



W.P.(MD).No.18962 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 18.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD).No.18962 of 2015
and
M.P.(MD).Nos.1 and 2 of 2015**

A.Viruthagriswaran

... Petitioner

Vs.

- 1.The Principal Secretary/Commissioner
of Indian Medicine and Homeopathy Department,
Commissionerate of Indian Medicine and Homeopathy
Department,
Chennai – 106.
- 2.The Director,
Directorate of Medicine and Rural Health Services,
Chennai – 6.
- 3.The Principal,
Government Homeopathy Medical College and Hospital,
Thirumangalam,
Madurai District.
- 4.The Enquiry Officer,
Principal-in-charge,
Government Homeopathy Medical College and Hospital,
Thirumangalam,
Madurai District.

... Respondents



W.P.(MD).No.18962 of 2015

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the impugned order of the fourth respondent dated 28.04.2015 communicated through the consequential order of the first respondent in Ref.No. 14152/E2/1/2011 dated 21.09.2015 and quash the same as illegal.

For Petitioner : Mr.M.Kannan.

For Respondents : Mrs.D.Farjana Ghoushia,
Special Government Pleader.

ORDER

This Writ Petition is filed to quash the impugned order of the fourth respondent dated 28.04.2015 communicated through the consequential order of the first respondent dated 21.09.2015

2. The petitioner is serving as Assistant in the College of the third respondent. The first respondent issued a memo dated 08.11.2010 alleging certain irregularities committed by the petitioner. The respondents have passed suspension order on 02.05.2011. The petitioner has challenged the same before this Court in W.P.(MD).No.12066 of 2011 and this Court directed the respondents to consider and pass orders. The respondents revoked the



W.P.(MD).No.18962 of 2015

suspension on 30.01.2012 and issued a charge memo dated 10.01.2012. The charge memo was issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal), Rules. The contention of the petitioner is that before issuing charge memo, no show cause notice was issued to the petitioner. In the meanwhile, the petitioner's name was included in the panel of promotion to the post of Office Superintendent for the year 2011-2012. The petitioner challenged the charge memo dated 10.01.2012 in W.P.(MD).No.1460 of 2012 and the same is pending. In the meanwhile, the petitioner submitted a representation dated 08.02.2012 requesting the respondents to furnish the documents mentioned in the Annexure III of the charge memo. The contention of the petitioner is that the charges are vague and the respondents ought not to have invoked Rule 17(b) and utmost it must would come under Rule 17(a). If the charges are framed under Rule 17(a), the petitioner would be eligible for promotion. The respondents issued this charge memo in order to curtail the promotional opportunities of the petitioner. The learned counsel appearing for the petitioner relied on the judgments rendered by this Court in ***W.P.No.29030 of 2015*** in the case of ***N.Saravanan Vs. The Government of Tamil Nadu vide order dated 30.09.2015*** has held as under:



WEB COPY



W.P.(MD).No.18962 of 2015

16. *It is very pertinent to point out at this juncture that the allegation merely pertains to loss of revenue to the State and no ill-will or motive or corrupt practice has been levelled against the petitioner except the general charge, namely Charge No.8 which speaks about Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973. In the considered opinion of the Court, the charges framed against the petitioner are vague and admittedly, Annexure-II to the charge memo would also indicate that even prior to the tenure of the petitioner also, such alleged lapses took place, for which, the concerned officials have not been proceeded with and the said fact was also brought to the knowledge of the Disciplinary Authority by the petitioner in his interim reply, for which also, no response is forthcoming. Thus, on account of vague and indefinite charges framed against the petitioner, he is put to grave prejudice and hardship in defending the charges framed against him.*

17. *It is also the submission of the learned Senior Counsel appearing for the petitioner that in the absence of any specific or definite allegation that discharge of official duty was with dishonest motive or exercise of official position for personal gain, charges under Rule 17(b) of the TNCS (D&A) Rules cannot be framed. The guidelines framed in this regard is referred to in the Division Bench Judgment of Madurai Bench of this Court in W.P.(MD).No.6809 of 2004 and it is relevant to extract the same:*

“ 32....The instructions were quoted as follows:

"Without prejudice to the generality of situations involving indiscipline, moral turpitude, corruption, etc., Charges under Rule 17(b) has to be framed in the following types of cases for imposing any one of the major penalties"-

1.Cases in which there is reasonable ground to believe that a particular offence has been committed by a Government



Servant but the evidence forthcoming is not sufficient for prosecution in a Court of Law, e.g.,

[a] Possession of assets disproportionate to the known source of income;

[b] Obtaining or attempting to obtain illegal gratification;

[c] Misappropriation of Government property, money or shares;

[d] Obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration, which is not adequate, etc.

