

Tamilnadu Vs. The Customs

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Court : Chennai

Decided On : Jan-29-2015

Judge : R.Sudhakar

Appellant : Tamilnadu

Respondent : The Customs

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

09. 10.2009 CORAM THE HONOURABLE Mr. JUSTICE M.M.SUNDRESH
W.P.No.4242 of 2009 M.Meera Mytheen Dy. Chief Inspector of Factories, No.23A,
Old Agraharam Street, Chinna Chokkikulam Madurai-2. ...Petitioner -Vs- 1.State of
Tamilnadu, Rep. by its Secretary to Government, Labour & Employment
Department, Fort St. George, Chennai-9.

2. The Chief Inspector of Factories,. Chepauk, Chennai-5. ... Respondents
PRAYER: This Writ Petition has been filed under 226 of the Constitution of India to
issue a writ of Certiorari calling for the records of the 2nd respondent in connection
with the impugned 1) Memo No.Vu 2/43202/2004-1 dated 30.07.2008 by which a
minor disciplinary proceedings against the petitioner was converted into a major
disciplinary proceedings and the consequential charge-memo issued by the 2nd
respondent in 2) Memo No.Vu/43202/2004-2 dated 30.07.2008 and quash the
same with all consequential benefits. For Petitioner : Mr.V.Suthakar For

ORDER

The petitioner herein has filed the present Writ Petition challenging the proceedings of the second respondent dated 30.07.2008 wherein the second respondent has converted the charge memo from 1 under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules into the charges covering under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. The petitioner herein was working as a Deputy Chief Inspector of Factories (Testing and Safety) Tirunelveli. While he was working in the said capacity as Deputy Chief Inspector of Factories at Tirunelveli, the petitioner was alleged to have committed some misconduct. Therefore, a charge memo was issued by the second respondent under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules on 10.02.2006. In pursuant to the said charge memo an enquiry notice was issued to the petitioner and the petitioner gave a representation on 23.07.2007. Thereafter, the second respondent has issued a charge memo dated 30.07.2008, which is impugned herein converting the charges under 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules into 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. Challenging the said proceedings the petitioner has filed the present writ petition.

2. The learned counsel for the petitioner submitted that the charges have been altered from 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules into 17 (b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules without affording any opportunity to the petitioner. The learned counsel submitted that inasmuch as proposed punishment for the earlier charges and the present charges are different, the petitioner should have been heard before deciding alteration of charges. In respect of his contention the learned counsel has relied upon the judgment reported in A.BOMMUSAMY Vs. THE GOVERNMENT OF TAMIL NADU REP. BY SECRETARY TO GOVERNMENT & OTHERS (2007 (3) CTC518, wherein the Hon'ble Division Bench of this Court has held that while altering the charges from minor penalty to major penalty the delinquent should have been given an opportunity.

3. Per contra, the learned Additional Government Pleader submitted that the judgment relied upon by the learned counsel for the petitioner is not applicable to the facts of the present case on hand, since in the said case, the Division Bench of this Court was pleased to hold that without conducting an enquiry the charges cannot be altered. Therefore, the learned Additional Government Pleader submitted that inasmuch as the enquiry having been conducted in the present case, which was not a case in the earlier case, the petitioner will have to be dismissed.

4. As contended by the learned counsel for the petitioner, the proposed punishment of the charges framed earlier and subsequent by the second respondent are distinct and different from the charges framed under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules wherein minor penalties are proposed whereas for the charges framed under the impugned charge memo major penalties are proposed. It is no doubt true that in the present case, an enquiry has been conducted and based upon that enquiry impugned charge memo has been issued. However, inasmuch as the said alteration involves civil consequences affecting the rights of the petitioner, this Court is of the considered opinion that the petitioner should have been given an opportunity before passing impugned charge memo. The Hon'ble Division Bench in the judgement reported in 2007 (3) CTC518 CTC (supra) observed is as follows: As seen from the facts and circumstances of the case, though initially the charges were framed under Rule 17(a) of the Rules, but later on the charges were altered to the one under Rule 17 (b) and this was done without following the procedure as contemplated in the Rules, without conducting any further enquiry and without conducting any enquiry and without giving any opportunity to the petitioner. Further, the third respondent is not the competent authority to issue the charge memo under Rule 17(b) of the Rules as he was not the appointing authority of the petitioner and even on this ground also the order of punishment is liable to be set aside. 5. On a consideration of the said judgment this Court is of the opinion that the second respondent ought to have been given an opportunity to the petitioner before altering the charge memo. It is no doubt true that in the present case an enquiry has been conducted and based upon that enquiry impugned charge memo has been given, coming to the prima facie conclusion. But the mere facts that such an

enquiry has been conducted cannot be a ground to deprive of the petitioner's opportunity of being heard before passing the impugned charge memo. Therefore, without going into merits of the case, the impugned order passed by the second respondent is hereby set aside and the second respondent is directed to issue a show cause notice to the petitioner to show cause as to why the charges framed earlier should not be altered and to proceed with a fresh enquiry in accordance with law after affording an opportunity to the petitioner. M.M.SUNDRESH.J., deepa 6..With these observations, the writ petition is allowed. No costs. Consequentially, connected miscellaneous petitions are closed. 09.10.2009 Index : Yes / No Internet : Yes / No Deepa W.P.No.4242 of 2009 To 1. Secretary to Government, State of Tamilnadu, Labour & Employment Department, Fort St. George, Chennai-9.

2. The Chief Inspector of Factories,. Chepauk, Chennai-5.

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