

(2010) 02 MAD CK 0042

In the Madras High Court

Case No : Writ Petition No"s. 26863 of 2008 and 12591 of 2009 and M.P. No"s. 1 of 2008 and 1 of 2009

T. Simson Prathab Singh

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 12-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 193, 201, 218, 302, 34

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 13(1), 17

Citation : (2010) 02 MAD CK 0042

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : A. Jenasenan, for the Appellant; R. Neelakandan, GA, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides. The petitioner in both the writ petitions is one and the same person. In the first writ petition, the

petitioner challenges the order in G.O.(2D) No. 592, Home (Police) Department, dated 30.9.2008, wherein and by which he was placed under

suspension under Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. In the same writ petition, he also challenges the order

in G.O.(2D) No. 593, Home (Police) Department, dated 30.9.2008, wherein by which he was not permitted to retire by exercise of power under

Rule 56(1)(c) of the Fundamental Rules. The writ petition was admitted on 23.12.2008. Pending the writ petition, this Court granted an interim

stay.

2. Subsequently, the petitioner has come forward to file an another writ petition

being W.P. No. 12591 of 2009, challenging the charge memo, dated 5.6.2009 framed by the Director General of Police. When the writ petition came up on 08.07.2009, even without admitting the writ petition, a direction to the respondents to take notice and this Court granted an interim stay of the charge memo. This was on the ground that the present memo related to the earlier charges and therefore, prima facie it was a case for staying the operation of the order. Subsequently, when this writ petition came up on 5.11.2009, this Court directed the other writ petition also to be posted along with the earlier writ petition as requested by the counsel.

3. In the first writ petition, the contention of the petitioner was that the petitioner had put an unblemished service and no enquiry into the grave charges is said to be pending on 30.9.2008. Therefore, the order has been mechanically passed. It is also contrary to the Government order in G.O.Ms. No. 144, P&AR Department, dated 8.6.2007. The issuance of the second order retaining him in service will arise only when the charge was pending and when there was valid suspension. The petitioner had passed his Law examination and was preparing to enroll himself as an Advocate after his retirement. By this order, he is being prevented from doing so.

4. In the second writ petition, the contention was that since the earlier order was stayed by this Court, he is deemed to have retired from service on 30.9.2008 and therefore, the subsequent charge memo issued on 5.6.2009 was illegal. He also stated that the charge that he had illegally detained a suspected accused from 23.00 hours on 28.11.2005 to midnight of 30.11.2005 in Keeriparai Police Station without a remand and not produced him before the court in connection with Crime No. 482 of 2005 on the file of Aralvaimozhy police station was illegal. He claimed that at the relevant time, he was the Deputy Superintendent of Police, District Crime Branch dealing with only white collar crimes and he was not involved in that case. He was also on night round duty on the relevant date. It was one Eswaran, Deputy Superintendent of Police, who was the Investigating Officer, assigned to investigate the case.

5. However, this Court is not inclined to go into the merits of the case. The only question that arise for consideration was whether the petitioner can be suspended and retained in service for the purpose of facilitating the

departmental enquiry.

6. In the counter affidavit filed on behalf of the respondents in W.P. No. 12591 of 2009, it was averred that the Revenue Divisional Officer,

Padmanabapuram sent a report stating that the police personnel were responsible for illegal detention and torture of Mohammed Masood. The

District Collector, Kanyakumari had recommended appropriate action against 11 police personnel including the petitioner. The petitioner was held

responsible for illegal detention and for beating the detenu. Since the petitioner was about to retire, he was placed under suspension on grave

charges either contemplated or pending. Since the petitioner had rushed to this Court and obtained a stay order, the Government passed an order

retaining him in service and also subsequently, framed the charge memo as per the order of the Director General of Police. The charges framed

against the petitioner revealed serious misconduct on his part. As found from the charge memo, dated 5.6.2009, the two charges are as follows:

(i) Highly reprehensible conduct in having illegally detained the secured suspected accused Mohamed Masood S/O Abdul Jabar, Chanthai

Nadupettai, Kadayanallur, Kalyani @ Kalyanasundaram and Krishnamoorthy from 23.00 hrs. on 28.11.05 to 30.11.05 midnight in Keeriparai

P.S. without remanding them before the court in connection with Aralvoimozhi P.S. Cr. No. 482/2005 u/s 395, 397 and 427 IPC registered on

28.11.2005 at 01.30 hrs. and

(ii) Highly reprehensible conduct in having beaten and tortured the secured suspected accused namely Mohamed Masood, S/O Abdul Jabar, a

resident of Chanthai Nadupettai, Kadayanallur Tenkasi Taluk, Tirunelveli District while he was detained from 28.11.05 to 30.11.2005 midnight in

Keeriparai Police Station under the guise of interrogation in the dacoity case in Aralvoimozhi P.S.Cr. No. 482/2005 u/s 395, 397 and 427 IPC.

