



W.P.(MD)No.25936 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.25936 of 2022

and

W.M.P.(MD)Nos.20092 of 2022 and 17060 of 2024

M.Jebaraj

... Petitioner

versus

1. The State of Tamil Nadu,
Rep. by its Additional Chief Secretary
to Government,
Home (Pol.2) Department,
Secretariat, Chennai – 9.

2. The Director General of Police/
Head of Police Force,
Mylapore,
Chennai – 4.

3. The Superintendent of Police,
Karur District,
Karur.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India,
seeking for the issuance of Writ of Certiorari to call for the records
pertaining to the impugned charge memorandum issued by the 3rd



W.P.(MD)No.25936 of 2022

respondent dated 13.06.2018 in P.R.No.25 of 2018 under Rule 17(b) of TNCS (D&A) Rules, 1955 and the letter of the 1st respondent vide letter No. 60649/Pol.2/2021-3 dated 06.09.2022 and quash the same as illegal.

For Petitioner : Mr.F.Deepak

For Respondents : Mr.P.T.Thiraviam,
Government Advocate

ORDER

This writ petition has been filed challenging the charge memo dated 13.06.2018 issued by the 3rd respondent/the Superintendent of Police, Karur District, in P.R.No.25 of 2018 under Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules, 1955 and the letter of the 1st respondent vide a letter in No.60649/Pol.2/2021-3 dated 06.09.2022.

2. The petitioner is a Deputy Superintendent of Police. While he was in service as Inspector of Police at Aravakurichi Police Station in Karur District, he was the Investigation Officer in a murder case in Crime No.367 of 2013. An accused, by name, Kathiresan, surrendered himself in Crime No.367 of 2013 and he was taken for police custody by the



W.P.(MD)No.25936 of 2022

petitioner/Investigation Officer. During the police custody, the said accused Kathiresan died under suspicious circumstance. Therefore, an enquiry under Section 176(1A) of Cr.P.C., was ordered. The learned Judicial Magistrate No.II, Karur, has conducted an enquiry under Section 176(1A) Cr.P.C. and submitted his report dated 14.11.2013, which was accepted by the Government. Thereafter, the Government, vide G.O.(Ms.)No.216, Public (Law and Order-A) Department, dated 15.03.2017, sanctioned compensation of Rs.5,00,000/- to the family of the deceased/accused and also ordered for initiating departmental proceedings as against the petitioner and his subordinates. Consequently, the Director General of Police has approved the draft charge memo and communicated the same to the Superintendent of Police, Karur District, vide a Memorandum in Rc.No.CON-II(1)/166101/2013 dated 30.04.2018 with a direction to the Superintendent of Police, Karur District, to prepare/sign and serve the fair copy of the charge memos to the petitioner and other police personnel with a request to send the acknowledged copies to Chief office immediately and also conduct oral enquiry in the departmental proceedings as against the petitioner and other police personnel. Based on this direction, the Inspector General of Police, Central Zone, Trichy and the Deputy Inspector General



W.P.(MD)No.25936 of 2022

of Police, Trichy Range, have also requested the Superintendent of Police to prepare/sign and serve the fair copy of the draft charge memos to the petitioner and other police personnel, against whom the disciplinary proceedings were contemplated. Accordingly, the Superintendent of Police has signed and issued the charge memo to the petitioner. At that time, the petitioner was working as Deputy Superintendent of Police. Pursuant to the issuance of charge memo, the Superintendent of Police, Karur District, has conducted oral enquiry in the departmental proceedings initiated as against the petitioner. After completing the enquiry, the Enquiry Officer, namely, the Superintendent of Police, Karur District, vide his letter in C.No.A4 PR 25, 26, 27 and 28/2008 dated 21.05.2021, filed the proved minute and handed over the files in person, to the Director General of Police, Chennai. In furtherance to the proceedings, the Government, vide a letter No. 60649/Pol.2/2021-3 dated 06.09.2022, has called for a further explanation from the petitioner. But, the petitioner has not submitted his explanation to the second show cause notice dated 06.09.2022. Instead, he has approached this Court by way of filing this writ petition on the ground that the charge memo was issued by an incompetent authority.



W.P.(MD)No.25936 of 2022

3. Considering the submissions of the petitioner that the impugned charge memo has been issued by the Superintendent of Police, Karur District and for the Deputy Superintendent of Police, the competent authority to issue the charge memo is the Government and therefore, this Court has entertained this writ petition and also granted an order of interim stay on 16.11.2022. However, the Department has filed a petition to vacate the interim order dated 16.11.2022, only on 20.08.2024. Thereafter, this writ petition is listed before this Court along with the vacate stay petition in W.M.P.(MD)No.17060 of 2024. With the consent of both the parties, the matter is taken up for final disposal and disposed of by this order.

4. The learned counsel appearing for the petitioner submits that the impugned charge memo is wholly without jurisdiction, illegal and the power to initiate departmental proceedings as against the Deputy Superintendent of Police is only with the appointing authority, namely, the State Government. However, the impugned charge memo has been issued by the Superintendent of Police, Karur District. The learned counsel, by referring to G.O.Ms.No.216 dated 15.03.2017, submits that the Government has issued a specific direction to the Director General of Police to initiate the



W.P.(MD)No.25936 of 2022

departmental proceedings and therefore, he cannot delegate the power to the Superintendent of Police, who is an incompetent authority to issue the charge memo. In support of his contention, the learned counsel has also relied on a Judgment of the Hon'ble Supreme Court, reported in **1986 (4) SCC 326 (A.K.Roy and another vs. State of Punjab and others)** and a Judgment of this Court reported in **2022 SCC OnLine Madras 123 (in V.Kumar vs. Deputy Commissioner (Works), Greater Chennai Corporation)**, wherein, this Court has followed the abovesaid Judgment of the Hon'ble Supreme Court.

