IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.13926 of 2023
and W.M.P.No.13586 of 2023

Mr.L.K.Tirupathy,
S/o.V.A.Krishnasamy Naidu ...Petitioner

Vs

1. The Principal Secretary to the Government of Tamil Nadu, Handlooms, Handicrafts, Textiles and Khadi (F1) Department, Secretariat, Chennai – 600 009.

2. The Chief Executive Officer, Tamil Nadu Khadi and Village Industries Board, Kuralagam, Chennai – 600 104. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records in respect of the order/charge memo No.3422/2022/E3(2) dated 06.04.2023 issued by the 2nd respondent, the Chief Executive Officer, Tamil Nadu, Khadi and Village Industries Board, Kuralagam Building, Chennai – 600 104 and quash the same and direct the respondents to allow the petitioner to retire on 30.04.2023.

For Petitioner : Mr.R.Ramachandran

For Respondents : Mr.S. Prabhakaran,
Government Advocate [R1]

Mr.S.K.Bose [R2]

ORDER

This writ petition has been filed to quash the impugned charge memo No.3422/2022/E3(2) dated 06.04.2023 issued by the second respondent and for a consequential direction to the respondents to allow the petitioner to retire on 30.04.2023.

2. The petitioner herein while serving as a Deputy Director before the second respondent Board was levelled with certain charges through a charge memo dated 01.11.2022. The petitioner had tendered his explanation to the charge memo on 23.02.2023. After the explanation was tendered, the second respondent herein had cancelled the charge memo dated 01.11.2022 on 06.04.2023 and on the same day, the second charge memo dated 06.04.2023 was issued by the second respondent. A comparison of both the charge memos dated 01.11.2022 and 06.04.2023

would reveal that, the delinquency alleged in both these charge memos are one and the same.

3. This Court had an occasion to deal with the similar set of facts in the case of ***Balagovinda Rao Vs. The Chief Chennai, Chennai Port Trust and Anr.*** in ***W.P.No.18133 of 2016*** dated ***03.01.2023,*** wherein the first charge memo was withdrawn and the second charge memo was issued and by placing reliance on various decisions of this Court as well as the Hon'ble Supreme Court, had held that the said action of issuance of second charge memo without proceeding with the first charge memo was illegal. The relevant portion of the order reads as follows:

> *"10. Likewise, it is further seen that the respondents had earlier framed charges through a notice dated 02.07.1996, in the following manner:-*
>
> > *"That at the time of his initial appointment as mazdoor in the Trust he had produced bogus Schedule Tribe community certificate and gained employment in the Trust".*
>
> *11. However, without proceeding any further on this Charge Memo, which is termed as a communication, the*

respondents have proceeded to frame the following fresh charge through their Charge Memo dated 05.10.2011:-

> *"That at the time of his initial appointment as Mazdoor (PW) in the Trust he had produced Bogus Schedule Tribe Community Certificate and gained employment in the Trust".*

12. A reading of the original Charge Memo dated 02.07.1996 and the subsequent Charge Memo dated 05.10.2011 would reveal that both the charges are identically verbatim. It is not the case of the respondents that earlier the Charge Memo dated 02.07.1996 was dropped. The respondents have also not assigned any valid reason in their second Charge Memo as to why they had discarded the earlier Charge Memo and proceeded to issue the second one. Thus, the issuance of a Second Charge Memo either without dropping the first Charge Memo or assigning any valid and acceptable reason in the second Charge Memo for ignoring the first Charge Memo cannot be sustained, in view of the following decisions. 13. The Hon'ble Division Bench of this Court in the case of ***'A. Obaidhullah Vs. The State of Tamil Nadu, Home Department'*** *reported in* ***'2002 (5) CTC 380',*** *had held this possession in the following manner:-*

10........ "We have already mentioned that the second charge memo dated 5-12-90 does not contain any reason for cancellation of first charge memo dated 29-8-78. It is not the case of the department that new materials have been gathered and based on the same, the second charge memo dated 5-12-90 came to be issued. On the other hand, the very same charge based on the report of the Commission was reiterated in the fresh charge memo dated 5-12-90. The tribunal has overlooked the issuance of the second charge memo superseding the earlier charge memo without adequate reason which is fatal to the disciplinary proceedings. In the light of the principles laid down in the Supreme Court decision, in the absence of any explanation for not pursuing the first charge memo and issuance of fresh charge memo after a period of 12 years cannot be sustained......"

