



W.P(MD)No.29529 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.12.2023

DELIVERED ON : 11.01.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.29529 of 2023

and

W.M.P(MD)No.25491 of 2023

R.Janani Soundarya

... Petitioner

Vs.

The Managing Director,
Tamil Nadu Milk Producers' Federation Limited,
Aavin House, Head Office,
Nandaram,
Chennai-600 035.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to grant order of and all further proceedings pursuant to the impugned proceedings of the respondent, dated 23.11.2023 in ந.க.எண்.14331/ப.கு.தொ.உ 2/2022-3 and quash the same.

For Petitioner

: Mr.Isaac Mohanlal
Senior Counsel
for Mr.N.Dilip Kumar



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For Respondent : Mr.J.Devasenana

ORDER

The present writ petition has been filed by a Special District Revenue Officer (Land Acquisition), Chennai-Kanniyakumari Industrial Corridor Project challenging the charge memo issued to her on 23.11.2023 by the respondent herein.

2. The facts leading to the filing of this writ petition are as follows:

(i) The petitioner herein was appointed as Deputy Collector on 22.03.2011. After completion of training, the petitioner was appointed as a Deputy Collector on 30.03.2012. The petitioner has worked as Revenue Divisional Officer in various stations.

(ii) The Government of Tamil Nadu vide G.O.Rt.No.4002 Public (Special-A) Department, dated 20.09.2019 placed the services of the writ petitioner at the disposal of Tamil Nadu Co-operative Milk Producers' Union (Aavin,) Madurai for appointment as its General Manager. The petitioner was working as a General Manager of Aavin Madurai between 27.09.2019 and 06.02.2021. Later, she was posted as District Revenue Officer, Tenkasi on 27.01.2021 and she worked there till 31.03.2022. As



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on today, the petitioner is working as Special District Revenue Officer (Land Acquisition), Chennai-Kanniyakumari Industrial Corridor project at Kumbakonam.

(iii) While she was working in the present post, she was issued with a memo by the respondent herein on 20.03.2023 calling for her explanation relating to 3 audit objections for the financial year 2017-18. Along with the said memo, a copy of the relevant audit objections were also annexed. The petitioner herein had submitted her preliminary explanation on 06.04.2023. In the said explanation, the petitioner had requested for furnishing 13 documents and has sought further time of 15 days to submit her final explanation based upon the documents to be furnished.

(iv) The petitioner was issued with the impugned charge memo on 23.11.2023 by the respondent herein. The summary of the charges are as follows:

(a) As per Item No. 15 of the audit objection, 22,500 kg of ghee was supplied to Tirupathi Devasthanam and the same was returned due to quality defects. There are no records to establish the sale or return of those items.



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(b) As per Charge No.2, Madurai Aavin had incurred a financial loss of Rs.3,42,024/- (Rupees Three Lakh Forty Two Thousand and Twenty Four only) towards entry tax and transportation charges in view of the fact that the supplied ghee has been returned by Tirupathi Devasthanam.

(c) As per Charge No.3, the petitioner had not sent any explanation to the notice issued by Tirupathi Devasthanam for forfeiting the EMD amount of Rs.16,90,000/- (Rupees Sixteen Lakh and Ninety Thousand only) for delayed despatch of the products. Therefore, Madurai Aavin had incurred financial loss of Rs.16,90,000/- (Rupees Sixteen Lakh and Ninety Thousand only).

Challenging the said charge memo, the present writ petition has been filed.

3. Contentions of the learned Senior Counsel appearing for the writ petitioner are as follows:

(i) The primary contention of the learned Senior Counsel appearing for the writ petitioner is that, at present, the petitioner is working as a District Revenue Officer falling within the Group-I of Tamil Nadu Civil Services. Therefore, the respondent is not the



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appointing authority, but only the Government. Hence, the charge memo issued by an authority who is neither an appointing authority nor a disciplinary authority is bad in the eye of law.

(ii) The learned Senior Counsel relied upon explanation to Rule 2 of Tamil Nadu Civil Services (Discipline and Appeal) Rules and contended that even though a member of civil service has been placed at the disposal of any Corporation, the said member is deemed to be a member of civil service despite the fact that the salary is drawn from a source other than the consolidated fund of the State. Therefore, according to the learned Senior Counsel, though the petitioner was on deputation in Aavin Madurai, her services should be deemed to be a member of civil service and therefore, Managing Director of Aavin has no jurisdiction to issue a charge memo.