2. Falsification of Government Records.

3. Irregularity or negligence in the discharge of official duties with a dishonest motive.

4. Misuse of official position for personal gain.

5. Disclosure of secret or confidential information even though it does not fall strictly within the scope of the official secrets act.

6. Misappropriation of Government Funds, false claims of travelling allowance reimbursement of false medical bills etc.,"

As already pointed out, on account of vagueness of charges and in the absence of any specific allegation that negligence on the part of the petitioner in discharging his official duty was actuated with dishonest motive or he exercised his official position with personal gain, charges under Rule 17(b) of the TNCS (D&A) Rules, cannot be framed.



W.P.(MD).No.18962 of 2015

Since there are no serious allegations against the petitioner, the contention of the petitioner is that the respondents ought to have considered to issue show cause notice under Rule 17(a). At that time of admission, this Court has granted an interim stay thereby staying the operation of the impugned proceedings.

3. The respondents have filed a counter along with the Vacate Stay Petition. The respondents have stated in the counter that the petitioner did not attend the enquiry at all in spite of so many requests. Therefore, the enquiry proceedings were conducted and in the enquiry the charges are held to be proved. At this circumstance, the petitioner ought not to have filed this Writ Petition and the Writ Petition itself is not maintainable. The judicial review in domestic enquiry proceeding is very limited. Therefore, the petitioner ought to face the enquiry report and prayed to dismiss this Writ Petition. The respondents further submitted that imposing of punishment has not reached it is only enquiry report and the petitioner is having alternative remedy for preferring appeal before the higher authorities.



W.P.(MD).No.18962 of 2015

4. Heard Mr.M.Kannan, learned counsel for the petitioner and Mrs.D.Farjana Ghoushia, learned Special Government Pleader for the respondents and perused the records.

5. On perusing the charges framed against the petitioner, it is found that the petitioner has not reconciled the treasury figures with the expenditure incurred at the institution and he has simply copied the treasury figures. The petitioner has not submitted monthly plan expenditure and has not remitted the LIC premium which was deducted from the employees salary and he had not handed over the complete charges to his successor. The petitioner has submitted his explanation stating that the LIC is only an account reconcile statement. As far as the charge of handing over of the charge is concerned, the petitioner submitted within one week he had handed over charges after reconcile all statement. On bare perusal of the charge itself, this Court is of the considered opinion that there is no serious allegation as stated in the judgment cited supra. As rightly pointed out by the learned counsel for the petitioner that this would come under Rule 17(a) and not under 17(b). Therefore, this Court is of the considered opinion that the respondents ought to continue the proceeding under Rule 17(a) and the enquiry shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.



W.P.(MD).No.18962 of 2015

WEB COPY

6. As far as promotion is concerned, since it is enquiry under 17(a), the same will not affect the promotional aspect of the petitioner. Therefore, the respondents are directed to consider the petitioner's promotion and if any vacancy available, the petitioner shall be granted promotion and the said exercise shall be completed within a period of four (4) weeks from the date of receipt of a copy of this order.

7. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions stand closed.

18.11.2022

Index : Yes / No
Internet : Yes/ No
Nsr



W.P.(MD).No.18962 of 2015

To
WEB COPY

1. The Principal Secretary/Commissioner
of Indian Medicine and Homeopathy Department,
Commissionerate of Indian Medicine and Homeopathy
Department,
Chennai – 106.
2. The Director,
Directorate of Medicine and Rural Health Services,
Chennai – 6.
3. The Principal,
Government Homeopathy Medical College and Hospital,
Thirumangalam,
Madurai District.
4. The Enquiry Officer,
Principal-in-charge,
Government Homeopathy Medical College and Hospital,
Thirumangalam,
Madurai District.



WEB COPY



W.P.(MD).No.18962 of 2015

S.SRIMATHY, J.

Nsr

W.P.(MD).No.18962 of 2015

18.11.2022