

W.P.No.30961 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20 /12/2019

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

and

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.30961 of 2019

A.Ananthakumar

...

Petitioner

Vs

1. The Registrar General,
High Court Madras, Chennai 104.
2. The District Judge,
Thiruvallur, Thiruvallur District.
3. The District Munsif-cum-Judicial Magistrate,
O/o.the District Munsif-cum-Judicial Magistrate
Court,
Gummidipoondi, Thiruvallur District. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified Mandamus, calling for concerned records relating to the charge memo contained order Dis.No.2415 of 2019 dated 01.10.2019 passed by the 3rd respondent and to quash the same and consequently direct the 3rd respondent to

re-instate the petitioner in service with all consequential, monetary and other service benefits.

For petitioner ... Mr.M.Gnanasekar

For respondent ... Mr.C.T.Mohan & Mr.B.Vijay
(for R1 & R3)

ORDER

Subramonium Prasad, J.

The short but important question of law which arises in this writ petition is whether an authority higher to the delinquent officer can suspend the delinquent officer when the higher authority is not the appointing authority.

2. The facts which arise in this case lies in a very narrow compass. The writ petitioner was initially appointed as senior bailiff in Thiruvallur District. He was promoted as a Junior Assistant. A memo dated 21.05.2019 from the office of the District Munsif-cum-Judicial Magistrate, Gummidipoondi, Tiruvallur District, was served on him alleging that the petitioner had neglected the following assignments:-

1. Charge sheet register not updated.
2. Summons/Notice not issued to the accused/parties.
3. CMP's have not been rounded off in CMP Register.
4. Petitions u/s 317 Crp c and Admission petitions have not been assigned with CMP Number.
5. Cases listed for hearing were not prepared daily.

3. The writ petitioner submitted his explanation and he was served with another memo by the District Munsif-cum-Judicial Magistrate, Gummidipoondi, on 17.07.2019, stating that he is lethargic and has been negligent in performing his work. The memo stated that about 30 bundles were not indexed and the writ petitioner would have to place these records before the officer, after indexing the same. The memo stated that the salary for the month of August 2019 would not be paid until the 30 bundles are indexed. District Munsif-cum-Judicial Magistrate, Gummidipoondi, issued memo dated 21.08.2019, calling for an explanation from the delinquent officer as to why disciplinary proceedings should not be taken against him for not performing his work properly. The writ

petitioner was to provide an explanation within seven days from the date of receipt of the memo issued against him.

4. On 01.10.2019 the District Munsif-cum-Judicial Magistrate, issued a charge memo against the writ petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (hereinafter referred to as Discipline and Appeal Rules), on the following charges:-

"That you Thiru. P.Anantha Kumar Junior Assistant, District Munsif Cum Judicial Magistrate Court, Gummidipoondi. had ommitted to assign new case numbers for 26 cases listed in Annexure V, of this proceedings inspite of the fact that the cases were received from J.M.I Ponneri on transfer as early as March - April 2019 and the bundles were traced from your cup-board after complaints from police and counsels. It is found that your are lethargic and negligent in your duty and showed scant regard to the directions in the running note file dated 8.5.2019. Memorandum dated 21.8.2019 vide Dis.No. 1827/2019 was issued to you and your explanation was found not satisfactory. The said conduct of the individual amounts to gross negligence and dereliction of duty.

2. That you Thiru. P.Anantha Kumar Junior Assistant, District Munsif Cum Judicial Magistrate Court, Gummidipoondi. by order dated 10.9.2019, in the running Note file, was given a final chance to index disposed case records (Civil and Criminal) as on 31.8.2019 and to produce them to the officer on 30.9.2019. It was also intimated in the order that if compliance report is not filed on 30.9.2019, serious disciplinary proceedings shall follow. But the individual has shown scant regard to the directions either under three Memorandums issued to him on 21.5.2019, 17.7.2019 and 21.8.2019 or under the running note file dated 8.5.2019 and finally under officer order dated 10.9.2019."

5. The delinquent was been placed under suspension by the very same order of the District Munsif-cum-Judicial Magistrate. The proceeding dated 01.10.2019 has been challenged by the writ petitioner, primarily stating that the facts do not warrant initiation of proceedings under 17(b) of Discipline and Appeal Rules, which are initiated to award major penalties. The charge memo was also challenged on the ground that the District Munsif-cum-Judicial Magistrate is not the competent authority to initiate disciplinary

proceedings in as much as he is not the appointing authority and further that he does not have the authority to place the writ petitioner under suspension.