(iii) The learned Senior Counsel further contended that the charge memo has been issued by the respondent herein primarily on the basis of a letter said to have been addressed by Chief Secretary to Government to the respondent herein on 28.06.2023 invoking third proviso to Rule 12(2) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. According to the learned Senior Counsel, the said third proviso is not applicable to the facts of the present case. He further contended that the



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Managing Director of Aavin can never be considered to be an authority directly higher to the writ petitioner. The petitioner is a member of civil services who had been placed on deputation to Madurai Aavin and therefore, the Managing Director of Aavin can never be considered to be an authority higher to the writ petitioner even while she was working in Aavin Madurai.

(iv) The learned Senior Counsel further relied upon Rule 16 and contended that the said Rule would also not be applicable to the facts of the case in view of the fact that the power to impose major penalty lies only with the lending authority and therefore, the borrowing authority, namely the Managing Director of Aavin has no jurisdiction to issue the charge memo. He further contended that the said Rule will apply only in cases where a member of service has been lent by one department to the other department. In the present case, the petitioner has been sent on deputation from Revenue Department to a foreign service, namely Aavin Madurai. Therefore, Rule 16 is not applicable to the facts of the present case.

(v) The learned Senior Counsel further contended that Rule 16-A is applicable to cases where delinquency has been committed in the parent department and while initiating disciplinary proceedings, the



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member of the service is on deputation, the lending authority, namely the parent department alone would be entitled to initiate disciplinary proceedings. However, in the present case, delinquency is alleged to have happened while the petitioner was on deputation on a foreign service. Therefore, the said rule is also not applicable.

(vi) The learned Senior Counsel further contended that a memo was issued to the writ petitioner on 20.03.2023 instructing her to submit reply within a period of 7 days. Since the petitioner was not having any documents to send her reply in full, she had addressed a communication to the respondent herein on 06.04.2023 requesting for furnishing of 13 documents, so that she can furnish her complete reply. However, without furnishing those documents, the respondent herein has chosen to issue the present impugned charge memo on 23.11.2023 under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. When the documents requested by the petitioner have not been furnished to her, the present charge memo is not valid in the eye of law. Hence, he prayed for allowing the writ petition.

4. Contentions of the learned counsel appearing for the respondent are as follows:

(i) The petitioner was issued with a memo on 20.03.2023 with an



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instruction to submit her reply within a period of 7 days. However, no reply was received from the writ petitioner. Since the charges were found to be grave, the respondent herein had decided to invoke Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. Therefore, the present charge memo has been issued. Hence, the question of non furnishing of documents to the memo, dated 20.03.2023 has no relevance whatsoever to the present charge memo.

(ii) As per the representation of the writ petitioner, dated 06.04.2023, all the documents have been furnished to the writ petitioner vide proceedings of the General Manager, Aavin Madurai, dated 15.12.2023. He further contended that all the documents found in the annexure to the charge memo have also been furnished to the writ petitioner by another proceedings, dated 15.12.2023.

(iii) The Chief Secretary to Government by his proceedings, dated 28.06.2023 had permitted the respondent herein to issue a charge memo, appoint Inquiry Officer and remit papers along with Inquiry report to the Government for passing final orders. Only based upon the said permission granted by the Chief Secretary to Government, the impugned charge memo has been issued.



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(iv) As per third proviso to Rule 12(2) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, any authority, who is a higher authority to the delinquent, though not an appointing authority, is empowered to issue a charge memo and conduct disciplinary proceedings. However, final orders have to be passed only by the appointing authority. Therefore, the invocation of the third proviso to Rule 12(2) to the facts of the present case is perfectly valid in the eye of law.

(v) The learned counsel relied upon a Division Bench judgment of our High Court made in *W.P.No.30961 of 2019, dated 20.12.2019 (A.Ananthakumar Vs. The Registrar General, High Court Madras, Chennai & Others)* to impress upon the Court that a charge memo can be issued by any higher authority, though such an authority is lower than the appointing authority. Hence, he prayed for dismissal of the writ petition.

