BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 31.07.2023

PRONOUNCED ON : 21.08.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.16794 of 2023
and
W.M.P(MD)Nos.14049, 14050 & 15231 of 2023

A.Paul Rathinaraj ... Petitioner

Vs.

1.The Additional Chief Secretary / Commissioner
of Revenue Administration,
Chepauk,
Chennai – 600 005.

2.The District Collector,
Virudhunagar,
Virudhunagar District.

3.The District Revenue Officer,
District Collector's Office,
Virudhunagar District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order of the second respondent in Na.Ka.No.A5/5957/2022, dated 20.02.2023 quash the same.

For Petitioner : Mr.S.Ramsundarvijayraj

For Respondents : Mr.P.Veera Kathiravan
Additional Advocate General
Assisted by
Mr.N.Muthu Vijayan
Special Government Pleader

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorari, to quash the impugned order of the second respondent in Na.Ka.No.A5/5957/2022, dated 20.02.2023.

2.Heard Mr.S.Ramsundarvijayraj, learned counsel appearing for the petitioner and Mr.P.Veera Kathiravan, learned Additional Advocate General appearing for the respondents and perused the materials available on record.

3.The petitioner is working as a Tahsildar in the respondent Department and took charge as Special Tahsildar (LA – IPCOT) Unit – 2, Sattur on 19.09.2019. The petitioner was issued with a impugned charge memo vide proceedings in Na.Ka.No.A5/5957/2022, dated 20.02.2023 for the reason of issuing patta and subsequent land acquisition. Challenging the said charge memo, dated 20.02.2023, this Writ Petition came to be filed.

4.The circumstances in which charges were framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, against the petitioner are briefly narrated as below:-

The land in S.No.245/2 measuring an extent 3.13 acres, originally stands in the name of N.Sadayandi Servai in patta No.152, Thulukkapatti Village, Virudhunagar Taluk, Virudhunagar as per Jamin Correlation Pimas No.100. As per U.D.R "A" register S.No.245/2 measuring 1.26.5 Hectares Thulukkapatti Village, Virudhunagar Taluk, Virudhunagar, stands registered in the name of N.Sadayandi Servai, vide patta No.176. After the death of the said Sadayandi the same devolved to his only legal heir, namley Krishnabakthan, who executed a sale deed in favour of Gopalsamy Naicker relating to Survey No. 245/2 measuring 3.13 acres, Thulukkapatti Village, Virudhunagar Taluk vide Document No.2861/1960 dated 14.09.1960 (first sale). Subsequently, the said Gopalsamy Naicker has executed a sale deed in favour of President of Seva Samajam and its President District Collector, Ramanathapuram, S.No.245/2 measuring 3.13 acres Thulukkapatti Village, Virudhunagar Taluk vide Document No.72 of 1981 dated 12.01.1981. Subsequently, patta No.465 stands registered in the name of Virudhunagar District President Seva Samajam and District Collector. Subsequently, the Revenue Divisional Officer, Aruppukottai through his proceedings in Na.Ka.B1/4641/2012, dated 30.07.2013 had rejected the patta transfer appeal filed by one Mariammal on valid ground that the first sale relating to S.No.245/2 was in the name Seva Samajam under President ship of District Collector, Ramanathapuram. But the said Mariammal on the the basis of a fraudulent document created in collusion with Krishnabakthan through one Rajeshwari had filed an appeal before the District Revenue Officer, Virudhunagar on 2013 which was numbered as Ni.Mu.B2/41575/2013. This appeal also rejected on 15.12.2021 confirming the earlier Revenue Divisional Officer, Aruppukottai order. When the revision petition filed by Mariammal was pending before the District Revenue Officer, Virudhunagar, one Sundaramoorthy, who was working as the Zonal Deputy Tahsildar, Aruppukottai has granted patta to Mariammal for Survey No.245/2 measuring 3.13 acres (1.26.5 Hectares) Thulukkapatti Village, Virudhunagar vide letter No.TR/2019/0103/26/06/2401/TR, dated 07.06.2019. In this regard charges have been framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal Rules) against Sundaramoorthy in Collector Rc.No.A5/5957/2002, dated 04.04.2022. The above charges are under process. The Special District Revenue Officer, SIPCOT, Virudhunagar has ordered compensation to Mariammal for Rs.98,98,979.00 in RC.No.LA/02/2015 SIPCOT/Unit2/Block8/Award No.9/2021, dated 15.02.2021. Mariammal has obtained ex-parte Judgment and decree from the District Munsif Court, Virudhunagar in O.S.No.107 of 2009, dated 07.12.2009. The District Collector, Virudhunagar has preferred an ex-parte set aside petition before District Munsif Court, Virudhunagar to set aside the ex-parte Judgment which under process. The Special District Revenue Officer, SIPCOT, Virudhunagar was also placed under suspension for the irregular payment of compensation amounting to Rs.98,98,979.00 to Mariammal vide G.O(2D).No.48, Public (Special – A) Department, dated 29.06.2022. Charges have been framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against V.Ravichandran, Special DRO, SIPCOT, Virudhunagar. It is under process. The petitioner has written a letter Roc.No.02/2015 SIPCOT Unit 2/2015, dated 08.11.2019 to the District Revenue Officer, Virudhunagar and Revenue Divisional Officer, Aruppukottai seeking reply whether any appeal/revision is pending for Survey No.245/2 (Block 8) Thulukkapatti Village, Virudhunagar District. In the absence of getting any reply from the District Revenue Officer, Virudhunagar and Revenue Divisional Officer, Aruppukottai, the petitioner has recommended to pass award on 05.02.2021 without seeking any clarification relating to his earlier letter dated 08.11.2019 and was in support of illegal payment of compensation to Mariammal amounting to Rs.98,98,979.00. Hence, charges were framed against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules in Rc.No.A5/5957/2022, dated 20.02.2023. The appeal preferred by Mariammal for the grant of patta was rejected by the Revenue Divisional Officer, Aruppukottai in his proceedings No.RC.B1/4641/2012, dated 30.07.2013 on the ground that it is a second sale. The revision petition filed by Mariammal for grant of patta was also rejected by the District Revenue Officer, Virudhunagar in his proceedings No.R.Dis.B2/41575/2013, dated 15.12.2021. In view of illegal payment of compensation to Mariammal, amounting to Rs.98,98,979.00, the Government have faced heavy loss of Revenue.

