

(2011) 08 MAD CK 0173

Madras High Court

Case No: Writ Petition No. 9002 of 2011 and M.P. No"s. 1 and 2 of 2011

K.R. Sowthamani

APPELLANT

Vs

The Director of Treasuries and
Accounts

RESPONDENT

Date of Decision: Aug. 18, 2011

Acts Referred:

- Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 - Rule 17
- Tamil Nadu Government Servants Conduct Rules, 1973 - Rule 19(2), 20(1)

Hon'ble Judges: D. Hariparanthaman, J

Bench: Single Bench

Advocate: M. Ravi, for the Appellant; S. Gunasekaran, Government Advocate for M.C. Swamy, Special Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D. Hariparanthaman, J.

The Petitioner was initially recruited as Junior Assistant in 1980. She was promoted as Accountant in 1985. While so, she was issued with a charge memo dated 27.01.2003 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (shortly "the Rules") making three charges. An enquiry was conducted. The Enquiry Officer held that the charges were not proved. But however, the Respondent differed with the findings of the Enquiry Officer and issued a show cause notice dated 06.11.2007 directing the Petitioner to give her explanation.

2. Thereafter, another charge memo dated 02.09.2008 was issued under the Rule 17(b) of the Rules incorporating the same charges that contained in the charge memo dated 27.01.2003. This time also, an enquiry was conducted and the Enquiry Officer submitted his report dated 13.07.2009 holding that the first charge was proved and the second charge was not proved. The Respondent did not agree with

the findings of the Enquiry Officer.

3. Subsequently, the Respondent issued another show cause notice dated 28.08.2009 directing the Petitioner to show cause as to why the Respondent could not come to a different conclusion from that of the Enquiry Officer.

4. While so, the Petitioner reached the age of superannuation on 30.06.2010. The Respondent passed an order dated 30.06.2010 permitting the Petitioner to retire from service without prejudice to the disciplinary proceedings, which was pursuant to the charge memos dated 27.01.2003 and 02.09.2008.

5. In these circumstances, the Respondent issued another charge memo dated 01.02.2011 under Rule 17(b) of the Rules on the same charges. Challenging all these charge memos, the Petitioner has filed the present writ petition.

6. The Respondent has filed a counter affidavit refuting the allegations made by the Petitioner.

7. Heard both sides.

8. The learned Counsel for the Petitioner submits that the Respondent could not repeatedly issue charge memos for the same charges and hold enquiries and harass the Petitioner. He further submits that the marriage of the Petitioner took place long back and the Respondent could not take those matters and take disciplinary action. It is further submitted that the disciplinary action is pending for the past nine years on the same charges and in view of the pendency of the same, the proceedings are liable to be interfered with.

9. On the other hand, the learned Government Advocate seeks to sustain the impugned orders, based on the counter affidavit filed by the Respondent.

10. I have considered the submissions made on either side and perused the materials available on record.

11. The charges made in the charge memo dated 27.01.2003 is extracted hereunder:

The Enquiry Officer held that the charges were not established. The Respondent disagreed with the findings of the Enquiry Officer and issued a show cause notice dated 06.11.2007. The Respondent ought to have proceeded further and passed final orders. On the other hand, the Respondent issued another charge memo dated 02.09.2008 making the same and similar charges.

The charges made in the charge memo dated 02.09.2008 are as follows:

This time, the Enquiry Officer held the first charge as proved and the second charge as not proved, vide report dated 13.07.2009. The Respondent disagreed with the findings of the Enquiry Officer and issued the show cause notice dated 28.08.2009.

12. While so, the Petitioner reached the age of superannuation on 30.06.2010 and was permitted to retire from service, without prejudice to the disciplinary proceedings. In these circumstances, the Respondent issued another charge memo dated 01.02.2011 making the same charges and the charges, which reads as follows:

Charge No. 1. Tmt. K.R. Sowthamani by declaring Thiru D. Subash formerly Accountant of Sub Treasury Dharmapuri as her husband and father of her two children Selvi S. Nila and Selvi S. Udaya has developed illegal intimacy with Thiru D. Subash and thus she has violated Rule 19(2) of Tamil Nadu Government Servants Conduct Rules, 1973.

Charge No. 2. She has falsely declared that she has married on Thiru D. Subash a thread merchant belonging to Sevapet in Salem District and got two children S. Nila and S. Udaya through him when in fact such person is fictitious one.

Charge No. 3. She has falsely declared in her service register that the name of her husband as Thiru R. Sundara Raghavan when in fact she did not marry him legally. Thus she has violated Rule 20(1) of Tamil Nadu Government Servants Conduct Rule 1973.

13. From the above narrated facts, it is clear that the Respondent could seem to have decided to issue one charge memo after another charge memo, until the Enquiry Officer records a finding of guilt. There is no other reason for issuing three charge memos on the same and similar charges. In this context, it is relevant to note that the Honourable Supreme Court has held in the following two decisions that the Department could not issue second charge memo, when the first charge memo resulted in the findings that the charges were not established.

(I) [Kanailal Bera Vs. Union of India \(UOI\) and Others,](#)

(II) [K.R. Deb Vs. The Collector of Central Excise, Shillong,](#)

14. If the Respondent disagreed with the findings, they could have proceeded further after getting explanation from the Petitioner. On the other hand, the Respondent is not correct in resorting to issue second charge memo dated 02.09.2008. Here again, the Enquiry Officer gave a finding that one of the charges was established. In these circumstances, as a third time, the charge memo dated 01.02.2011 was issued, making the same charges. This is not permissible under law.

15. In these circumstances, I am inclined to quash the impugned orders and accordingly, the impugned orders are quashed. The Respondent is directed to settle the terminal benefits to the Petitioner within a period of eight weeks from the date of receipt of a copy of this order.

16. With the above observation and direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.