(2008) 01 MAD CK 0044

In the Madras High Court

Case No : Writ Petition No. 259 of 2008 and M.P. No. 1 of 2008

R. Ramachandran APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 28-01-2008

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 47, 47(1)
Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1988 — Section 44
Tamil Nadu Government Servants Conduct Rules, 1973 — Rule 20(1), 20(2)

Citation : (2008) 01 MAD CK 0044

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : Abudu Kumar Rajaratnam, for the Appellant;

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—The prayer in the writ petition is to issue a writ of Certiorarified mandamus calling for the records pertaining to

the proceedings dated 17.10.2007 in letter No. 6634/Tr.II/2007-10 of the first respondent, quash the same and direct the respondents herein to

reinstate the petitioner in service with all service benefits.

2. At the outset, I would like to point out that the second part of the prayer for reinstatement is misconceived as the question of reinstatement does

not arise at all since the petitioner is in service.

3. The case of the petitioner is that he was appointed as Motor Vehicle Inspector, Grade-II in the year 1985 as a direct recruit through Tamil

Nadu Public Service Commission and he was promoted as Motor Vehicle Inspector, Grade-I in the year 1991 and presently he is holding the said post in the Regional Transport Office, Chennai (North). Petitioner was issued with a charge memo dated 17.10.2007 alleging that without verifying

the genuineness of the documents produced for registration of six imported vehicles, petitioner accepted the fabricated documents produced by the

Importer and registered the vehicles, which resulted in loss of revenue to the Government to the tune to Rs. 32,252/- by way of Life Time Tax, for

lesser value than the actual value. The statement of charges and the statement of allegations are contained in Annexure I & II, which read as

follows:

Annexure-I

Statement of charges framed against Thiru R. Ramachandran, Motor Vehicle Inspector, Grade-I, Regional Transport Officer, Chennai (North)

When you were working as Motor Vehicles Inspector, Grade-I, Regional Transport Officer, Chennai (North), Chennai - 39 during February-

2006, you committed the following irregularities.

CHARGE:

As per Circular No. 1/79 of the Transport Commissioner, Chennai, the records produced for registration of foreign vehicles should be verified for

genuineness and whether all the records prescribed under Rule 47 of Central Motor Vehicles Rules are produced. You have inspected the

following illegally imported six second hand vehicles and accepted fabricated documents without proper scrutiny of the registration papers,

inspected the vehicles and also certified in Form-20, which is against the statutory requirement under Rule-47 of CMV Rules, 1989 and

instructions issued by the Transport Commissioner in Circular 1/79.

1. TN 05/R.1255

2. TN 05/R.2703

3. TN 05/R.3600

4. TN 05/R.4153

5. TN 05/R.7816

6. TN 05/R.8989

You are the competent authority to inspect the vehicle and grant registration as contemplated u/s 44 of M.V. Act, 1988 and solely responsible for the registration of vehicles mentioned in charge-I. You had accepted the fabricated documents produced by the importer without proper

verification. Thus your action has resulted in loss of revenue to the effect of Rs. 32,252/- to the Government exchequer by way of Life Time Tax

assessed based o fabricated documents for lesser value than the actual value of the cars.

Thus you have failed to maintain absolute integrity and devotion to duty and thereby contravened the provisions of Rule 20(1) and (2) of the

TNCS (D&A) Rules, 1973, and thus conducted yourself in a manner unbecoming of a Government servant.

ANNEXURE - II

Statement of allegations namely imputation of misconduct or misbehaviour in support of the charges framed against Thiru R. Ramachandran, Motor

Vehicles Inspector (Non-Technical), Grade-I, Regional Transport Office, Chennai (North)

That the Directorate of Revenue Intelligence, Chennai-17 has informed in their letter that six second hand cars illegally imported by one M/s. Sri

Vijayalakshmi Auto Centre and others were registered in the office of the Regional Transport Officer, Chennai (north), in the name of the importer

and other companies with forged documents. The Directorate of Revenue Intelligence, Chennai-17 has clearly stated that the illegally imported

vehicles were fraudulently registered by submitting the fabricated documents.

An application for registration of Motor vehicles should be made in form No. 20 of the CMV Rules, 1989, and has to be accompanied by the

documents prescribed under Rule 47(1)(a) to (i) of CMV Rule, 1989. In the case of imported vehicles, customs clearance certificate along with

the license and bonds, if any shall be enclosed.

Further, the Regional Transport Officers have been given instructions that they should themselves make such enquiries as they may deem necessary

before they approve the re-registration of imported vehicle wherever there is a reasonable suspicion, as per circular 1/79.

If you were careful enough to verify the genuineness of the documents produced by the importers while applying for registration of the illegally

imported cars would not have been registered and the registration certificates of the six vehicles would not have been issued.

Failure on your part of non scrutinizing the documents properly as per Motor Vehicles Act, Rules and Circular instructions you have caused loss of

revenue to the Government Exchequer to the tune of Rs. 32,252/- in collection of Life Time Tax assessed for lesser value than the actual value of

the cars.

Hence the charges as found in Annexure-I are framed against you.

