



W.P.(MD).No.26917 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 14.10.2024

ORDER PRONOUNCED ON : 19.10.2024

**CORAM:
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD).No.26917 of 2023
and WMP(MD).Nos.23134 & 23135 of 2023**

I.Murugan

....Petitioner

Vs

1.The State of Tamil Nadu
Represented by its Principal Secretary to Government
Municipal Administration and Water Supply Department
Secretariat, Chennai 600 009

2.The Director of Town Panchayat
Office of the Director of Town Panchayat
MRC Nagar
Chennai -28

....Respondents

Prayer : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating to the impugned order passed by the second respondent vide his proceedings in Na.Ka.No. 11527/2017-1/Vu2 dated 22.05.2023 and quash the same as illegal.

For Petitioner : Mr.H.Mohammed Imran
for M/s.Ajmal Associates



W.P(MD).No.26917 of 2023

For Respondents : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by Mr.S.Shanmugavel
Additional Government Pleader

ORDER

The instant writ petition has been filed by a Municipal Commissioner challenging a charge memo issued by the second respondent on 22.05.2023.

2.The petitioner was issued with a charge memo with seven charges on 23.11.2018 for granting building plan approval in unapproved layouts and thereby causing loss to the Seithur Town Panchayat. The petitioner was suspended on 29.05.2019. Since the petitioner was about to retire on 31.05.2019, an order was passed on 31.05.2019, retaining him in service. The petitioner had filed W.P(MD).No.26057 of 2023 seeking a mandamus to conclude the disciplinary proceedings. This Court by an order dated 01.11.2023 had directed the authorities to conclude the disciplinary proceedings within a period of twelve weeks. So far no orders have been passed.

3.The petitioner herein was issued with a second charge memo on 22.05.2023 with three charges on the allegation of procurement of street lights and spare parts from unauthorised companies and without following Tamil Nadu Transparency in Tender Rules, 2000. This second charge memo is under challenge in the present writ petition.



W.P(MD).No.26917 of 2023

4. According to the learned counsel appearing for the writ petitioner, the misconduct alleged in the charge memo relates to the period between 2014-2015. The charge memo having been issued in the year 2023 is highly belated and therefore, it is liable to be set aside. The petitioner had further contended that he was working as an Executive Officer attached to the office of the Assistant Director of Town Panchayat. His role was only to counter-sign the files sent by the Executive Officer of the concerned Town Panchayat and thereafter, presenting the same to the Assistant Director of Panchayat. Therefore, he did not have any role at all for procurement of street lights or spare parts.

5. The learned counsel for the petitioner had further contended that the instant charge memo has been issued four years after the date of retirement. The petitioner was retained in service on the basis of the charge memo dated 23.11.2018 and therefore, the said retention cannot be utilized by the authorities to issue the impugned charge memo. Hence, he prayed for allowing the writ petition.

6. Per contra, the learned Additional Advocate General appearing for the respondents had contended that the Assistant Director of Town Panchayat is having control over 37 Town Panchayats. The petitioner is the Executive Officer/Administrative Officer working in the said Assistant Director of Town Panchayat Office. It is his official duty to scrutinize the proposal within the



W.P(MD).No.26917 of 2023

Tirunelveli Zone and after ensuring the compliance of Rules, files have to be placed before the Assistant Director of Panchayat. However without scrutinizing the papers, the writ petitioner has cleared the said files and placed it before the Assistant Director of Panchayat. He had further contended that the charges have been framed as against the Assistant Director of Panchayat and others also.

7.The learned Additional Advocate General had further contended that a complaint was received in the year 2015 and it was referred to Vigilance and Anti Corruption for preliminary enquiry. A criminal case was lodged as against the writ petitioner and other officials. On 22.06.2022, the Director of Vigilance and Anti-Corruption, Tirunelveli had submitted a report. Based on the said report, the Vigilance Commissioner vide his letter dated 29.06.2022 had recommended for departmental action. Only based upon the recommendation, the impugned charge memo was issued on 22.05.2023. In fact, the petitioner has already submitted his explanation on 17.07.2023 denying the charges. Only thereafter, the present writ petition has been filed challenging the charge memo.