Therefore, it must be stated that there is no case for interfering with the charge memo.

7. The counter affidavit filed in the other writ petition also sets out the same facts. One Rathinasamy, Head Constable, who was involved in the

incident was also not allowed to retire on reaching the age of his supeannuation. It was a case relating to illegal detention, custodial torture and

resultant man missing of Mohammed Masood from 30.11.2005.

8. The learned Government Advocate also brought to the notice of the court a letter, dated 10.12.2009 sent by the Additional Director General of

Police, Crime Branch, CID addressed to the Principal Secretary to Home Department, stating that after conducting sustained investigation, a

comprehensive charge sheet was filed by the CB CID on 10.11.2009 in Kadayanallur Police Station Crime No. 391 of 2006 under Sections 342

(man missing), 344, 193, 218, 302, 506(ii), 201 IPC read with 34 IPC against all the 12 persons including the petitioner who was accused in the

said case. The case was taken on file by the Judicial Magistrate, Tenkasi and summons were issued to all the accused.

9. When these are the facts, it is surprising that the petitioner could challenge the order retaining him in service as well as the one suspending him

from service including the charge memo. This Court is not inclined to interfere with the said orders for more than one reason.

10. The Supreme Court in its decision in State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, dealt with the power of the Court in dealing

with a charge memo at the show cause stage and the following passage found in paragraph 9 will make the position clear:

9. The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a government servant under a

statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by

showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably

without any authority of law. "The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once

cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the government servant and

only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature, the High Court in our

opinion ought not have interfered with the show cause notice.

11. The Supreme Court vide judgment in The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another, observed as follows:

5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-

cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted.

12. Further, the Supreme Court in the judgment relating to Union of India v. Kunisetty Satyanarayana reported in (2006) 12 SCC 28 in paras 13

to 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 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.

13. In the decision in Deputy Registrar, Cooperative Societies, Faizabad Vs. Sachindra Nath Pandey and Others, , the Supreme Court held that

the delay in framing charge cannot be a ground to interfere with the charge memo and the relevant passage found in paragraph 7 of the said

judgment is extracted below:

7. On a perusal of charges, we find that the charges are very serious. We are, therefore, not inclined to close the matter only on the ground that

about 16 years have elapsed since the date of commencement of disciplinary proceedings, more particularly when the appellant alone cannot be

held responsible for this delay....

14. Further, in Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan, , the Supreme Court has held that the charge

cannot be quashed only on the ground of delay and any finding recorded by the Court will prejudice the enquiry. The Supreme Court has also

pulled up the member of the Administrative Tribunal for having interfered with the charge memo as if the Tribunal is the appellate authority. The

following passage found in paragraph 3 of the said judgment makes the position very clear:

3. ...We are informed that charge-sheet was laid for prosecution for the offences of embezzlement and fabrication of false records etc. and that the

offences and the trial of the case is pending. The Tribunal had set aside the departmental enquiry and quashed the charge on the ground of delay in

initiation of disciplinary proceedings. In the nature of the charges, it would take a long time to detect embezzlement and fabrication of false records

which should be done in secrecy. It is not necessary to go into the merits and record any finding on the charge levelled against the charged officer

since any finding recorded by this Court would gravely prejudice the case of the parties at the enquiry and also at the trial. Therefore, we desist

from expressing any opinion on merit or recording any of the contentions raised by the counsel on either side. Suffice it to state that the

Administrative Tribunal has committed grossest error in its exercise of the judicial review. The member of the Administrative Tribunal appears to

have no knowledge of the jurisprudence of the service law and exercised power as if he is an appellate forum dehors the limitation of judicial

review. This is one such instance where a member had exceeded his power of judicial review in quashing the suspension order and charges even at

the threshold. We are coming across such orders frequently putting heavy pressure on this Court to examine each case in detail. It is high time that

it is remedied.

15. Even a mere terminology usage cannot invalidate suspension. The Supreme Court in its decision reported in Director General and Inspector

General of Police, Andhra Pradesh, Hyderabad and others Vs. K. Ratnagiri, has held in paragraph 7 as follows:

7. ...The Rule 13(1) empowers the authority to keep the respondent under suspension pending investigation or enquiry into the criminal charges

where such suspension is necessary in the public interest. When the first information report is issued, the investigation commences and indeed it has

commenced when the respondent was kept under suspension. The order of suspension cannot, therefore, be said to be beyond the scope of Rule

13(1) merely because it has used the word "prosecution" instead of investigation into the charges against the respondent. A wrong wording in the

order does not take away the power if it is otherwise available. The Tribunal seems to have ignored this well accepted principle.

16. As long as the order has been passed under FR 56(1)(c) and served on the petitioner, the petitioner will have to face the enquiry. Besides, as

set out above, the petitioner is also facing a serious criminal case.

17. In the light of the above, both the writ petitions will stand dismissed.

However, there will be no order as to costs. Consequently, connected miscellaneous petitions stand closed.