

(2014) 02 MAD CK 0193

In the Madras High Court

Case No : Writ Petition No. 12316 of 2012 and M.P. No. 1 of 2012

D. Gnanasekaran

APPELLANT

Vs

The Principal Chief Conservator of Forest and The District
Forest

RESPONDENT

Date of Decision : 13-02-2014

Acts Referred:

Citation : (2014) 02 MAD CK 0193

Hon'ble Judges : K. Ravichandrababu, J

Bench : Single Bench

Advocate : M. Ravi, for the Appellant; Inbanathan Government Advocate
(Forest), for the Respondent

Final Decision : Dismissed

Judgement

K. Ravichandrababu, J.—The above writ petition is filed challenging the charge memo and consequently for a direction to the first respondent to consider the petitioner's candidature for empanelment and promotion as Forester. The case of the petitioner is as follows:

He was initially appointed as Watchman on 10.06.1998. He was promoted as Office Assistant in the year 1991. Thereafter, he was appointed as Forest Guard by transfer of service on 11.10.2000. He was placed under suspension on 26.01.2010. However, the said order was cancelled on 10.03.2010. He was issued with a charge memo on 15.03.2010 by the second respondent under Rule 17(b) of the Tamilnadu Civil Services (Discipline & Appeal) Rules, alleging that he failed to submit the original 10th Standard certificate. For appointment as Forest Guard, by transfer of service, no educational qualification is required except the physical fitness of the candidate. The requirement of the educational qualification was made only in the year 2001 by issuing G.O.MS. No. 41, wherein Plus Two was prescribed as educational qualification. Since the petitioner's appointment was earlier to the said G.O., he cannot be found fault with. After the lapse of ten years from the date of appointment, the above charge memo was issued. An

enquiry was conducted, wherein the Enquiry Officer found the charges as proved. The petitioner submitted further representation on 22.03.2011 and 02.08.2011, pointing out that the educational qualification was not required during the relevant period of his appointment. In the said representations, an error had crept in the translated version with regard to his community by wrongly stating as Scheduled Caste instead of Backward Class. Immediately, he forwarded another representation dated 21.03.2012, informing the above said mistake. Considering all the representations, the second respondent through proceedings dated 29.03.2012, had withdrawn the charges. The said withdrawal was without any reservation for issuing fresh charges. While that being so, the petitioner was once again issued with a fresh charge memo on 30.03.2012, leveling the very same allegations. Therefore, the impugned charge memo is challenged on the grounds of delay, maintainability and non application of mind.

2. The second respondent filed a counter affidavit wherein it is stated as follows:

The charges earlier leveled against the petitioner dated 15.03.2010 were entirely different from the charges issued on 30.03.2012. The petitioner was requested to produce the original certificate of SSLC to find out whether he has passed SSLC or not. But, he did not do so. He had his qualification entered in the Service Register as if he passed SSLC. The Joint Director of Government examination reported on 08.02.2012 that the petitioner obtained only 25 marks in Social Science as per the records available as against 55 marks shown in the Service Register. It was a total misrepresentation by furnishing a false information. Further, he claimed that he belonged to Scheduled Caste. Only on 08.02.2012, the second respondent came to know that the petitioner had secured only 25 marks in the Social Science as against 55 marks, as claimed in the Service Register. Thus, a fresh cause of action has arisen with new material to formulate different and new set of charges, which are nothing to do with the earlier charge memo. Therefore, there is no delay.

3. The contention of the learned counsel appearing for the petitioner is as follows:

Both the charges are one and the same and therefore, having withdrawn the earlier charge memo, no fresh charge memo can be issued without reserving any right to do so. There is an inordinate delay of 12 years from the date of promotion and 16 years from the date of occurrence, in issuing the charge memo. Thus, as per the decision of the Apex Court reported in P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, , the charges are liable to be quashed on the ground of delay. On the date of actual promotion, no educational qualification was required and only in the year 2001, a Government order introduced the requirement of educational qualification. Therefore, the petitioner cannot be found fault with, even assuming that he has not produced the SSLC certificate. In this connection, the orders made in unreported decisions in W.P. No. 47241 of 2006 dated 22.09.2010 and W.P. No. 42220 of 2006 dated 03.01.2011 are relied on. The petitioner did not get appointment based on the SSLC qualification but on the clarification letter dated 31.07.2000 issued, by the Principal Chief

Conservator of Forest.

4. Learned Government Advocate (Forest) appearing for the respondents 1 and 2 submitted that both the charges are different and there is no delay in issuing the same, as explained in the counter affidavit. He further submitted that the petitioner made misrepresentation with regard to his community.

5. Heard Mr. M. Ravi, learned counsel appearing for the petitioner and Mr. Inbanathan, learned Government Advocate (Forest) appearing for the respondents 1 and 2.

6. The point for consideration in this writ petition is as to whether the impugned charge memo is liable to be set aside on the grounds urged by the petitioner.

7. It is well settled that a charge memo cannot be called into question before the court of law, unless the same is issued without jurisdiction or it is illegal and unsustainable on the face of it or there is an unexplained and inordinate delay in issuing the same.

