

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 30.11.2009

Coram

The Honourable Mr. Justice P. JYOTHIMANI

W.P. No.30068 of 2008

and

M.P.Nos.2 of 2008 and 1 of 2009

S.Siddique

... Petitioner

..Vs..

The Commissioner,
Municipal Administration,
Chepauk, Chennai.

... Respondent

Petition under Article 226 of The Constitution of India, praying to issue a writ of Certiorari calling for the proceedings of the respondent Roc.No.63297/2007/OP3-6 dated 28.08.2008 and quash the same.

For Petitioner : Mr.V.Vijayshankar

For Respondent : Mr. T. Seenivasan,
Additional Government Pleader

O R D E R

The Writ Petition is directed against the charge memo issued to the petitioner by the respondent dated 28.08.2008. The impugned charge memo is challenged on the ground that there is no precise charge and the charge is not referable to Rule 20(1) of the Tamil Nadu Government Servant Conduct Rules 1973. The petitioner who has joined service as Assistant in Rural Development Department on 30.05.1986 and was later promoted as Section Officer on 14.05.1992 in the Municipal Administration and Water Supply Department and having opted from the Secretariat service to the Municipal Services, he was posted as Municipal Commissioner Grade II and got promotion as Municipal Commissioner Grade-I and later confirmed to Selection Grade in October 2007 and working in the Mettur Municipality, Mettur Dam and in these years of service from 1986 till date there was no blemish on record except the impugned charge memo issued by the respondent dated 28.08.2008. The respondent has issued the impugned order dated 28.08.2008 under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The charge as stated in the Annexure - I is as follows:

"Statement of allegations namely imputation of misconduct or misbehaviour in respect of which inquiry is proposed to be held against Thiru.S.Siddique, formerly Municipal Commissioner, Ramanathapuram Municipality.

Charge :

You Thiru.S.Siddique, formerly Municipal Commissioner, Ramanathapuram Municipality, was in possession of Rs.1200/- and unable to give proper explanation for the same and thereby failed to maintain absolute integrity and violated the rule 20(1) of Tamil Nadu Government Servant Conduct Rules, 1973."

2. In the Annexure II, while explaining the statement of allegations, the reason given is that at the time of inspection, he has produced Rs.1,200/- from his purse. When questioned by the Inspection Cell Officer about the money, whether it was kept to give it as illegal gratification to Audit Party, he was unable to give proper explanation. More astonishing statement which is as follows: - "As a responsible officer, he was unable to answer the direct question raised by the Inspection Cell Officer. It was assumed that he has kept that amount to give it as illegal gratification to the Audit Party". Of course, the statement of allegation also proceeds that the petitioner has given direction to the subordinates Tr.P.Ravi, Revenue Assistant and Tmt.E.S.Nagammal, Revenue Inspector, to book rooms at lodges for the Audit Persons. But the fact remains that the charge only relates to the possession of Rs.1200/- for which the petitioner being the Commissioner of Grade-I Municipality was unable to give his explanation and that it presumed to be a failure to maintain absolute integrity and devotion to duty and thus violated the rule 20(1) of the Tamil Nadu Government Servants Conduct Rules.

3. Rule 20 of Tamil Nadu Government Servants Conduct Rules, nowhere contemplates such conduct as the violation of integrity and failure of devotion to duty. On the face of it, there is no difficulty to conclude that the charge that the petitioner being the Municipal Commissioner was having Rs.1200/- in his purse and unable to explain its source and further allegation that the amount has been kept by the petitioner to give bribe to the Audit Parties and the charge is not that the petitioner has received bribe. This can only be said to be a charge without any precision so as to enable the delinquent officer to give proper explanation. The charges framed under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules are expected to be specific since it affects the civil right of the Government Servant and unless specific charge is given, there is a possibility of ex-post facto interpretation of some incident and it has been held that the charges must not be vague and must be specific in nature.

4. The Hon'ble Supreme Court in (A.L.Kalra ..vs.. The Project and Equipment Corporation of India Ltd.,) reported in AIR 1984 SC 1361 while dealing about the specific nature of charge, which has to be framed by the employer held as follows:

" Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct."

" 22. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct."

