(2011) 07 MAD CK 0390

Madras High Court

Case No: Writ Petition (MD) No. 11452 of 2009 (MADURAI BENCH)

N. Muthulakshmi		APPELLANT
	Vs	
The Inspector General of Registration and The Deputy Inspector General of Registration		RESPONDENT

Date of Decision: July 26, 2011

Hon'ble Judges: P. Jyothimani, J

Bench: Single Bench

Advocate: M. Ravi, for the Appellant; V. Pandi, Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P. Jyothimani, J.
Heard the learned Counsel for the Petitioner as well as the learned Government Advocate for the Respondent.

2. The writ Petitioner was appointed as Junior Assistant in the Public Health Department during 1981 and thereafter, transferred to Registration Department during 1992 and she was promoted as Assistant on 30.12.1996. A charge memo was issued against her under Rule 17(b) on 15.10.2004 to the effect that while working as Assistant in the District Registration Office, Karivalamvandanallur, Tenkasi she has failed to produce key relating to the office on 11.05.2001 stated to have been with her and instead of she has handed over the key to Kuppamuthu, Office Assistant with the result, the Registration office could not be opened upto 1.45 p.m. on that day and thereby prevented the public office from functioning.

3. Based on the said charge memo, it appears that the Petitioner has given her explanation on 28.12.2004 that during the relevant period namely 11.05.2001, she has applied for medical leave namely from 05.05.2001 to 13.05.2001 and therefore,

she has denied the charges. The charges framed against her originally on 15.10.2004 by the Deputy Inspector General of Registration, Tirunelveli. It is stated that in spite of such explanation having been given, there was No. further proceedings pursuant to the charge memo, dated 15.10.2004. However, the first Respondent has issued the second charge memo, dated 27.02.2006 which is also impugned in this proceedings relating to the same incident and same charge was framed under Rule 17(b). The Petitioner has submitted her explanation to the second charge memo also reiterating her earlier stand. It was thereafter, an Enquiry Officer was appointed who after enquiry, has submitted his report to the first Respondent on 28.08.2008 finding that the charges against the Petitioner are proved. It was based on the said final enquiry report, the first Respondent has given a show cause notice, dated 12.05.2009 calling upon the Petitioner to submit her further representation for the Enquiry Officer''s report.

4. It is at this stage, the Petitioner has chosen to challenge the impugned show cause notice issued by the first Respondent along with the charge memo dated 27.02.2006 issued by the first Respondent on various grounds including that the impugned show cause notice issued by the first Respondent is premeditated since while forwarding the Enquiry Officer''s report, the first Respondent has made up his mind as if the charges stood proved and therefore, there is nothing further for the first Respondent to pass orders.

5. That apart, the entire enquiry proceedings have been challenged on the ground that even in the enquiry conducted by the Enquiry Officer, the witness namely, Kuppamuthu (Office Assistant) examined on the side of the establishment and before the Enquiry Officer, he has clearly stated that he has not handed over the key with the Petitioner and the Enquiry Officer has specifically accepted that the said Kuppamuthu has not handed over the key to the Petitioner and therefore, the said charge framed against the Petitioner, on the face of it, is vague.

6. It is also the further case of the Petitioner that the impugned show cause notice has been issued by presuming that the Petitioner was involved in the charge on the basis of a preliminary enquiry conducted before the disciplinary proceedings were initiated in which the said Kuppamuthu has stated that he has handed over the key to the Petitioner and such statement which has been recorded from Kuppamuthu in the absence of the Petitioner cannot be put against the Petitioner and that there has been a long delay which has been unexplained in the disciplinary proceedings.

7. In the counter affidavit filed by the Respondents, it is stated that while it is true that the first charge was framed on 15.10.2004 and that was not proceeded further in spite of the fact that the Petitioner has submitted her explanation but it is sought to be explained in the counter affidavit that in the second charge memo, dated 27.02.2006 having found that the second Respondent was not the competent authority to frame charges and the first Respondent happened to be the appointing authority, the first charge against the Petitioner, dated 15.10.2004 stood cancelled

and the second charge which is impugned in this writ proceedings have been issued by the authority competent namely, the first Respondent.

8. It is further stated that there is No. defect in the enquiry conducted by the Enquiry Officer and the Petitioner having taken part in the enquiry proceedings cannot challenge the proceedings and it is her duty to give explanation to the impugned show cause notice especially when the show cause notice has been issued by giving opportunity to her which is in compliance of the principles of natural justice. It is further stated that simply because in the impugned show cause notice, the first Respondent has chosen to state that he has held the charges against the Petitioner as proved, it does not mean that the first Respondent made up his mind as if he has accepted the report of the Enquiry Officer especially when it has been forwarded to the Petitioner and that if the Petitioner gives her explanation, the same will be considered impartially and therefore, according to the Respondents, there is No. illegality in the disciplinary proceedings.