8. Here, in this case, it is urged that the impugned charges and the charges leveled against the petitioner earlier on 15.03.2010 are one and the same and having withdrawn the earlier charge memo, the present charge memo cannot be re-issued without reserving any right. In order to appreciate the said contentions, it is better to read and compare both the charge memos. The charge memo dated 15.03.2010, issued and withdrawn latter reads as follows:

9. The present impugned charge memo dated 30.03.2012 reads as follows:

10. Both the charge memos contained two charges. A comparative reading of charge No. 1 in both the charge memos would show that they are not similar or identical or containing the same set of facts. The first charge in charge memo dated 15.03.2010, alleged that non production of the SSLC certificate by the petitioner, had raised a doubt with regard to its genuinity. Thus, it is stated therein that by not producing those certificates, the petitioner has committed dereliction of duty.

11. While reading the first charge in the present impugned charge memo, it could be seen that the allegation is that the petitioner has misrepresented with regard to his qualification and that the marks in the social science subject entered in the Service Register differs with the marks details obtained from the Joint Director of Government examinations. It is also alleged that the petitioner has given false information to the higher officials and also to the Tamilnadu Administrative Tribunal, regarding his SSLC qualification and obtained favourable order for his promotion.

12. Thus, from the perusal of the first charge in both the charge memos, it could be seen that they are not one and the same, as contended by the learned counsel for the petitioner and on the other hand, they are different on narration of the allegations.

13. While coming to the second charge in the charge memo dated 30.03.2010, the allegation is that the petitioner has failed to furnish the certificates for more than three years and therefore, he has committed dereliction of duty. In effect, the second charge is nothing but an extended version of the first charge.

14. While coming to the second charge in the present impugned charge memo, the allegation is that the petitioner has given false information with regard to his community as Scheduled Caste in his representation dated 22.03.2011 and 02.08.2011, when his Service Register shows his community as Backward Class. Thus, the charge No. 2 in the present impugned charge memo was not a charge leveled in the earlier charge memo. Admittedly, it is a new charge.

15. Considering all these facts, I am of the view that the two charge memos are totally different and distinct and they are not one and the same. Consequently, withdrawal of the earlier charge memo has got no relevance or bearing on the issuance of the impugned charge memo. Thus, I reject the contention of the learned counsel for the petitioner in this aspect.

16. Is there a delay in issuing the charge memo is the next question. I have already found that both charge memos are not one and the same. Even assuming that 1st item of both charge memos has some common factor, still, I am of the view that the conduct of the petitioner estopes him from raising the ground of delay for the following reasons. In so far as the first item of the impugned charge memo is concerned, no doubt, it is true that the petitioner was appointed as Forest Guard as early as in the year 2000 and the charge memo is issued after nearly 12 years. But at the same time, in so far as the first charge is concerned, the earlier charge memo issued on 15.03.2010 alleged that he has not produced the SSLC certificate, which raised a doubt on its genuinity. The non production of SSLC Certificate is the common factor in both charge memos. The petitioner has not questioned the said charge memo on the ground of delay and on the other hand, he participated in the enquiry and consequently, the said charge was also found proved by the Enquiry Officer. Therefore, the issuance of the fresh charge memo, impugned in this writ petition in respect of the first charge, cannot be questioned by the petitioner on the ground of delay having participated in the earlier round of the domestic enquiry. The principles of estoppel would, certainly, be applicable to the present case.

17. Moreover, it is to be seen that the first charge also emanated in pursuant to the report of the Joint Director of Government Examinations dated 08.02.2012 in respect of the marks obtained by the petitioner in Social Science subject. This is a new set of facts. Therefore, part of the cause of action for issuing the first charge also has arisen on 08.02.2012. Therefore, in my considered view, there is no question of delay in respect of the first charge.

18. In respect of the second charge, the cause of action for the disciplinary authority has arisen only in pursuant to the representations dated 22.03.2011 and 02.08.2011. Therefore, there is no delay even in respect of the second

charge. Thus, from the above discussed facts and circumstances, it could be seen that there is no delay and consequently, the decision relied on by the learned counsel for the petitioner reported in P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, has got no application to the present case.

19. The learned counsel for the petitioner further relied on the unreported decisions made in W.P. No. 47241 of 2006 dated 22.09.2010 and W.P. No. 42220 of 2006 dated 03.01.2011, to contend that on the date of actual promotion, no educational qualification was required. In my considered view, all these things need not be gone into at this stage by this Court since that would amount in deciding the charges on the merits.

20. Whether the charge is sustainable on merits or not, is not for this Court, at this stage, to go into the same and decide. It is for the petitioner to take part in the enquiry and disprove the contents of charges by adducing materials.

21. Moreover, it is not the case of the petitioner that the charge memo was issued without jurisdiction. When a competent authority has issued a charge memo, it is for the petitioner to disprove its contents by participating in the domestic enquiry with adequate materials. Considering all these facts and circumstances, I am of the view that the writ petition is not maintainable as against the charge memo. Accordingly, the same is dismissed. The writ petitioner is directed to file his explanation to the charge memo within a period of three weeks from the date of receipt of a copy of this order. On receipt of such explanation, it is for the Disciplinary Authority to consider the same and after such consideration, if such Authority chooses to proceed with the enquiry, the disciplinary proceedings shall be completed within a period of eight weeks thereafter.

With these observation, the writ petition is dismissed. No costs. The connected miscellaneous petition is also dismissed.