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W.P. No. 12056 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 12056 of 2023

and

W.M.P. No. 11898 of 2023

N.Dayanandam

... Petitioner

-VS-

1. The Accountant General (A&E),
No.361, Anna Salai,
Teynampet,
Chennai 600 018.

2. The Pension Pay Officer,
Nandanam,
Chennai 600 035.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for records relating to the proceedings of the Second Respondent in Na.Ka. No. 265487/2023/E5 dated 23/02/2023 and quash the same and to consequently forbear the First and Second Respondents from withholding or effecting any recovery from the Petitioner's pension for future months.



W.P. No. 12056 of 2023

For Petitioner : Mr. Swarnam J.Rajagopalan
For Respondents : Mrs. Hema Muralikrishnan (R1)
Mrs. R.Anitha
Special Government Pleader (R2)

ORDER

Heard Mr. Swarnam J.Rajagopalan, Learned Counsel for the Petitioner and Mrs. Hema Muralikrishnan, Learned Counsel who takes notice for the First Respondent and Mrs. R.Anitha, Learned Special Government Pleader who takes notice for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the proceedings in Na.Ka.No. 265487/2023/E5 dated 23.02.2023 issued by the Second Respondent, which is evidently a show-cause notice for which the Petitioner has been required to submit his explanation for the proposed recovery of certain excess payment in the pension amount said to have been made to him.

3. The consistent legal position has been reiterated by the Hon'ble Supreme Court of India in *Union of India -vs- Kunisetty Satyanarayana* [(2006) 12 SCC 28] that a charge memo or show cause notice cannot be challenged before



the completion of enquiry and the proceedings cannot be interdicted till it reaches its logical conclusion. It would be useful here to extract the relevant passages from the said decision which read as follows:-

*“13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide **Executive Engineer, Bihar State Housing Board -vs- Ramdesh Kumar Singh** [JT 1995 (8) SC 331], **Special Director -vs- Mohd. Ghulam Ghouse** (AIR 2004 SC 1467), **Ulagappa -vs- Divisional Commissioner, Mysore** [2001(10) SCC 639], **State of U.P. -vs- Brahm Datt Sharma** (AIR 1987 SC 943) etc.*

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the



W.P. No. 12056 of 2023

WEB COPY

proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”

Having due regard to the aforesaid legal position, as there is nothing which precludes the Petitioner from raising the contentions in this Writ Petition in the reply to be submitted to the Second Respondent, who is bound to deal with the



W.P. No. 12056 of 2023

same before coming to any ultimate conclusion, there is no necessity for the Court to interfere at this pre-mature stage of the matter.

4. In such circumstances, the Court is inclined to pass the following order:-
- (i) it shall be incumbent upon the Petitioner to submit his explanation to the show-cause notice, which is impugned in the Writ Petition, if not done already, to the concerned authority by 31.05.2023;
 - (ii) in the event of not being satisfied with the explanation submitted by the Petitioner, an enquiry shall be conducted following the prescribed procedure after affording full opportunity of personal hearing to the Petitioner to explain his position in that regard and a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated under written acknowledgment;
 - (iii) if any adverse decision is taken, the Petitioner may pursue legal remedies in accordance with law; and
 - (iv) though obvious, it is made clear that no view has been expressed by the Court on the merits of the controversy involved in the matter.



W.P. No. 12056 of 2023

WEB COPY

In fine, the Writ Petition is disposed on the aforesaid terms.

Consequently, the connected Miscellaneous Petition is closed. No costs.

20.04.2023

Maya

Index: Yes/No

Neutral Citation : Yes/No

Note: Issue order copy by 28.06.2023.

To

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WEB COPY



W.P. No. 12056 of 2023

P.D. AUDIKESAVALU, J.

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W.P. No. 12056 of 2023

20.04.2023