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



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Discussion:

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6. A perusal of the impugned charge memo indicates that it has been issued by the respondent herein, who is the Managing Director of Tamil Nadu Co-operative Milk Producers Federation, Nandanam, Chennai. Admittedly, he is an officer of Indian Administrative Service. The petitioner herein is a Group-I officer and she was working as a General Manager in Madurai Aavin between 27.09.2019 and 06.02.2021. The services of the petitioner have been placed at the disposal of Aavin Madurai for appointment as its General Manager have been issued by the Chief Secretary to Government under G.O.Rt.No.4002 Public (Special-A) Department, dated 20.09.2019. A perusal of the said Government Order reveals that the terms and conditions of deputation of the writ petitioner on foreign services will be issued from the Animal Husbandry, Dairying and Fisheries Department, Chennai. The petitioner has not chosen to place on record the said order relating to terms and conditions of deputation. The Court can take judicial notice of the fact that the petitioner's services were placed at the disposal of the respondent herein for appointing her as General Manager of Aavin Madurai. Therefore, the appointment order of the writ petitioner as General Manager of Aavin Madurai has been issued only by the respondent herein.



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7. A perusal of explanation to Rule 2 of Tamil Nadu Discipline and Appeal) Rules clearly indicate that even though a member of civil service is sent on a deputation to hold a post in corporation, they continue to be a member of the civil service notwithstanding the fact that their salary is drawn from a source other than the consolidated fund of the State. Hence, it is clear that the petitioner while working as a General Manager of Aavin Madurai continued to be a member of civil service. A perusal of Rule 16 indicates that where the services of a member have been lent to a borrowing authority and the said borrowing authority considers that the punishment of compulsory retirement, removal or dismissal should be imposed, the borrowing authority himself is empowered to complete the enquiry and revert the person concerned to the lending authority for such action as that authority may considered necessary. Therefore, it is clear that if the delinquency had happened while the member of service is on deputation, the borrowing authority himself is entitled to issue a charge memo, appoint an Inquiry Officer and after receipt of Inquiry report, he may forward the same to the lending authority for imposition of major penalty. In the present case, since the petitioner had already reverted back to the parent department, Chief Secretary to Government has permitted the borrowing authority to



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issue a charge memo and complete the enquiry and thereafter, sent the enquiry report to the Government for further action.

8. A perusal of third proviso to Rule 12(2) of Tamil Nadu Civil Service (Discipline and Appeal) Rules further indicates that a charge memo need not be issued by the appointing authority. Any authority who is directly higher to the delinquent can frame charges under Rule 17(b) even if they are not the competent authority to impose penalty. That apart, they are empowered to conduct the inquiry and 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.

9. A combined reading of explanation to Rule 2, third proviso to Rule 12(2) and Rule 16 of Tamil Nadu Civil Services (Discipline and Appeal) Rules clearly indicate that a charge memo could be issued by any authority who is higher than the delinquent, even if he is not the competent authority to impose major penalty. In cases of deputation, if the delinquency had happened in the deputed post, the borrowing authority is entitled to issue a charge memo under Rule 17(b), conduct



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inquiry and submit a report to the Government. In the present case, the Managing Director of Tamil Nadu Co-operative Milk Producers Federation is the immediate higher authority of the writ petitioner, while she was on a deputation as General Manager in Madurai Aavin. Therefore, the charge memo issued by him is legally sustainable. If the petitioner had continued her services in Aavin Madurai, even without a permission letter from the Chief Secretary to Government, the Managing Director of Aavin, being immediate higher authority, would be entitled to issue a charge memo to the writ petitioner. In view of the above said facts, this Court does not find any merits in the contention of the learned Senior Counsel that the respondent does not have any jurisdiction to issue the impugned charge memo.

10. As far as the merits of the charges levelled as against the writ petitioner are concerned, it is for the enquiring authority as well as the disciplinary authority to decide the issue on merits based upon the explanation to be submitted by the writ petitioner. Therefore, this Court has not expressed any opinion on the merits of the charges made as against the writ petitioner.



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11. In view of the above said deliberations, there are no merits in the writ petition. Hence, this Writ petition stands dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

11.01.2024

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

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To

The Managing Director,
Tamil Nadu Milk Producers' Federation Limited,
Aavin House, Head Office,
Nandaram,
Chennai-600 035.



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R.VIJAYAKUMAR,J.

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Order made in
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Dated:
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