamil Nadu Police Sub-ordinate Service (Discipline and Appeal) Rules and subsequent notice issued by the Enquiry Officer to conduct an enquiry are under challenge in the present writ petition.



2. The petitioner is working as Inspector of Police. With reference to certain allegations, the impugned charge memo has been issued.

3. The learned counsel appearing for the petitioner mainly attacked the charges on two grounds.

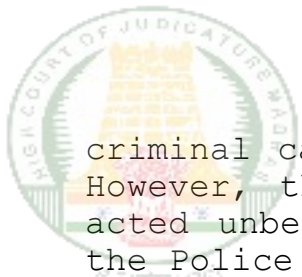
4. Firstly, the charge No.1 states that one Selvan, who is the son of Thanislas, had given a complaint on 31.07.2019. However, the petitioner has not initiated any action on the complaint and the said conduct of the petitioner as Inspector of Police is a misconduct under the Conduct Rules. In this regard, the learned counsel appearing for the petitioner reiterated that the petitioner joined as the Inspector of Police in the said Police Station on 05.08.2009, after the date of the complaint and therefore, there is no application of mind on the part of the Authorities.

5. The ground of attack with reference to the second charge is that the petitioner was arrayed as Accused No.1 in Crime No.279 of 2020 under Sections 364, 302 IPC. However, the Crime Branch-Criminal Investigation Department conducted elaborate investigation and at the time of filing the final report, the name of the petitioner was deleted. Thus, the charge itself is untenable.

6. The learned Special Government Pleader objected the said contention by stating that the final report cannot be a ground to quash the charge memo as the charge memo was issued under the Discipline and Appeals Rules and the misconducts as alleged in the charge memorandum are to be enquired into by the Competent Authorities.

7. Considering the arguments, it is relevant to look into the nature of the allegations in the charge memorandum. Though the petitioner referred the complaint dated 31.07.2019 given by one Selvan, the said charge memo further proceeds by stating that the father of the said Selvan has given a complaint on 03.09.2019 and the said complaint has not been enquired into by the writ petitioner. Therefore, the father of the original complainant namely Thanislas, has also given a complaint reiterating the said allegations on 03.09.2019. The said complaint was not enquired into by the petitioner in his capacity as Inspector of Police. Therefore, the charge reveals that the petitioner has committed a misconduct of dereliction in duty and not conducted enquiry, which is in violation of Rule 24(1) of the Tamil Nadu Sub-ordinate Police Officers' Conduct Rules.

8. As far as the second charge is concerned, no doubt, a criminal case has been cited. A perusal of the Final report in the



criminal case reveals that the name of the petitioner was deleted. However, the charges framed against the petitioner is that he has acted unbecoming of a police officer and caused dis-reputation to the Police Department, in view of the fact that his name was arrayed as accused No.1 in Crime No.279 of 2020 registered under Sections 364 and 302 IPC. Therefore, the said charge is connected with the misconduct under the Conduct Rules and no way connected with the criminal case or otherwise.

9. The Conduct Rules reveal that a public servant both inside the premises of the office and outside has to maintain a good conduct. Acting unbecoming of a public servant is a misconduct. Several instances are enumerated in the Conduct Rules to ensure that the public servants always maintain a good conduct in their life and in the event of any indiscipline or otherwise, they are liable for disciplinary proceedings. Therefore, the nature of the criminal case and the deletion of the name of the petitioner in the final report would not be a bar for the Disciplinary Authority to proceed with the departmental disciplinary proceedings. The standard of evidence required to prosecute in the criminal law and punish an employee under the Discipline and Appeal Rules are distinct. Even the preponderance of probability is sufficient. The petitioner is working in the responsible post as Inspector of Police. On what circumstances a criminal case was registered against him and how the registration of the criminal case caused dis-reputation to the Department are the disciplinary matters which are all not connected with the criminal case. The Courts have repeatedly held that even an acquittal in a criminal case is not a bar for the Department to continue the departmental disciplinary proceedings. When an order of acquittal itself is not a ground for seeking exoneration, the Disciplinary Authority has no bar for continuance of the departmental disciplinary proceedings.

10. This being the principles to be followed, the petitioner has to defend his case by availing the opportunities to be provided by the competent Authorities.

11. 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.

12. 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.

13. In view of the fact that the Enquiry Officer has already been appointed who in turn commenced the enquiry and on account of pendency of the writ petition, the Disciplinary Authority is unable to proceed, this Court is inclined to direct the respondents to continue the departmental disciplinary proceedings and conclude the same as expeditiously as possible by following the procedures contemplated and by affording opportunity to the petitioner. The petitioner is at liberty to raise all his defence statements/documents before the Authorities in the manner known to law.

14. With these observations, the Writ Petition stands dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

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/ /2022

Sub Assistant Registrar(CS)

ssb

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To

1. The Deputy Inspector General of Police,
Tirunelveli Range, Tirunelveli.
2. The Additional Superintendent of Police,
Head Quarters,
Thoothukudi District,
Thoothukudi.
3. The Deputy Superintendent of Police,
Crime Branch Crime Investigation Department (CBCID),
Tirunelveli Range,
Tirunelveli.

+1 CC to M/s.G.THALAIMUTHARASU, Advocate (SR-10832[F] dated
09/03/2022)

W.P.(MD) No.18825 of 2021

08.03.2022

MGJ(24.03.2022) 5P 5C