



WEB COPY



W.P.No.18364 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2024

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P.No.18364 of 2017
and
W.M.P.No.19937 of 2017

R.Bagyalakshmi

... Petitioner

Vs.

1.The Disciplinary Authority/
Principal District Judge,
Namakkal.

2.The Sessions Judge,
Fast Track Mahila Court,
Namakkal.

3.Senior Accounts Officer/Pension,
Office of the Accountant General,
(Accounts and Entitlements)
Tamil Nadu,
No.361, Anna Salai,
Teynampet,
Chennai – 600 018.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings in ROC.No.1684/A/2017, dated 11.04.2017 on the



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file of the first respondent herein , and to quash the same and direct the first respondent to forward the pension papers of the petitioner to the third respondent, for the payment of all her terminal and attendant benefits including pension, gratuity and all other such benefits within the time frame so as to enable the third respondent to complete the process and to pay all such benefits to the petitioner.

For Petitioner : Mr.S.Subbiah
Senior Counsel
for Mrs.Elizabeth Ravi

For R1 and R2 : Mr.S.Haja Mohideen Gisthi

For R3 : Mr.V.Vijay Shankar

ORDER

(Order of this Court was made by S.M.SUBRAMANIAM,J.)

This writ petition has been instituted challenging the Charge Memorandum issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

2. The petitioner was appointed as Junior Assistant in the Judicial Ministerial Services. She was promoted to the post of Grade-1 Bench Clerk. On identification of certain lapses and dereliction of duty, the learned Principal District Judge, Namakkal issued a Charge Memorandum under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules after



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the retirement of the writ petitioner. It is not in dispute that the petitioner was allowed to retire from the service on 29.02.2016, without prejudice to the Departmental Disciplinary proceedings initiated against the writ petitioner. Thus, we do not find any infirmity in respect of the Charges framed, which is in consonance with the Rules in force.

3. Mr.S.Subbiah, learned Senior Counsel appearing on behalf of the writ petitioner would state that the allegations are minor in nature. For routine lapses, charges cannot be framed under Rule 17(b). Thus, the Charge Memorandum is liable to be set aside. In support of the said contention, he relied on the Judgment of the Hon'ble Division Bench in the case of the petitioner in W.P.No.37023 of 2016.However, the said case was decided in respect of different charges framed against the writ petitioner. There the Hon'ble Division Bench has gone in to merits of the allegations set out in the said Charge Memorandum and set aside the same. Thus, the findings therein cannot be relied on for the purpose of quashing of the present Charge Memorandum, since the said writ petition was decided considering the factual merits involved.



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4. As far as the present case is concerned, though the Charge Memorandum was issued under Rule 17(b), Mr.S.Haja Mohideen Gisthi, the learned Counsel for the respondent 1 and 2 brought to the notice of this Court that an Enquiry Officer was appointed, who in turn completed the Enquiry and submitted the final Report. The departmental disciplinary proceedings are concluded in all respects and final order alone is yet to be passed. Due to the pendency of the present writ petition, the final order has not been passed by the Disciplinary Authority.

5. We are of the considered opinion that no writ against the Charge Memorandum is entertainable in a routine manner. A writ against Charge Memorandum can be entertained, if it is issued by an incompetent Authority having no jurisdiction or tainted with the allegations of mala fides. High Court in exercise of powers of Judicial Review under Article 226 of the Constitution of India cannot go into the merits of the allegations set out in the Charge Memorandum and give a finding. In other words High Court cannot sit as Disciplinary Authority by conducting an Enquiry in to the allegations set out in Charge Memorandum.



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5.1 In the present case, conversion of charges already issued under Rule 17(b) as 17(a) may not be required, since the Enquiry has already been concluded and final order is alone is yet to be passed. The petitioner has not established any allegations of mala fides except by stating that the Authority who framed charges himself became an Enquiry Officer. However, the learned Counsel for the respondents would oppose by stating that on account of transfer, another Officer was appointed as Enquiry Officer, who in turn conducted the Enquiry. Therefore, the ground raised is unsustainable.

5.2. Since domestic Enquiry has already been concluded, we are not inclined to consider the relief as such sought for in the present writ petition. However, the 1st respondent/Disciplinary Authority is directed to consider the materials available on record on merits and pass final orders in the departmental disciplinary proceedings within a period of twelve weeks from the date of receipt of a copy of this order.

6. With these directions, the Writ Petition stands disposed of. There



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shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[S.M.S.J.] [K.R.S.J.]
05.03.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
veda

To

- 1.The Disciplinary Authority/
Principal District Judge,
Namakkal.
- 2.The Sessions Judge,
Fast Track Mahila Court,
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- 3.Senior Accounts Officer/Pension,
Office of the Accountant General,
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