
(2011) 03 MAD CK 0639

In the Madras High Court

Case No : Writ Petition No. 24023 of 2010 in M.P. No. 2 of 2010

K. Manickam

APPELLANT

Vs

The Tamil Nadu Water Supply and Drainage Board

RESPONDENT

Date of Decision : 08-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Water Supply and Drainage Board Employees (Discipline and Appeal)
Regulations, 1972 — Regulation 24, 9

Citation : (2011) 03 MAD CK 0639

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : Kandhan Doraisami, for the Appellant; Sudharsana Sundar, TWAD, for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J.—The impugned charge memo dated 01.10.2010 issued by the Managing Director, Tamil Nadu Water Supply and Drainage Board, Chennai, the 1st Respondent herein, reads as follows:

1) The undersigned proposes to hold an enquiry against Thiru.K. Manickam Executive Engineer under Regulation 9(b) of TWAD Board Employees" (Discipline and Appeal) Regulations, 1972. The substance of allegations namely, the imputations of misconduct, misbehavior in respect of which the enquiry is proposed to be held is set out in Annexure I. A statement of allegations namely, the imputations of misconduct or misbehavior in support of each charge is enclosed in Annexure II. A list of documents by which and a list of witnesses by whom, the charges are proposed to be sustained are also enclosed in Annexure III and IV, respectively. Any other witnesses and documents are found necessary will be examined during the course of the enquiry.

2) Thiru.K. Manickam, Executive Engineer is directed to submit within 21 days of the receipt of this memorandum, a written statement of his defense and also to

state whether he desires oral enquiry or to be heard in person or both. If the written statement of defense is not received within the stipulated time, it will be presumed that he has nothing to offer in his defense and further action will be pursued.

3) He is informed that an oral enquiry will be held and oral evidence shall be heard in respect of such charges as are not admitted by him. He should therefore specifically admit or deny each charge. A form of questionnaire is also enclosed.

4) Thiru.K. Manickam, Executive Engineer is further informed that if he does not submit his written statement of defense on or before the date specified in Para 2 above or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Regulation 9(b) of TWAD Board Employee's (Discipline and Appeal) Regulations, 1972, or the orders or directions issued in pursuance of the said rule the inquiring authority may hold the inquiry ex-parte.

5) Attention of Thiru.K. Manickam, Executive Engineer is invited to Regulation 24 of the TWAD Board Officers' and Servants' Conduct Regulations, 1972, under which no Board Servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Board. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Thiru K. Manickam, Executive Engineer is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Regulation 24 of TWAD Board Officers' and Servants' Conduct Regulations, 1972.

2. Substantiating the charge memorandum, the Corporation has relied on 31 documents. Besides, 22 witnesses have been proposed to be examined to prove the charges leveled against the Petitioner. While that be so, the writ Petitioner has impugned the charge memorandum, on the grounds inter alia that the charge memorandum has been issued only to favor the Respondents 2 and 3, who are juniors to the Petitioner, and that he had worked on deputation in Nagapattinam Division, only for a short period between 20.09.2006 and 24.09.2007. According to him, he has not committed any irregularity in the matter of construction of houses, as alleged by the Respondents and that the complaint is highly belated, and therefore, the charge memorandum has to be quashed.

3. A detailed counter affidavit has been filed by the Managing Director, Tamil Nadu Water Supply and Drainage Board, Chennai, the 1st Respondent herein, to sustain the charge memo. The disciplinary proceedings initiated cannot be quashed at the threshold, unless the same has been issued by an incompetent authority or it is contrary to statutory provisions. Useful reference can be made to few decisions of the Supreme Court.

4. In Union of India (UOI) and Others Vs. Upendra Singh, , the Central

Administrative Tribunal examined the correctness of the charges framed against the Respondent therein, on the basis of the material produced by him and quashed the same. The Union of India preferred an appeal. The Supreme Court, after considering the decision in *T.C. Basappa Vs. T. Nagappa and Another*, , which was followed in *Ujjam Bai v. State of U.P.*, reported in AIR 1962 SC 1621 and *V.D. Trivedi v. Union of India*, (1993) 2 SCC 55 , at Paragraphs 4 and 6 of the judgment in *Upendra Singh's* case, held as follows:

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 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.

The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal. If the original application of the Respondent were to be filed in the High Court it would have been termed, property speaking, as a Writ of prohibition. A writ of prohibition is issued only when patent lack of jurisdiction is made out. It is true that a High Court acting under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in view.