9. As far as the question of delay is concerned, it is the case of the Respondents that during the course of the enquiry, it was the Petitioner who took time before the Enquiry Officer and therefore, the delay is attributable to the Petitioner and it cannot be said to be an unexplained delay. It is further stated that the charges are very clear namely that on 11.05.2001, the Petitioner has not handed over the key to enable the office to be opened and therefore, vagueness of the charge does not arise.

10. Mr. Ravi, learned Counsel for the Petitioner would submit that the impugned show cause notice, on the face of it, is illegal in the sense that the first Respondent having held that the charges are proved, he has nothing more to add for the purpose of passing final order and therefore, the impugned charge memo is only an empty formality and it is purely premeditated in its nature.

11. As far as the vagueness is concerned, it is submitted that the cases where admittedly when the person was on medical leave a charge has been levelled on her to the effect that the key was not given when admittedly the leave has been granted and the leave period has been regularised the charge to the effect that during the leave period, the Petitioner has failed to come to the office can only be termed as vague.

12. As far as the delay is concerned, he relied upon various judgments of the Hon''ble Supreme Court as well as this Court to contend that the unexplained delay should be held to be prejudicial to the interest of the delinquent.

13. On the other hand, the contention of the learned Government Advocate is that the records would show that the Petitioner has been taking time for participating in the enquiry and the delay is attributable to her. It is also his submission that the first Respondent would pass orders impartially without being influenced by the word used in the impugned show cause notice whereby he has stated that the Petitioner

is held responsible and that should simply mean that the first Respondent has accepted the Enquiry Officer''s report and that cannot be said to be premeditated intention.

14. I have considered the submissions made on either side and given my anxious thought to the issue involved in this writ petition.

15. On the facts of the present case, it is not in dispute that the same charge was levelled against the Petitioner by the second Respondent on 15.10.2004 for which the Petitioner has submitted her explanation immediately on 28.12.2004. Between the said period dated 15.02.2004 and the second charge memo dated 27.02.2006, nothing has happened. Admittedly, as it is seen from the record neither of the Respondents have passed any order giving up the original charge memo dated 15.10.2004. Therefore, the original charge memo still stand as on date. On a reference to the impugned charge memo dated 27.02.2006 which is the second charge memo relating to the same incident and verbatim the charge being the same, there is absolute No. reference in the second charge memo to the effect that the first Respondent has given up the original charge memo, dated 15.10.2004 on the ground that the second Respondent who has issued first charge memo, dated 15.10.2004 was incompetent except that it is sought to be explained in the counter affidavit filed herein.

16. Law is well settled that the impugned order has to be read as it is and it is certainly not open to the Respondents to explain the impugned order in their own way at the time of filing of the counter affidavit. The contents of the counter affidavit cannot certainly be a substitute for the contents of the impugned order. Inasmuch as the impugned order does not contain any clause to the effect that the original charge memo, dated 15.10.2004 has been dropped for the reason that the second Respondent had No. jurisdiction, the contention raised on the part of the Respondents as if the impugned charge memo is valid on the ground that the original charge memo, dated 15.10.2004, was issued by the incompetent authority, cannot be acceptable. Even, on the facts of the case, admittedly, the charge memo, dated 15.10.2004 as well as the impugned charge memo, dated 27.02.2006 are one and the same.

17. It has been the categoric case of the Petitioner that she was on medical leave for the period between 05.05.2001 and 13.05.2001. But it remains the fact that the Petitioner has given medical leave application only on 14.05.2001 even though she availed leave in accordance with rules before that period and it is not in dispute that the said period availed by the Petitioner as medical leave has been regularised by the Respondents. It is not the case of the Respondents that the Petitioner has unauthorisedly absented herself.

