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W.A.No.147 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2024

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A.No.147 of 2023

and

C.M.P.No.1746 of 2023

1.The Director of Town Panchayats,
MRC Nagar, Chennai - 600 028.

2.The Collector,
Erode District, Erode.

3.The District Social Welfare Officer,
Erode District,
Collectorate Office,
Erode.

... Appellants

Vs.

Prabakaran

... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 23.08.2021 passed by the learned Judge in W.P.No.5228 of 2020.

For Appellants

: Mr.R.Neelagandan,
Additional Advocate General
assisted by Mrs.Keerthika,
Government Advocate

For Respondent

: Mr.V.Elangovan

* * *



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JUDGMENT
(Judgment of the Court was delivered by R. MAHADEVAN, J.)

This Writ Appeal is directed against the order dated 23.08.2021 passed by the learned Judge in W.P.No.5228 of 2020.

2.The necessary facts leading to filing of this writ appeal are as follows:

2.1. The respondent joined as a Bill Collector on 13.04.1987. After due promotions, he was lastly working as Executive Officer at Thirunindravur Special Grade Town Panchayat, Thiruvallur District. During his service, he was issued with a charge memo dated 26.07.2018 under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, alleging that he indulged in sexual harassment of the ladies, while he was working as Executive Officer in Aappakoodal Town Panchayat. The respondent gave a reply to the charge memo dated 26.07.2018 on 24.05.2019. Thereafter, just 9 days before the respondent's superannuation, a second charge memo dated 19.02.2020 was issued by the second appellant under Rule 17(b) *ibid.*, framing four charges superseding the first charge memo dated 26.07.2018.

2.2. Challenging the second charge memo dated 19.02.2020, the respondent preferred the writ petition no.5228 of 2020, on the grounds that (i) the complaints committee was not properly constituted; (ii) there was no written complaint by the alleged victims; (iii) copy of the inquiry report was not



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furnished; and (iv) the second charge memo was arbitrary and motivated, issued just before retirement.

2.3. After hearing both sides, the learned Judge by the order impugned herein, partly allowed the writ petition by quashing the second charge memo dated 19.02.2020 with a direction to the disciplinary authority to proceed with the first charge memo dated 26.07.2018 issued under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, and complete the same, within a period of six months. Aggrieved by the order so passed by the learned Judge dated 23.08.2021, the appellant authorities have preferred this appeal.

3.The learned Additional Advocate General appearing for the appellants would contend that the respondent, while serving as Executive Officer at Aappakoodal Town Panchayat, had faced a sexual harassment complaint dated 11.12.2017 and this prompted referral to the Local Complaints Committee as per the mandate of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. He would further submit that the Complaints Committee chaired by the second appellant, conducted a comprehensive series of inquiries from 29.12.2017 to 05.06.2018. More than three witnesses deposed about their knowledge of the alleged sexual harassment, leading the Committee to conclude that the complaint was proven and this resulted in a recommendation for departmental action. He would also submit that



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the second appellant, being the respondent's immediate superior, had issued show cause notice under Section 17(a) and the appointing authority, the first appellant, being competent to proceed further with disciplinary proceedings, had corrected and modified the provisions under which the charges led to be framed on complaint or offence of sexual harassment of women at working place, attracting Rule 20-B of the Tamil Nadu Government Servants Conducts Rules. Therefore, the show cause notice issued by the immediate superior and the charge memo issued by appointing authority were not meant for two separate disciplinary proceedings for the same offence, but they were the process of single proceeding for same offence. Thus, according to the learned Additional Advocate General, the disciplinary proceedings in question involve allegations of indiscipline, moral turpitude and violation of Rule 20-B of the Tamil Nadu Government Servants Conduct Rules, thereby warranting an inquiry under Rule 17(b). The learned Additional Advocate General further points out that the order issued by the first appellant modifying the rule applicable to Rule 17(b), effectively supersedes the show cause notice issued by the second appellant, forming an integral part of the ongoing disciplinary proceedings. However, the learned Judge, without appreciating the facts, erroneously held that the first charge memo having been issued under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 to the respondent, it was not open to the first appellant to issue the second charge memo on 19.02.2020 and accordingly, quashed the



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said charge memo, and directed the second appellant to proceed with the first charge memo dated 26.07.2018. Stating so, the learned Additional Advocate General prays to set aside the order passed by the learned Judge and allow this appeal.