5. In *Union of India and Others Vs. K.K. Dhawan*, , it was contended by the delinquent therein that his conduct cannot be the subject matter of disciplinary proceedings, as it was not in the course of discharge of the duties, as a servant of the Government. The Supreme Court, following the ratio decedent in *Govinda Menon Vs. Union of India (UOI)*, , repelled such contention and at Paragraph 28, held that disciplinary action can be taken in the following cases, though the instances are not exhaustive,

- i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
- ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- iii) if he has acted in a manner which is unbecoming of the government servant;
- iv) if he had acted negligently or that he omitted the prescribed conditions which

are essential for the exercise of the statutory powers;

v) if he had acted in order to unduly favor a party;

vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great.

6. It is also useful to extract the ratio decedent in Govinda Menon Vs. Union of India (UOI), , which reads as follows:

In our opinion, it is not necessary that a member of the Service should have committed the alleged act or omission in the course of discharge of his duties as a servant of the Government in order that it may form the subject-matter of disciplinary proceedings. In other words, if the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission even though the act or omission relates to an activity in regard to which there is no actual master and servant relationship. To put it differently, the test is not whether the act or omission was committed by the Appellant in the course of the discharge of his duties as servant of the Government. The test is whether the act or omission has some reasonable connection with nature and condition of his service or whether the act or omission has cast any reflection upon the reputation of the member of the Service for integrity or devotion to duty as a public servant. We are of the opinion that even if the Appellant was not subject to the administrative control of the Government when he was functioning as Commissioner under the Act and was not the servant of the Government subject to its orders at the relevant time, his act or omission as Commissioner could form the subject-matter of disciplinary proceedings provided the act or omission would reflect upon his reputation for integrity or devotion to duty as a member of the service." In this context reference may be made to the following observations of Lopes, L.J. in *Pearce v. Foster* (1866) 17 QBD 536, p. 542.

If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service of the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant.

(emphasis supplied)

7. In *Union of India (UOI) and Another Vs. Kunisetty Satyanarayana*, , the Respondent therein was issued with a charge memo for availing reservation against the post earmarked for ST, though he did not belong to the said category. Instead of submitting a reply to the charge memo, he preferred Original

Application before the Central Administrative Tribunal, which disposed of the same with a direction to the Respondents to submit the explanation to the charge memo and on such reply, the disciplinary authority was directed to consider his name. In stead of filing the reply, the Respondent therein filed a Writ Petition, which was allowed. Testing the correctness of the order of the Andra Pradesh High Court, the Supreme Court, at paragraphs 13, 14 and 16, held as follows:

13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide *Executive Engineer, Bihar State Housing Board v. Ramdesh Kumar Singh and Ors.* [JT 1995 (8) SC 33], *The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another, , Ulagappa and Ors. v. Divisional Commissioner, Mysore and Ors.* [2001 (10) SCC 639], *State of Uttar Pradesh Vs. Brahm Datt Sharma and Another*, etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so.

It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.

(emphasis supplied)

8. Material on record does not disclose any violation of statutory provisions, in formulating the charges. This is not a case where, the competence of the Managing Director, Tamil Nadu Water Supply and Drainage Board, Chennai, is questioned. What is pleaded by the writ Petitioner is that he has not committed any irregularity as alleged and that it was purely to favor somebody. When the department has annexed a list of documents numbering 31 and proposed to examine 22 witnesses to substantiate the charges leveled against the Petitioner in the matter of construction of 8233 houses, for Tsunami affected people, under the Rajiv Gandhi Rehabilitation Package at Seruthur village, no finding can be recorded on mere averments made in the supporting affidavit and that the matter has to be enquired by the department.

9. Following the judgments of the Supreme Court, this Court is of the considered view that it is not a fit case to call for interference of this Court. Mr. Kandhan Doraisami, learned Counsel for the Petitioner submitted that the Petitioner would submit his explanation/reply to the charges by tomorrow itself and that a direction may be issued to the 1st Respondent to complete the enquiry within one month or by end of April, as the Petitioner is attaining the age of superannuation on 30.05.2011. Considering the evidence sought to be let in by the Respondents to substantiate the charges, this Court is not inclined to fix the time limit, as prayed for by the writ Petitioner. However, having regard to the submission of the learned Counsel for the Petitioner that the Petitioner would submit his reply to the charges, a direction is issued to the Managing Director, Tamil Nadu Water Supply and Drainage Board, Chennai, the 1st Respondent herein, to complete the disciplinary proceedings and pass appropriate orders as expeditiously as possible, before the date of superannuation. It is made clear that if the disciplinary proceedings impugned in this writ petition, are not completed within such period fixed by this Court, for some reason or the other, that would not give any right to the writ Petitioner to seek for quashing of the charges or the disciplinary proceedings. Accordingly, the writ petition is dismissed. Consequently, M.P. No. 2 of 2010 are closed. No costs.