*In the aforesaid decision, the Hon'ble Division Bench had placed reliance on a Constitutional Bench judgment of the Hon'ble Supreme Court in **'K.R. Deb Vs. Collector of Excise, Shillong'** reported in **'1971 (2) SCC 102'**, wherein, the main contention before the Hon'ble Supreme Court was* *that a third inquiry, while two earlier reports were in existence, cannot be sustained. Accepting the contention, the Hon'ble Supreme Court had held that, when the Disciplinary Authority had enough powers to reconsider the evidence itself, a third inquiry was unwarranted.*

14. In ***'Parameswaran Vs. State of Tamil Nadu, Rural Development Department'*** *reported in* ***'2006 (1) CTC 476',*** *when two Charge Memos were already issued on the employee and he had also submitted his explanation, a third Charge Memo was issued which was quashed by an Hon'ble Division Bench of this Court, by holding as follows:- ......*

> *"10. In the case before us, the alleged failure to utilise the advance amount and failure to complete the work entrusted to him by utilising the funds had taken place prior to 1985. It is not a case of misappropriation or retention of Government money. On the other hand, the allegation relates to negligence in monitoring the projects and nonutilising the funds within the time prescribed. Taking note of the same and in the light of unexplained reason for not pursuing the first and second charge memos, when admittedly, the petitioner*

submitted his explanations denying all the allegations and considering the length of time involved, viz., 20 years, we are of the view that the judgment of the Supreme Court referred to above (2005 (4) CTC 403), is directly on the point. Further, the petitioner has already suffered enough mental agony on account of the protracted disciplinary proceedings. These material aspects have not been considered by the Tribunal, which has committed an error in dismissing the original application filed by the petitioner."

15. The aforesaid extracts are self-explanatory. As such, issuance of a second Charge Memo in the present case, without dropping the first Charge Memo or adducing any valid and acceptable reason for issuance of second Charge Memo, is opposed to the ratio laid down in the aforesaid decision and hence, illegal."

4. There is yet another aspect of the matter while framing the second charge memo. The respondents though had placed reliance on six documents, have not shown any witnesses to be examined in the enquiry. Such non furnishing of list of witnesses would disable the delinquent

Officer to tender an effective explanation. This apart, if documents are are produced during the course of enuqiry, the same requires to be proved through evidence. This aspect has been upheld by the Hon'ble Supreme Court in the case of '***Roop Singh Negi Vs. Punjab National Bank & others'*** reported in ***'(2009) 2 SCC 570' ,*** wherein the following has been stated:

> *.... "14. Indisputably, a departmental proceeding is a quasijudicial proceeding. The enquiry officer performs a quasijudicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence....."*

5. In this regard, the Government has issued a Government Order

in G.O.Ms.No.111, Human Resources Management (N) Department, dated 11.10.2021, wherein the Government had held that suspension order on the date of retirement should be avoided and it was further held that disciplinary authority should pass final orders within three months before the date of retirement of a delinquent officer, if not done within the three months severe action would be taken against the official concerned.

6. In the instant case, though the respondents had proceeded to take action against the petitioner on 01.11.2022, the subsequent cancellation and issuance of fresh charge memo was on 06.04.2023 when the petitioner's was due to retire on 30.04.2023.

7. Hence, in view of the Government Order in G.O.Ms.No.111, the deliquency though had occurred prior to 01.11.2022, the charges can be framed through the second charge memo, which is within three months prior to the petitioner's retirement.

8. Since the petitioner was not permitted to retire on the date of his superannuation, he would be entitled to retirement and pensionary benefits.

9. Accordingly, the respondents herein shall pass appropriate orders for retiring the person with effect from 30.04.2023 and disburse the retirement benefits including the pensionary benefits. Such order shall be passed by the respondent atleast within a period of four(4) weeks from the date of receipt of a copy of this order.

10. Accordingly, this writ petition stands allowed. No costs. Connected miscellaneous petition is closed.

28.06.2023

Index:Yes/No
Speaking order/Non-speaking order
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To

1. The Principal Secretary to the Government of Tamil Nadu,
   Handlooms, Handicrafts, Textiles and Khadi (F1) Department,
   Secretariat, Chennai – 600 009.

2. The Chief Executive Officer,
   Tamil Nadu Khadi and Village Industries Board,
   Kuralagam, Chennai – 600 104.

M.S.RAMESH,J.

mp

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