5. The Division Bench of this Court, in the "Management of Hindustan Lever Limited, represented by the Branch Manager, Madras .. vs.. Deputy Commissioner of Labour, Madurai and another", (2008) 4 MLJ 214" while considering the term "misconduct" has held on the facts of the said case as follows:

"24. On a close scrutiny of the charges framed against the workman, we could not find mentioning of any provision of law or Standing Order therein, under which the alleged acts of the workman, could be termed as a misconduct. However, it has been argued on behalf of the Management that the meaning 'misconduct' has got wider connotation. Even accepting that the term 'misconduct' has got wider connotation, we fail to understand the non-mentioning of any provision of law or Standing Order in the show-cause notices issued to the workman, under which the alleged acts of the workman could be termed as a misconduct and such an ex post facto determination by the Management, fishing out the alleged conduct of the workman as misconduct, in the absence of any service regulations or certified standing orders, cannot be permitted."

Of course that was a case where ultimately a final order of dismissal has been passed. But the legal position remains that the ex-post facto determination by the Management against the workman or delinquent employee would amount to fishing out a conduct so as to make an employee liable for his conduct. By applying such dictum as stated above, I am of the considered view that the charge framed

against the petitioner is not specific and it is not a charge which can be suitably explained by way of defence by the petitioner.

6. In such circumstances, the impugned charge is set aside and the Writ Petition stands allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst.Registrar

/True Copy/

Sub.Asst.Registrar

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To

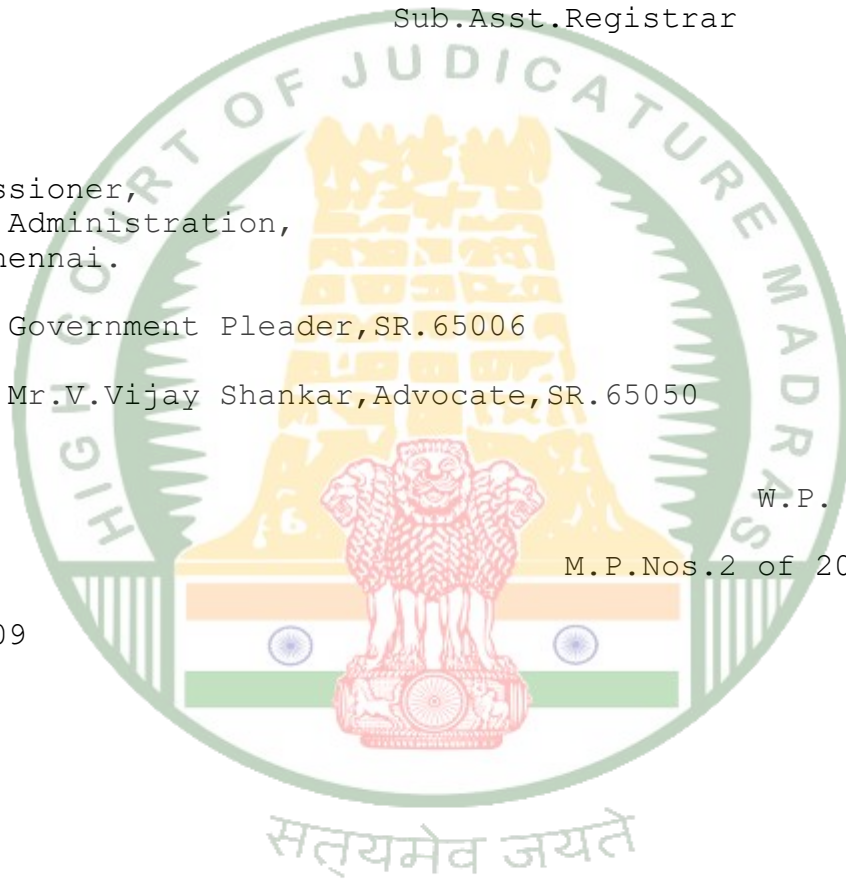
The Commissioner,
Municipal Administration,
Chepauk, Chennai.

+ 1 cc to Government Pleader, SR.65006

+ 1 cc to Mr.V.Vijay Shankar, Advocate, SR.65050

JSV(CO)
EM/19.12.09

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