8.The learned Additional Advocate General had further contended that in view of pendency of the vigilance report, the entire file was retained by them and hence, there was a delay in issuing the charge memo. That apart, since the materials have to be collected from more than 30 Panchayats, there



W.P(MD).No.26917 of 2023

was some delay in initiating the action. He had further contended that when the petitioner disputes his liability or involvement in the scam, it is a factual dispute and the same has to be decided only during the enquiry. Hence, he prayed for dismissal of the writ petition.

9.I have considered the submissions made on either side and perused the material records.

10.The impugned charge memo has been issued on 22.05.2023 for the alleged misconduct of the writ petitioner occurred in the year 2014-2015 in procuring the street lights and spare parts from unauthorised companies/bogus companies. The main ground of attack of the writ petitioner is that the charge memo has been issued belatedly and therefore, the same is liable to be set aside.

11.A perusal of the records indicate that a criminal case has been initiated as against the writ petitioner under the provisions of Prevention of Corruption Act by the Vigilance and Anticorruption Department. However, after enquiry, Tirunelveli Unit have recommended for departmental action instead of criminal action. Accepting the said report, the Vigilance Commissioner has addressed a communication to the Government on 29.06.2022 for initiating departmental action as against the writ petitioner. Thereafter, the impugned charge memo has been issued on 22.05.2023. It is the contention of the respondents that they have to collect material from more



W.P(MD).No.26917 of 2023

than 30 Town Panchayats for issuance of the said impugned charge memo.

Therefore, I am of the considered opinion that the delay on the part of the respondent authority has been properly explained. Hence, this Court is not inclined to set aside the charge memo on the ground of delay.

12. According to the learned counsel appearing for the writ petitioner, the role of the petitioner as Administrative Officer/Executive Officer attached to the Assistant Director of Panchayat Office is very limited. He had just counter-signed the files forwarded by the Executive Officers of the Town Panchayats and placed it for approval before the Assistant Director of Panchayat. However, it is the contention on the part of the authorities that the petitioner is duty bound to scrutinize the files from the concerned Town Panchayat before placing it in the Assistant Director of Panchayat. The duty of the writ petitioner and the role played by the writ petitioner in the alleged scam are factual disputes. They have to be decided only by the enquiry officer.

13. The Hon'ble Supreme Court in a judgement reported in (1994) 3 SCC 357 (*Union of India and others Vs. Upendra Singh*) in Paragraph No.6 has held as follows:

“6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no



W.P(MD).No.26917 of 2023

misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be.....”

14. In view of the above said facts, this Court is not inclined to entertain the submissions of the learned counsel for the petitioner that he had no role or played a very limited role in clearing the said files. It is for the enquiry officer to decide the said factual dispute.

15. It is the further contention of the writ petitioner that his services were retained only based upon the first charge memo dated 23.11.2018 and therefore, the second charge memo issued, four years after the date of retirement is without jurisdiction. As long as the employer and employee relationship continues, the employer is entitled to initiate departmental action for misconduct of the writ petitioner committed prior to the date of retirement. Therefore, such a contention is also liable to be rejected.



W.P(MD).No.26917 of 2023

WEB COPY 16. In the light of the above said discussions and considering the fact that the petitioner has already submitted his explanation to the impugned charge memo on 17.07.2023, this Court does not find any reason to interfere in the impugned charge memo. There are no merits in the writ petition and the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

19.10.2024

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
msa

To

1. The Principal Secretary to Government
State of Tamil Nadu
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Secretariat, Chennai 600 009

2. The Director of Town Panchayat
Office of the Director of Town Panchayat
MRC Nagar
Chennai -28



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W.P(MD).No.26917 of 2023

R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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