5. The learned Government Advocate appearing for the respondent submits that the petitioner was issued with the charge memo for the delinquency committed by him, while he was in service as Inspector of Police at Aravakurichi Police Station. No doubt, the petitioner was working as Deputy Superintendent of Police, at the time of serving the charge memo. The amended Rule 12(2) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, 1955, enables the immediate superior officer to issue the charge memo. The learned Government Advocate has also relied on a Judgment of this Court reported in **CDJ 2019 MHC 1134 (Dr.S.Ranjane**



W.P.(MD)No.25936 of 2022

vs. The State of Tamil Nadu, rep. by the Secretary to Government Health & Family Welfare Department, Secretariat, Chennai and others) in support of his contention.

6. This Court considered the rival submissions made and also perused the materials placed on the record.

7. The impugned charge memo was issued to the petitioner pursuant to the direction of the Government in G.O.Ms.No.216, Public (Law and Order-A) Department, dated 15.03.2017. The petitioner, while he was in service as Inspector of Police at Aravakurichi Police Station, was held responsible for a custodial death in Crime No.362 of 2021, based on the report of the learned Judicial Magistrate No.II, Karur, under Section 176(1A) Cr.P.C. and upon the recommendations of the National Human Rights Commission. The Government, vide G.O.Ms.No.216, Public (Law and Order-A) Department, dated 15.03.2017, has issued a direction to the Director General of Police, Chennai, to initiate departmental proceedings as against the petitioner and other delinquents, who were involved in the custodial death. In that Government Order, the Government has also



W.P.(MD)No.25936 of 2022

recommended for initiating criminal prosecution.

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8. However, it appears that the said Government Order has not been complied with and the criminal prosecution has not been initiated for the past seven years. This is how the Government Orders are respected by the subordinate officers. Be that as it may. The Director General of Police has partly complied with G.O.Ms.No.216, dated 15.03.2017, by initiating the departmental proceedings against the petitioner and other police personnel. He has approved a draft charge memo and communicated the draft charge memo by his Memorandum in Rc.No.Con.II(1)/16610/2013 dated 30.04.2018 to the Superintendent of Police, Karur District, to prepare/sign and serve the fair copy of the charge memo to the petitioner and other delinquent officers. Therefore, this Court is not inclined to accept the contention of the petitioner that the charge memo was issued by an incompetent authority. Even as per the amended Rule 12(2) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, 1955, the immediate superior officer, namely, the Superintendent of Police, is the competent authority to issue the charge memo. The Rule 12(2) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, 1955, is also extracted as



W.P.(MD)No.25936 of 2022

under:

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“12(2). Notwithstanding anything contained in these rules, the appointing authority or any authority administratively higher to the appointing authority may impose the penalties specified in items (i), (iii) to (viii) and (ix) of rule 8 on members of the State Service:

Provided that where the members of the State Services have been appointed by the Government or by any authority administratively higher than the appointing authority, the penalties specified in items (iii) in so far as it relates to withholding of promotion and items (iv),(vi),(vii) and (viii) in rule 8 shall be imposed only by the Government or by such higher authority:

Provided further that where the State Government are the appointing authority for members holding the posts included in the State Services, the Heads of Departments concerned may impose any of the penalties specified in item (i) and item (iii) in so far as it relates to withholding of increments and items (v) and (ix) in rule 8 on those members other than such members who are immediately below such Heads of Departments:



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W.P.(MD)No.25936 of 2022

Provided also that all authorities directly higher to the members holding the posts included in the State Services may frame charges against such members of the State Services under rule 17(b) or issue show cause notice under rule 17(a) even if they are not the competent authority to impose the penalty and they may conduct the inquiry themselves or request the competent authority to appoint an officer to conduct the inquiry. They shall remit the papers to the competent authority for passing final orders, after the case is processed upto the level of completion of inquiry or after receipt of explanation to show cause notice, as the case may be. Provided also that where the appointing authority or the authority administratively higher to the appointing authority have passed orders of suspension under rule 17(e) on the members of the State Services, they may exercise the power to impose the penalty specified in item (ix) in rule 8 on such members.”

9. In view of the amended Rule 12(2) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, 1955, this Court is not inclined to accept the case of the petitioner. For the delinquency committed in the year



W.P.(MD)No.25936 of 2022

2013, the Government has taken a decision to initiate disciplinary proceedings and criminal prosecution in the year 2017. The enquiry was commenced in the year 2018 and the approved minute was filed in the year 2021, however, further explanation from the petitioner was called for only in the year 2022. Thereafter, the writ petition has been filed challenging the charge memo. Therefore, this Court is not inclined to accept the case of the petitioner.

10. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

15.11.2024

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NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.

To

1. The Additional Chief Secretary to Government,
Home (Pol.2) Department,
Secretariat, Chennai – 9.

2. The Director General of Police/
Head of Police Force,
Mylapore,
Chennai – 4.

11/12



WEB COPY



W.P.(MD)No.25936 of 2022

B.PUGALENDHI, J.

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3. The Superintendent of Police,
Karur District,
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W.P.(MD)No.25936 of 2022

15.11.2024