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WP.No.10606/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.09.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.10606/2017 & WMP.Nos.11542, 11543/2017 & 31227/2018

V.Sarala

... Petitioner

Versus

1.The Secretary to Government
Tamil Development and Information Department
Secretariat, Chennai 600 009.

2.The Director,
Directorate of Stationery and Printing
110, Anna Salai, Chennai 600 002.

3.Thiru.J.Jayakandhan, IAS
Director, Directorate of Stationery and Printing
110, Anna Salai, Chennai 600 002.

4.The Enquiry Officer/Joint Director,
Directorate of Stationery and Printing
110, Anna Salai, Chennai 600 002.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the 2nd respondent pertaining to proceedings No.R1/3575/2016-4 dated



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19.02.2016 and proceeding No.DIR.PROC.No.R1/3575/2016 dated 01.02.2017 and DIR No.R1/6810/2017 date 06.04.2017 and proceedings of the 4th respondent in DIR No.R1/3575/2016 dated 23.03.2017 and quash the same as illegal, arbitrary and non est in law.

For Petitioner : Mr.AR.Balaji
For RR 1, 2 & 4 : Mr.S.Ravikumar, Spl.GP

ORDER

- (1) The writ petition has been filed in the nature of a certiorari seeking records of the 2nd respondent pertaining to Proceedings No.R1/3575/2016-4 dated 19.02.2016 and proceedings No.DIR.PROC.No.R1/3575/2016 dated 01.02.2017 and DIR.No.R1/6810/2017 dated 06.04.2017 and proceedings of the 4th respondent in DIR No.R1/3575/2016 dated 23.03.2017 and to quash all the aforementioned orders/proceedings.
- (2) In the affidavit filed in support of the writ petition, it had been stated by the petitioner that she had been appointed as Assistant Works Manager on 04.07.2007 in the Stationery and Printing Department, by direct recruitment in a selection process made by the Tamil Nadu



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Public Service Commission. She was initially posted at the Government Press in Chennai and later, to Trichy as Branch Manager and was later transferred to the Government Press in Chennai in the year 2010. In March 2011, she was transferred to the Directorate of Stationery and Printing Head Office at Chennai and posted as Assistant Works Manager [Procurement]. She was then promoted as Deputy Works Manager on 09.11.2012 and posted to Maintenance Section in the Directorate Office.

- (3) It had been stated that tenders had been called for maintenance work and it had been stated that the funds had been utilised without obtaining any concurrence from the Public Works Department. It had been stated that the officials of the Audit Department, in November 2014, had recorded objections with respect to the utilisation of funds by the Director/2nd respondent and had sought explanation. It had been further stated that the 2nd respondent had directed the Maintenance Section to prepare proposals for issuance of five tenders for different and distinct maintenance work and repair works for a total value of Rs.15 lakhs. The petitioner had stated that she



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remonstrated that the Department where she worked, cannot call for tenders in respect of maintenance works and that, only the Public Works Department alone is the competent Department to so call for tenders. However, the 2nd respondent proceeded with the tender notifications. The petitioner had objected for violation of Rules in this regard. She had also stated about the violation of provisions of the Tamil Nadu Transparency in Tender Rules, 2000, in this regard by the 2nd respondent. It is also alleged by her that the 2nd respondent adopted illegal methods to favour a private contractor, Sri Krishnan Electricals. It had been stated that the 2nd respondent had committed these irregularities and unable to bear with the same, the petitioner availed leave from 28.10.2015 to 13.11.2015. However, the 2nd respondent declined to sanction leave by an order dated 16.12.2015. Thereafter, the 2nd respondent had issued a charge memo under Rule 17[b] of the Tamil Nadu Civil Servants [Discipline and Appeal] Rules, 1955, on 19.02.2016.

