

S.Kumar ... Vs.The Superintendent of Prisons,and anr.

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Court : Chennai

Decided On : Sep-13-2010

Judge : T.S.Sivagnanam, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : W.P.No. 25276 of 2009 & M.P.No.1 of 2009 & M.P.No.1 of 2010

Appellant : S.Kumar ...

Respondent : The Superintendent of Prisons,and anr.

Advocate for Def. : Mrs.M.Sneha G.A, Adv.

Advocate for Pet/Ap. : Mr.Ravi Shanmugam, Adv.

Judgement :

1. The prayer in the writ petition is for issuance of Writ of Certiorari to quash the charge memo dated 07.08.2009 issued to the petitioner.
2. The petitioner is working as a Carpentry Instructor and posted in the Central Prison, Vellore. The facts leading to the filing of the writ petition are that; the District Elementary Educational Officer, Salem preferred a complaint before the Crime Branch against Tmt.Palaniammal, Secondary Grade Teacher, Panchayat Union Elementary School, Thiru.Senthamizh @ Ravi, Secondary Grade Teacher and Thiru.Gnanasekaran, Secondary Grade Teacher. It is the case of the petitioner that in the said complaint, there is no allegation made against him.

During January 2002, the Sub-Inspector of Police, Central Crime Branch, Salem filed a charge sheet before the Judicial Magistrate No.III, Salem against eight accused and the petitioner was arrayed as the 6th accused, which according to the petitioner is based on a statement given by the second accused. The case has been taken on file as C.C.No.335/2003 and the case is still pending.

3. According to the petitioner, he has been regularly appearing before the Judicial Magistrate Court and the trial is yet to begin. While, so the petitioner was placed under suspension by an order dated 06.04.2005, on the ground that he is involved in a criminal offence, which is under trial. The petitioner has challenged the order of suspension before this Court by filing the writ petition in W.P.No.25931 of 2009 and this Court had granted interim stay, and based on such order, the petitioner has been reinstated. The first respondent by proceedings dated 07.08.2009, framed a charge against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The charge against the petitioner was that he was running a Teacher Training Institute and received money from the public and failed to return the money and thereby cheated the public. It is the case of the petitioner that in the annexure to the charge memo, there is no list of documents or any specific complaint or names of persons, who have made the complaint and the Assistant working in the Central Prison alone is cited as the prosecution witness in the charge memo. This charge memo dated 07.08.2009 is challenged in the present writ petition.

4. The learned counsel appearing for petitioner would submit that the charge memo framed against the petitioner is vague and does not disclose any material particulars such as date of occurrence and the persons, who preferred complaint, evidence which is to be considered in the enquiry etc., and the respondents cannot proceed, based on a such vague charge. It is further contended that the allegation in the criminal case, which is pending against the petitioner is identical to that of the departmental proceedings and therefore, the departmental proceedings have to be deferred till the conclusion of the criminal trial. Further, it is contended that the delay in issuing the charge memo is itself a ground for quashing the charge since, the allegation is of the year 1987 and departmental proceedings were instituted in 1991 and no enquiry was conducted till 1995 and

on the ground of the delay alone, the charge is liable to be quashed. The learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in P.V.Mahadevan vs. Managing Director, Tamil Nadu Housing Board, 2005 (6) SCC 636. On the above grounds, the learned counsel for the petitioner submitted that the impugned charge memo is liable to be quashed.