4.Per contra, the learned counsel for the respondent reiterated the arguments put forth before the writ Court and submitted that the order passed by the learned Judge does not require any interference, as the same has been passed based on the principles of fair play, equity, good conscience and natural justice.

5.Heard the rival submissions and perused the materials placed on record.

6.It is seen that the respondent, while serving as Executive Officer at Aappakoodal Town Panchayat, faced the allegation of sexual harassment of certain female staff members in December 2017. This led to the constitution of a Local Complaints Committee as per Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 by the District Collector. The Committee conducted detailed inquiries from 29.12.2017 to 05.06.2018, examining multiple witnesses and evidence. More than three witnesses specifically deposed regarding the acts of sexual harassment committed



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by the respondent. Based on the inquiry findings, the Committee concluded in its report dated 08.06.2018 that the charges of sexual harassment stood fully proved against the respondent. Based on the Committee's recommendations, the immediate superior, i.e., the second appellant issued the first charge memo dated 26.07.2018 under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, proposing a minor penalty for the established misconduct of sexual harassment, which amounts to violation of Rule 20-B of the Tamil Nadu Government Servants Conduct Rules. Therefore, the first appellant, being disciplinary authority, has issued the second charge memo dated 19.02.2020 under Rule 17(b) superseding the first charge memo, based on the facts and gravity of charges proven against the respondent. The said charge memo was quashed by the learned Judge in the writ petition, by the order impugned herein.

7.Undoubtedly, the allegations levelled against the respondent involved serious misconduct and moral turpitude in the form of sexual harassment at the workplace. Rule 20-B of the Tamil Nadu Government Servants Conduct Rules, deals with prohibition of sexual harassment of Working Women at the work place, which is usefully extracted below:

"Prohibition of sexual harassment of working women: (1) No Government servant shall indulge in any act of sexual harassment of any woman at any work place. (2) Every Government servant who is in-charge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such work place. Explanation: For the purpose of this rule, "sexual harassment" includes such unwelcome sexually determined behaviour, whether directly or otherwise, as: (a) physical contact and advances; (b) demand or request for sexual favours;



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(c) sexually coloured remarks; (d) showing any pornography; or (e) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature."

The acts of the respondent said to have been committed by him, attract the above said provision. As per established service jurisprudence, charges involving moral turpitude warrant imposition of major penalty proceedings. That apart, the charges framed against the respondent have been fully proved in the inquiry conducted by the independent statutory committee, as per law. Considering all these aspects, the appointing authority has rightly issued the second charge memo dated 19.02.2020 under Rule 17(b) superseding the first memo issued under 17(a). As such, the second charge memo issued by the first appellant cannot be treated as arbitrary or unjustified, as observed by the learned Judge.

8.It is also important to mention at this juncture that the first charge memo was issued on 26.07.2018, upon receiving report from the statutory enquiry committee. However, the respondent submitted his explanation only on 23.05.2019. Thereafter, the first appellant, being the disciplinary authority, issued the second charge memo on 19.02.2020 superseding the first charge memo, taking note of the nature of the delinquency committed by the respondent. The respondent challenged the same in the writ petition without being submitted any explanation. However, without considering the fact that the two charge memos were part of the same disciplinary proceedings initiated against the respondent,



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the learned Judge has quashed the second charge memo and thereby obstructed the proceedings against the respondent and prevented the authorities from imposition of appropriate penalty, by the order impugned in this appeal, which cannot be allowed to be sustained.

9.In the light of the foregoing reasons, the order dated 23.08.2021 passed by the learned Judge in W.P. No.5228 of 2020 is set aside and the writ appeal is allowed. The charge memo dated 19.02.2020 stands restored and the authorities concerned are directed to proceed with the disciplinary proceedings in accordance with law. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]
12.03.2024

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Index: Yes / No

Speaking order/ Non-speaking order

Neutral Citation: Yes / No

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