- (4) It is contended that it is an act of malice as against the petitioner herein. It is under those grounds that the petitioner states that the



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charge memo should be quashed. It was contended that one of the witnesses who had been stated in the charge memo, had been appointed as the Enquiry Officer. With respect to the other charge under Rule 17[b] of the Rules, again, grounds have been raised that it is an act of mala fide, particularly, by the 2nd respondent since, the petitioner had pointed out the irregularities in the calling of tender and the grant of the works to one individual, in violation of all known Rules and procedures under the Tamil Nadu Transparency of Tender Rules, 2000 and the substantial provisions under the said Legislation. In effect, the petitioner claims to be a victim of the nefarious act of the 2nd respondent / Director, Directorate of Stationery and Printing at Chennai. Seeking to quash all aforementioned orders/proceedings, the present writ petition has been filed.

- (5) When the matter came up for consideration, taking note of the fact that the petitioner had raised a substantial ground that one of the witnesses stated in the charge memo, was also the Enquiry Officer, this Court had made it very clear that such procedure will have to be interfered with by this Court. Thereafter, proceedings had been



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issued by the respondents by changing the Enquiry Officer and bringing in a new Enquiry Officer. Though initially stay was granted by an order dated 14.08.2023, a direction had been given that the Enquiry Officer who had been appointed afresh, Mr.K.Murugan, Joint Director/District Revenue Officer in Stationery and Printing, at Chennai, can proceed further with the enquiry.

- (6) The learned counsel for the petitioner stated that grounds have been raised to call upon this Court to quash the charge memos issued both under Rule 17[a] and Rule 17[b] of the Tamil Nadu Civil Servants [Discipline and Appeal] Rules, 1955. But however, the petitioner should raise all those grounds by way of an explanation before the officer concerned. The officer concerned should pass an order and judicial review will lie on whether proper procedure had been adopted or not. The Court cannot substitute itself for the Enquiry Officer and examine whether the explanations of the petitioner herein should be taken into consideration or not. The facts as stated in the affidavit, had been narrated by me and it had also been stated by the petitioner in the affidavit that the entire proceedings were the result of



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malice exhibited by the 2nd respondent against the petitioner since she had raised issues about calling for tender and the grant of tender to one particular contractor.

- (7) These are issues which the petitioner can always raise before the Enquiry Officer concerned and if raised, they should be answered by the Enquiry Officer. Necessary permission must be granted and opportunity must be granted to the petitioner to produce witnesses on her side to substantiate her case on the entire issue.
- (8) The facts will have to be established first and the facts can be established only on the basis of the evidence produced. The evidence will have to be tested and the Court without such testing, cannot come to any conclusion. At the most, the Court can only state that there is some malice on the part of the 2nd respondent against the petitioner herein, but that would not mean that the charges framed should therefore, be straightaway interfered with. Whether the charges are proved or not, would depend upon the evidence produced during the course of enquiry.



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- (9) Therefore, without entering into any further discussion on the facts or on the merits of the case, a direction is given to the Enquiry Officer Mr.K.Murugan, Joint Director / District Revenue Officer in Stationery and Printing, Chennai, to proceed further with the enquiry and give necessary opportunity to the petitioner herein. Direction is also given that if any explanation is given for the charge memo issued under Rule 17[b] of the Rules, the said explanation must be examined in its proper light and an order with reasons must be passed.
- (10) It is also made clear that in the explanation to be submitted by the petitioner, the date of joining of the petitioner may also be specifically mentioned/noted and it is contended by the learned counsel for the petitioner that the allegations had taken place much before the petitioner joined the service. This aspect may also be examined by the Enquiry Officer which are based on records. Therefore, the records may be examined and the petitioner may be given an opportunity to also peruse the records about the date on which the alleged delinquent acts took place and the date of joining of the petitioner as Deputy Works Manager. The rights of the petitioner



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to participate in the enquiry and the right to be given adequate and full opportunity is reiterated by this Court.

(11) With the above observations and directions, the writ petition stands **dismissed.** No costs. Consequently, connected miscellaneous petitions are closed.

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AP
Internet : Yes



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COPY TO:- Mr.K.Murugan, Joint Director / District Revenue
Officer, Stationery and Printing, Chennai.



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C.V.KARTHIKEYAN, J.,

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