5.In such background, the impugned charge memo, dated 20.02.2023 came to be issued by the second respondent. In the facts and circumstances of the incidents involved in this case, this Court is not inclined to quash the charge-memo.

6.Further, this Court in ***W.P.No.8158 of 2022, dated 05.04.2022 (T.M.Roopathy Vs. The General Manager and others)*** pertaining to quashment of the impugned charge memo has held as follows:-

> *5. At this juncture, it is worthwhile to mention that, the Hon'ble Supreme Court, In the case of Union of India vs. Kunishetty Satyanarayana [(2006) 12 SCC 28], held that writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not be ordinarily exercised by quashing a charge sheet. No doubt, in some very rare and exceptional cases, the High Court can quash a charge sheet if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal.*
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> *6. In the case of Secretary, Ministry of Defence and others Vs. Prabhash Chandra Mirdha, reported in 2012 11 SCC 565, the Apex Court observed as follows:-*
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>> *10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when*

some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court. (Vide State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 -: (1987) 3 ATC 319 : AIR 1987 SC 943] , Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327] , Ulagappa v. Commr. [(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] and Union of India v. Kunisetty Satyanarayana [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] .)

11. In State of Orissa v. Sangram Keshari Misra [(2010) 13 SCC 311 : (2011) 1 SCC (L&S) 380] (SCC pp. 315-16, para 10) this Court held that normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority. (See also Union of India v. Upendra Singh [(1994) 3 SCC 357 : 1994 SCC (L&S) 768 : (1994) 27 ATC 200] .)

12. Thus, the law on the issue can be summarised to the effect that the charge-she et cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it Dr.R.Gowrishankar vs The Secretary on 8 April, 2019 is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.

7. In view of the legal principles settled, writ petition against the charge memo cannot be entertained in a routine manner and judicial review against the charge memo is certainly limited. This being the factum, the writ petitioner has to participate in the process of enquiry and it is for the competent authorities to take steps for an early disposal of the disciplinary proceedings as prolonged pendency is also against the delinquent officials."

6.I am fully in agreement with the said order passed by this Court and with due regard to the settled legal principles, this Court is inclined to observe that the writ petition against the charge memo cannot be entertained in a routine manner, as a result of which, the writ petitioner is directed to participate in the process of enquiry and it is for the competent authorities to take steps for disposal of the disciplinary proceedings, within a period of two months from the date of receipt of a copy of this order.

7.Accordingly, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

21.08.2023
(3/3)

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

1.The Additional Chief Secretary / Commissioner
of Revenue Administration,
Chepauk,
Chennai – 600 005.

2.The District Collector,
Virudhunagar,
Virudhunagar District.

3.The District Revenue Officer,
District Collector's Office,
Virudhunagar District.

L.VICTORIA GOWRI, J.

ps

Pre-Delivery Order made in
W.P.(MD)No.16794 of 2023

21.08.2023
(3/3)