(2009) 01 MAD CK 0168

In the Madras High Court

Case No : Writ Appeal No. 912 of 2008

The State of Tamil Nadu APPELLANT

Vs

C. Krishnan RESPONDENT

Date of Decision : 05-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17

Citation : (2009) 01 MAD CK 0168

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.;V. Dhanapalan, J

Bench : Division Bench

Advocate : Raja Kalifullah, G.P, for the Appellant; G. Ethirajulu, for the Respondent

Judgement

S.J. Mukhopadhaya, A.C.J.

1. The respondent, who was Superintendent of Unit Office, Regional Transport Office, was proceeded departmentally vide charge sheet in Memo

R. No. 75848/V4/05 dated 4.5.2006. He challenged the same on different grounds including the ground that no case has been made out under

Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (hereinafter referred to as the ""Rules"").

2. The learned Judge, by the impugned judgment dated 3.9.2007, having noticed the charge sheet, held that no dishonest motive has been noticed

in the charge sheet and even though irregularity or negligence was alleged in the charge sheet, no question of framing charges under Rule 17(b)

would arise and in the facts and circumstances, the alleged charges would attract only Rule 17(a) of the Rules and directed the competent authority

to proceed under Rule 17(a) of the Rules, instead of Rule 17(b) of the Rules.

Having noticed that the employee was to retire in the month of

February 2008, the Department was also directed to consider the case of the employee for promotion also. Against the aforesaid judgment, the

Department (State) has preferred this appeal.

3. The learned Government Pleader appearing for the Department submitted that the High Court, under Article 226 of the Constitution of India,

has no jurisdiction to alter the charges framed under a particular provision of law to that of another law.

4. The learned Counsel appearing on behalf of the respondent (employee) submitted that the Court should not interfere with the judgment, as the

employee was allowed to retire from services of the State without any objection. He also relied upon the charge memo dated 4.5.2006 to suggest

that no charge was made out under Rule 17(b) of the Rules.

5. We have heard the learned Counsel for the parties and noticed the rival contention and also perused the records.

6. It is true that this Court, under Article 226 of the Constitution of India, has no jurisdiction to give a finding as to charge should be framed under

which provision of law. Therefore, we are of the opinion that the finding of the learned Judge, as made by the impugned judgment dated 3.9.2007

and directing the appellants to frame the charge under Rule 17(a) of the Rules, are not proper.

7. Now the question arises as to whether the proceedings under Rule 17(b) of the Rules should be revived, by remitting matter to the appellant,

since the employee has been retired from service.

8.1. From the records as contained in Annexure-I, we find that the following charges have been levelled.

Charge-I:

Thiru C. Krishnan, Superintendent, Unit Office, Hozur allowed 8 brokers inside the office premises viz. 1) Manoharan 2) Jayabalan 3)Ravi

Chandra Reddy 4) V. Radharajulu, 5) Balakrishnan 6) Devarajan 7) C. Senthilkumar 8) N. Manjunatha Reddy unwontedly and seized

unaccounted money of Rs. 21,165/- from them.

Charge-II:

An unclaimed amount of Rs. 3,370/- was found and seized within the office premises of office of Motor Vehicle Inspector, Hozur.

Charge-III:

A shortage of Rs. 348/- was noticed in the closing cash balance.

8.2. The imputation of charges, as found in Annexure-II, reads as under:

That the said Thiru. C. Krishnan, while working as Superintendent Unit Office, Hozur under the control of Regional Transport Officer, Krishnagiri,

a surprise check was conducted on 29.11.2005 by the appropriate authorities and District Inspection Cell Officers and found some irregularities.

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

8.3. The list of documents, as contained in Annexure-III, refers to a report on the result of surprise check conducted on 29.11.2005 by the

Officers of appropriate authorities and District Inspection Cell Officers Unit Office, Hozur.

8.4. Annexure-IV contains the list of witnesses by whom the charges have been framed, with the names of three persons, including the Deputy

Superintendent of Police, Vigilance and Anti-Corruption, Krishnagiri, Inspector of Police, Vigilance and Anti-Corruption , Krishnagiri and Cell

Inspector, Inspection Cell Office, Collectorate

9. From a perusal of the charge sheet, as contained in Annexure-I and quoted above, it would be evident that vague charges have been levelled.

Though in charge No. 1, it is alleged that the respondent employee allowed eight persons inside the office premises unwontedly and seized

unaccounted amount of Rs. 21,165/- from them, it has not been mentioned as to how it constituted any charge against the employee. If the amount

has been recovered from eight other persons, no evidence is enclosed to show that he allowed the persons inside the office premises and the

amount seized from the said eight persons was meant for some purpose other than the official purpose. It is not the case that the amount, which

was seized from those eight persons, belong to the State Government or the said amount was brought by them to bribe the employee or any other

person.

10. The second charge relates to the unclaimed amount of Rs. 3,370/- found and seized within the office premises of the office of the Motor

Vehicle Inspector, Hosur. But, it is not clear as to how the employee is connected with the same.

11. Similarly, with regard to charge No. 3, which talks of shortage of Rs. 348/- noticed in the closing balance, it has not been mentioned as to

whether the cash balance was maintained by the employee and shortage was found in it.

12. As the charges are vague, as also the imputation of charge as contained in Annexure-II and quoted above, and that employee has already been

allowed by the State Government to retire from services, we are of the view that it is not a proper case to remit the matter for enquiry with regard

to the vague charges. In that view of the matter, we set aside the part of the finding and direction of the learned single Judge dated 3.9.2007,

whereby direction was issued to proceed with the enquiry, after framing charges under Rule 17(a), but upheld the order so far as it relates to the

setting aside the charge memo dated 4.5.2006. The order of the learned single Judge dated 3.9.2007 stands modified to the above extent.

The writ appeal stands disposed of with the aforesaid observation. But, there shall be no order as to costs. M.P. No. 1 of 2008 is closed.