18. In such view of the matter, it is not known as to how responsibility can be fixed on her when she was on medical leave on the date of incident namely on

11.05.2001. It is in this regard, relevant to point out that even before the Enquiry Officer, it is the finding that in the absence of the Petitioner one Mr. Chellaiah, who was in charge of the office he has stated to have been handed over key in respect of the office to the Office Assistant, Kuppamuthu. The said Kuppamuthu''s statement which has been relied upon by the Respondents was originally before the charges framed at the preliminary stage wherein he has stated to have given a statement to the effect that he has handed over the key to the Petitioner whose house is adjacent to the office of the Registrar. But it is seen that during the course of enquiry before the Enquiry Officer, the said Kuppamuthu has accepted that he has not handed over the key to the Petitioner as it has been extracted by the Enquiry Officer which is as follows:

muRj;jug;g[rhl;rpahf jpU.rp.Fg;gKj;J tprhupf;fg;gl;lhh;. mth; jkJ thf;FKyj;jpy;" nsepiy cjtpahsh; jpU.fp.bry;iyah 10.05.01 md;W fhiy 9 kzpastpy; mYtyfk; te;jpUe;jjhft[k;, mtUila mz;zd; kfs; nwe;Jtpl;ljhft[k;, ne;jtpguk; cjtpahsUf;F Behpy; nsepiycjtpahsh; bjhptpj;J tpl;ljhft[k;, bjhptpj;Jk; 11.05.01 md;W fhiy jpUkjp.Kj;Jbyl;Rkp tPl;ow;Fr; brd;wjhft[k;, ePA;fs; BghA;fs; ehd; tUfpBwd; vdt[k; cjtpahsh; bjhptpj;jjhft[k;, cjtpahshplk; mYtyf rhtpiaf; bfhLf;ftpy;iy vdt[k; thf;FKyk; mspj;Js;shh;

19. Therefore, even as per the Enquiry officer''s report, it is clear that the said Kuppamuthu, Office Assistant has in clear terms stated that he has not handed over the key to the Petitioner. The fact that the Petitioner was on leave, is on record and the evidence of Kuppamuthu, Office Assistant who has been entrusted with the key before the Enquiry Officer is also clear that he has not handed over key to the Petitioner. Whileso, it is not known as to how the Petitioner can be held responsible that she has failed to hand over key on the date of incident namely on 11.05.2001. When admittedly, she was not having the key with her, there is No. question of making charge against the Petitioner. Certainly, it has to be taken that the said charge is vague. Even otherwise, on the factual scenario which is categoric, in my considered view there is nothing to proceed against the Petitioner at all.

20. There is one other aspect that in the show cause notice issued by the first Respondent after receiving the Enquiry Officer''s report, he has in categoric term held that the charges against the Petitioner are proved. The relevant paragraph in the impugned show cause notice is as follows:

2. After careful consideration of the report of the Inquiry Officer aforesaid, the Inspector General of Registration agree(s) with the findings of the Inquiry Officer and holds the charges as proved.

It denotes that the Enquiry Officer''s report has been carefully considered by the first Respondent who has made up his mind that the charges are proved and thereafter, given show cause notice to the Petitioner calling upon her to give explanation. On the face of it, it is an empty formality which has been followed by the first Respondent forming a premeditated determination against the Petitioner.

Certainly the first Respondent having decided that charge against the Petitioner has been proved, cannot give an impartial decision even after the explanation are submitted by the Petitioner. Either the explanation or the impugned show cause notice only appear to be the empty formality and there is nothing for the first Respondent to pass orders.

21. In such view of the matter, looking at any angle, the conduct of the Respondents, cannot be accepted to be legal in the manner known to law. The legal position regarding the reliance being placed on the preliminary report for making imputation on a delinquent is not maintainable for the reason that during the time of preliminary enquiry, there was No. possibility for the delinquent to participate and therefore, any statement during the preliminary enquiry can only be behind the back of the delinquent and if such reliance is placed on the preliminary enquiry or statement given by any person during the preliminary enquiry for the purpose of imposing punishment, such punishment cannot stand to the test of scrutiny of law. It was based on the hierarchy of judgments of the Hon''ble Supreme Court on this issue including the judgment in Narayan Dattatraya Ramteerthakhar Vs. State of Maharashtra and others, wherein the Hon''ble Supreme Court has discarded the legal validity of such statement during preliminary enquiry for the purpose of imposing punishment in the disciplinary proceedings, N.Paul Vasanthakumar,J, in the judgment reported in (2009) 7 MLJ 578 (K.Ramalingam Vs.Superintendent of Police, Perambalur) has held that the statements given in the preliminary enquiry, cannot be a basis for imposing any punishments. The relevant portion of the judgment is extracted hereunder:

14. In view of the above cited settled position of law on this aspect and having regard to the fact that there is No. controversy about the enquiry officer''s finding of guilt on the part of the Petitioner, relying upon the statements given by the witnesses during the preliminary enquiry and there was No. occasion to cross examine the said witness during the preliminary enquiry, I am of the view that the charges framed against the Petitioner cannot be said to be validly proved. Hence, the Petitioner is bound to succeed in this writ petition challenging the order of dismissal passed against him.