The said charge memo is sought to be quashed in this writ petition by contending that the statement of allegations even if accepted to be true, does

not make out any misconduct and there is discrimination in treating the charged officials. The fabricated documents appear like original documents

and therefore the petitioner cannot be expected to be an expert in identifying the fabricated documents and the proceedings initiated separately

against the petitioner is contrary to G.O(D) No. 1235 Home Department, dated 17.12.2000. Petitioner also contended that quoting of wrong

provision in the charge memo shows the non-application of mind by the authority concerned.

3. Heard the learned Counsel for the petitioner and perused the impugned charge memo.

4. Admittedly no jurisdictional issue with regard to the competency of the person, who framed the charge memo is raised. Whether the misconduct

alleged on the petitioner is made out or not will be known only when the petitioner submits his explanation and after conducting enquiry, if the

explanation is not found satisfactory.

5. From the typed set of papers it is seen that after receipt of the charge memo on 7.11.2007, petitioner sought for the documents which were

relied on in the charge memo. Petitioner also stated that after receiving the said documents, he will submit his written submissions. He had opted to

have both oral enquiry and personal hearing. The said submission of the petitioner is found in his representation dated 7.11.2007, which finds a

place at page 30 of the typed set of papers.

6. Petitioner appears to have violated circular No. 1/79, dated 5.1.1979, which is the basis for issuing the impugned charge memo. In the said

circular it is stated that it is the duty of the Registering Authority to take all possible steps to verify the genuineness of such applications for

registration, especially when all the applications are brought together for registration, for change of address, for issuing No Objection Certificate,

etc. All the Registering Authorities in the State were therefore instructed to ensure the genuineness of such documents, especially in regard to the

imported cars produced before the Registering authorities at the time of applying for registration, etc. so that the smuggled car could be prevented

from getting registered. It is further stated that the Regional Transport Officers shall personally verify the documents with original documents and

should themselves make such enquiries as may be deemed necessary before they approve the re-registration of imported vehicles, wherever there

is reasonable suspicion. Hence a duty is cast upon the petitioner, who is the Regional Transport Officer, to verify the genuineness of the documents

produced.

7. From the records, the Directorate of Revenue Intelligence found that the petitioner has failed in not scrutinising the documents properly as per

the Motor Vehicles Act, Rules, Circulars and instructions, which has caused loss of revenue to the Government exchequer.

8. The contention of the learned Counsel for the petitioner that common proceedings were initiated against one Shanmugasundaram, a copy of

which was not given to the petitioner can be answered by directing the respondents to furnish a copy of the same. The further contention that

wrong provision of law is quoted in the impugned charge memo viz., ''Rule 20(1) and (2) of the Tamil Nadu Civil Services (Discipline and Appeal)

Rules are contravened'', though to a certain extent is correct. However, from the reading of the allegations it is beyond doubt that the rule violated

is Rule 20(1) and (2) of the Tamil Nadu Government Servants Conduct Rules, 1973, and not the Tamil Nadu Civil Services (Discipline and

Appeal) Rules, 1973, as referred in the impugned charge memo, which appears to be a typographical error. Hence though the Rule 20(1) and (2)

is correctly mentioned, instead of typing ''Tamil Nadu Government Servants Conduct Rules, 1973'', it is wrongly typed as ''Tamil Nadu Civil

Services (Discipline and Appeal) Rules, 1973''. Wrong quoting of name of the Rule has not caused any prejudice to the petitioner.

9. Hence I am of the view that the impugned charge memo cannot be quashed at the threshold. The petitioner can very well submit his explanation

for the allegations levelled against him. The scope of interference at the charge memo level is admittedly very limited as held by the Supreme Court

in the following decisions:

(a) The scope of interference in charge sheet at show cause stage is well settled in the decision reported in (2006) 12 SCC 28 (Union of India v.

Kunisetty Satyanarayana), wherein in paragraphs 13 to 16, the Supreme Court held thus,

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 Vs. Ramesh Kumar Singh and others, , The Special Director and Another Vs. Mohd. Ghulam Ghouse and

Another, , Ulagappa v. Divisional Commr., Mysore (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 petition lies when some right of any party is infringed. A

mere show-cause notice or charge-sheet does not infringe the right of anyone. 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.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a

show-cause notice or charge-sheet.

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.

(b) In the decision reported in AIR India Ltd. Vs. M. Yogeshwar Raj, , in paragraph 8, the Supreme Court held as follows:

8. It appears from a copy of the writ petition that the respondent has not questioned the jurisdiction of the disciplinary authority to issue the

impugned show-cause notice. The two issues of the respondent''s caste and whether he had adequately explained the production of the bogus

certificate of 4-2-1998 are yet to be decided by the disciplinary authority. Both the issues are primarily issues of fact. The High Court should not

have pre-empted a factual decision of the disciplinary authority on the issues. Nor should the High Court have stayed the proceedings on a prima

facie finding on the subject-matter of inquiry particularly when the competence of the disciplinary authority was not in doubt.

10. In view of the above decisions, I am of the firm view that no case is made out for interference in the impugned charge memo and the writ

petition is dismissed in limine. Any observation made in this order shall not stand in the way of the petitioner in defending the charges in any manner

in the disciplinary proceeding.