5. Per contra, the learned Government Advocate by relying upon the counter affidavit would submit that the Inspector of Police, Central Crime Branch, Salem City by letter dated 28.03.2005 has stated that petitioner and his family members were involved in a criminal case relating to manipulation, forging and issuance of bogus certificate of Diploma in Teacher Education with a dishonest intention of cheating the general public and an F.I.R was registered in Crime No.7/2000 for offences under Section 468, 471, 420 IPC r/w Section 120(B) IPC and copy of the F.I.R was also received by the respondent. Under such circumstances, the petitioner was placed under suspension and subsequently, the impugned charge memo has been issued. The allegation of vagueness of the charge was denied and by placing reliance on the decision in Indian Overseas Bank vs. The District Collector, Ramanathapuram, 2009 (5) MLJ 938, it is contended that the criminal case as well as the disciplinary proceedings could be proceeded with simultaneously. Further, it is contended that there is no delay in initiating the disciplinary proceedings and the petitioner himself has without any demur submitted his explanation to the charge on 18.08.2009 and enquiry officer was also appointed to conduct the oral enquiry on 25.11.2009 and the petitioner participated in the enquiry and at that stage of the matter, the petitioner has filed this writ petition on 02.12.2009, only to stall the disciplinary proceedings and there are no merits in the contention raised by the petitioner. Further, it is contended that the petitioner being an employee under the uniformed force is bound to maintain integrity and devotion of duty and by his conduct, it is prima facie established that he has brought disrepute to the service and therefore, the charge memo should not be interfered by this Court. The learned Government Advocate in support of her contention relied on the decisions of the Hon'ble Supreme Court in State of Uttar Pradesh v. Brahm Datt Sharma and Another, 1987 2 SCC 179, Dy.Inspector General of Police v. K.S.Swaminathan, 1996 11 SCC 498, U.P.State Sugar corporation Ltd and Others v. Kamal Swaroop Tondon, 2008 2 SCC 41, Union of

India and Another v. Kunisetty Satyanarayana, 2006 12 SCC 28.

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

7. The challenge is to a charge memo issued to the petitioner, who is the Carpentry Instructor in the Central Prison at Vellore, admittedly part of the uniformed services. The basis of the charge memo is a criminal case in which the petitioner has been arrayed as the sixth accused. From the counter affidavit, it is seen that the other accused are the relatives of the petitioner. The gravamen of the charge in the criminal case is serious in as much as it is alleged that the accused have manipulated and issued forged certificates of Diploma in Teacher Training with intent to defraud the public. The defacto complainant is the District Elementary Educational Officer, Salem. It may be true that initially the petitioner's name was not found in the F.I.R., but subsequently, as an out come of investigation, the petitioner was arrayed as 6th accused. The charge memo is sought to be challenged, mainly on the ground of delay and vagueness. On the question of delay, the learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in the case of P.V.Mahadevan, referred supra. In the said case, disciplinary action was sought to be initiated against the Superintending Engineer of the Tamil Nadu Housing Board, who was issued a charge memo during in the year 2000 for irregularities in issuing sale deed in the year 1990. The Hon'ble Supreme Court after analyzing the facts of the said case held that there is no acceptable evidence on the side of the respondent explaining the inordinate delay in initiating departmental proceedings and the stand taken by the respondents in the counter affidavit was not convincing. Under such circumstances, the Hon'ble Supreme Court quashed the charge memo. However, the case on hand is factually different, it is an admitted that the petitioner has been arrayed as an accused in the criminal case in which charge sheet has been laid and is pending before the Judicial Magistrate No.III, Salem. It is admitted by the petitioner that the trial is in progress and he is regularly appearing before the Criminal Court. Further, the allegation pertains to manipulation and fabrication of diploma certificates, which are said to have occurred during 1998-99. The complaint was lodged by the District Elementary Education Officer and it is stated

that other accused are the relatives of the petitioner.

9. Thus, it appears that the charge against the petitioner is very serious and cannot be brushed aside as one of trivial in nature. That apart, even according to the petitioner, he was placed under suspension on 06.04.2005 and subsequently charge memo has been served, the petitioner submitted his explanation without any demur and also participated in the domestic enquiry, and at that stage, the petitioner has filed the present writ petition to quash the charge memo. It is true that this Court while, exercising discretion under Article 226 of the Constitution, is entitled to interfere in a show cause notice/charge memo and such exercise of discretion could be done in very rare and exceptional cases, when it was found that the charge memo is wholly without jurisdiction or for some other reason, if it is wholly illegal. It is not the case of the petitioner that the charge memo is without jurisdiction. One of the illegality pointed out is, the ground of delay. In my considering view the facts and circumstances as stated above, it cannot be stated that the departmental action was delayed. The petitioner was placed under suspension after the department came to know through the Central Crime Branch about the pendency of the criminal case. It is not known as to whether the petitioner had disclosed about the pendency of the Criminal case of the department, which he is bound to do. In any event, the petitioner was placed under suspension and he continues to appear before the Criminal Court.