22. A Division Bench of this Court in Dharma Paripalana Sabha Vs. The Commissioner, Hindu Religious and Charitable Endowments (Admn.) Dept., , has held that in a case relating to suo motu revision under the Tamil Nadu H.R. & C.E. Act wherein the impugned show cause notice has been issued without indicating any reason for such invocation that such show cause notice certainly is prejudicial to the interest of the Respondents and the enquiry will become an empty formality thereby setting aside the impugned show cause notice.

23. Applying the yardstick laid down by the Division Bench of this Court to the facts of the present case, inasmuch as the first Respondent in the show cause notice has in clear term stated that he has made up his mind as if the Petitioner is held

responsible as per the charges, any further proceedings can only be termed as an empty formality.

24. As far as the delay in the proceedings are concerned, in the absence of any valid explanation for not proceeding further based on the first charge memo, dated 15.10.2004, till the date of second charge memo, dated 27.02.2006, the said period has to be considered as unexplained delay. Further, even after the second charge memo issued on 27.02.2006, the Enquiry officer has completed his enquiry on 22.04.2008 itself and the report has been forwarded to the first Respondent, the first Respondent has chosen to issue the impugned show cause notice only after one year i.e., on 12.05.2009 for which also there is No. proper explanation for such delay.

25. The charge relates to an event which is stated to have been happened on 11.05.2001 in respect of which the impugned charge memo was issued on 27.02.2006, therefore, there are nearly five years which are unexplained. On the factual situation which I have enumerated above, especially when the Petitioner was on medical leave on the said date, in the absence of any proper explanation regarding such undue delay, I am of the considered view that the delay itself is sufficient to cause detrimental effect to the delinquent''s interest. It was held by the Hon''ble Supreme Court in P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, , that such undue delay itself is more than the punishment which may be awarded in respect of the charges and that itself is sufficient to hold that there has been a mental agony and sufferings on the part of the delinquent. In this regard, the Hon''ble Supreme Court has held as follows:

14. Under the circumstances, we are of the opinion that allowing the Respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the Appellant. Keeping a higher Government official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a Government employee should, therefore, be avoided not only in the interest of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the Government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The Appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the Appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the Appellant should not be made to suffer.

26. That came to be followed subsequently in series of judgments including the Division Bench of this Court in G. Maragatha Meenakshi v. The District Collector, Madurai and Ors. reported in 2010 (2) CWC 154, apart from M.Elangovan Vs.The Trichy District Central Co-op. Bank Ltd., rep. by its General Manager, No. 1, Fort Station Road, Trichirapalli and Anr. reported in 2006 (2) CTC 635.

27. Insofar as the vagueness of the charges is concerned, in an unreported judgment of the First Bench of this Court in Government of Tamil Nadu, Rep.by Secretary to Government, Environment and Forests Department, Fort St., George, Chennai-9 and Ors. Vs.M.Subramanian made in W.A. No. 587 of 2008 in the judgment dated 03.07.2008 by relying upon the judgment of the Hon''ble Supreme Court in The Government of Andhra Pradesh and Others Vs. A. Venkata Rayudu, , it was held that in the absence of specific charge, there can be No. enquiry. The relevant paragraph of the judgment is extracted hereunder:

9. We respectfully agree with the view taken by the High Court. It is a settled principle of natural justice that if any material is sought to be used in an enquiry, then copies of that material should be supplied to the party against whom such enquiry is held. In charge 1, what is mentioned is that the Respondent violated the orders issued by the Government. However, No. details of these orders have been mentioned in Charge 1. It is well settled that a charge-sheet should not be vague but should be specific. The authority should have mentioned the date of the GO which is said to have been violated by the Respondent, the number of that GO, etc., but that was not done. Copies of the said Gos or directions of the Government were not even placed before the enquiry officer. Hence, Charge 1 was not specific and hence No. finding of guilt can be fixed on the basis of that charge. Moreover, as the High Court has found, the Respondent only renewed the deposit already made by his predecessors. Hence, we are of the opinion that the Respondent cannot be found guilty for the offence charged.

It was ultimately held that in the interest of justice and considering the vagueness of charges, it is not proper for the Court to direct the Department to proceed with the enquiry against the delinquent.

28. For all the abovesaid reasons, I have No. hesitation to hold that the impugned charge memo as well as the show cause notice issued by the first Respondent are unsustainable in law. Accordingly, they are set aside. The writ petition stands ordered accordingly. No. costs. Consequently, connected miscellaneous petitions are closed.