10. Thereafter, after filing of the charge sheet before the Criminal Court, the departmental charge sheet has been issued. The petitioner has also submitted his explanation, not satisfied with the explanation, a domestic enquiry was ordered and the petitioner also participated in the first hearing of the domestic enquiry. Therefore, I am convinced that it is not a fit case, where the charge memo should be quashed on the ground of delay.

11. The next contention, which was raised by the learned counsel for the petitioner is that the charge memo is vague. The Hon'ble Supreme Court in the case of Dy.Inspector General of Police v. K.S.Swaminathan, referred supra has considered the scope of judicial review in examining the correctness of the charge particularly at the time of framing the charges held as follows:- "4.It is settled law

by a catena of decisions of this Court that if the charge memo is totally vague and does not disclose any misconduct for which the charges have been framed, the tribunal or the court would not be justified at that stage to go into whether the charges are true and could be gone into, for it would be a matter on production of the evidence for consideration at the enquiry by the enquiry officer. At the stage of framing of the charge, the statement of facts and the charge-sheet supplied are required to be looked into by the court or the tribunal as to the nature of the charges, i.e., whether the statement of facts and material in support thereof supplied to the delinquent officer would disclose the alleged misconduct. The Tribunal, therefore, was totally unjustified in going into the charges at that stage. It is not the case that the charge memo and the statement of facts do not disclose any misconduct alleged against the delinquent officer. Therefore, the Tribunal was totally wrong in quashing the charge memo. In similar circumstances, in respect of other persons involved in the same transactions, this Court in appeals arising out of SLPs (C) Nos. 19453-63 of 1995 had on 9-2-1996 allowed the appeals, set aside the order passed by the Tribunal and remitted the matter holding that: This is not the stage at which the truth or otherwise of the charges ought to be looked into. This is the uniform view taken by this Court in such matters.(emphasis supplied)

12. The allegation against the petitioner is that he has represented that he is running a Teacher Training Institution and cheated the public by collecting funds. In the annexure to the charge memo, the copy of the complaint has also been relied to. Therefore, the allegation in the charge is one of cheating the public by collecting money. In the criminal case, the charge relates to forgery and creating bogus certificates of Teacher Training Diploma course and all the accused have been charged for offences under Section 468, 471, 420 IPC r/w Section 120(B) IPC. Therefore, in my view, the scope and ambit of both the departmental charge memo and the charge in the criminal case are different, though it might arise out of a common incident or common set of facts, yet the scope of disciplinary enquiry is entirely different to that of the criminal case. Merely because the copy of the complaint stated to form part of the annexure to the charge memo has not been furnished to the petitioner, at this stage it cannot be taken as a parameter for quashing the charge. According to the petitioner the complaint does not make out

the charge, if that be so, it is for him to establish the same in the disciplinary proceedings.

13. Therefore, on these grounds, I do not find any reason to quash the charge memo. It is not a case, where the petitioner is not aware of the allegation based on which the charge has been issued, wherein he has to discover all the facts. The accused in the criminal case are said to be relatives of the petitioner and the trial in progress from 2005. Therefore, the decision relied on by the learned counsel for the petitioner in the case of *Surath Chandra Chakrabarty v. State of West Bengal*, 1970 (3) SCC 548, does not render any assistance to the facts of the case.

14. Thus, in view of the above reasons and also taking note of the fact that the petitioner has already submitted his explanation to the charge on 18.08.2009 and the enquiry officer has already been nominated and the petitioner also participated in the enquiry on 22.10.2009, the question of quashing the charge memo does not arise.

15. In the result, the writ petition fails and it is dismissed. The enquiry officer shall proceed with the disciplinary enquiry against the petitioner and afford full and effective opportunity to the petitioner and shall be conclude the same as expeditiously as possible. No costs. Consequently, connected miscellaneous petitions are closed.

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