6. The respondents have filed a counter, justifying the necessity to initiate disciplinary proceedings under Rule 17(b) of Discipline and Appeal Rules, for imposing a major penalty. The counter also states that the District Munsif-cum-Judicial Magistrate had the power to initiate disciplinary proceedings under Rule 17(b) of Discipline and Appeal Rules, for imposing a major penalty and also for the authority to place the writ petitioner under suspension.

7. The law regarding the power of a Writ Court to interfere at the stage of charge memo while exercising its jurisdiction under Article 226 of the Constitution of India is well settled. The Hon'ble Supreme Court in the case of ***Union of India v. Kunisetty Satyanarayana***, (2006) 12 SCC 28, has observed as under:-

"13.It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or

show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh[(1996) 1 SCC 327 : JT (1995) 8 SC 331] ,Special Director v. Mohd. Ghulam Ghouse[(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] ,Ulagappa v. Divisional Commr., Mysore[(2001) 10 SCC 639] ,State of U.P. v. Brahm Datt Sharma[(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , etc.

14.The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause

notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance. "

In view of the said judgment, this Court at this juncture is not inclined to go into the correctness or otherwise of the charge memo.

8. The issue which remains for consideration is as to whether the District Munsif-cum-Judicial Magistrate had the authority to initiate the disciplinary proceedings against the writ petitioner and to place the petitioner under suspension.

9. We have heard learned counsel for the parties and perused the records.

10. The writ petitioner is a member of the Tamil Nadu Judicial Ministerial Service, the Rules whereof came into effect in 1955. Rule

3 of the Tamil Nadu Judicial Ministerial Service Rules provides that the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, the rules regulating the pay of the services, the Government Servants' Conduct Rules, the Fundamental Rules, the Tamil Nadu Leave Rules, 1933, and the Pension Rules would be applicable to the members of the Tamil Nadu Judicial Ministerial Service.

11. By G.O. (Ms) No.149 P&AR (Per.N) Dept., dated 23.06.1994, the Discipline and Appeal Rules were made applicable to the members of the Tamil Nadu Judicial Ministerial Services. The services under Tamil Nadu Judicial Ministerial Service Rules, consist of various classes and categories of officers. The writ petitioner was appointed as Senior Bailiff, which falls in class V.

12. Rule 6 of the Tamil Nadu Judicial Ministerial Service Rules, provides for appointment to several classes and categories of members belonging to the Ministerial service. As per this provision, Junior Assistants are appointed by promotion from Assistant Superintendents of Copyists, Examiners, Senior Bailiffs, Readers and

Copyists; or by direct recruitment or for special reasons, recruitment by transfer from any other service.

13. Rule 6(ii) of the Tamil Nadu Judicial Ministerial Service Rules, provides that all appointments, promotions, reversions, reappointments, confirmations and transfers are made by the Principal District Judge or the District Judge where there is no Principal District Judge in the entire District.

14. Rule 10 of the Tamil Nadu Judicial Ministerial Service Rules, specifies the appointing authorities for the various classes. This Rule provides that the Principal District Judge, or where there is no Principal District Judge, the District Judge concerned, is the appointing authority for a Senior Bailiff or an Assistant.

15. Part III of the Discipline and Appeal Rules deals with discipline/penalties. Rule 8 of the Discipline and Appeal Rules enumerates the penalties which can be imposed on every member of the civil service of the State and other persons holding civil posts

under the State. The penalties which can be imposed under Rule 8 are:-

" (i) Censure;

(ii) Fine (in the case of persons for whom such penalty is permissible under these rules) ;

(iii) Withholding of increments or promotion ;

(iv) Reduction to a lower rank in the seniority list or to a lower post not being lower than that to which he was directly recruited, whether in the same service or in another service, State or Subordinate, or to a lower time-scale, not being lower than that to which he was directly recruited, or to a lower stage in a time-scale ;

(v) Recovery from pay of the whole or part of any pecuniary loss caused to the State Government or the Central Government or to any Government Company or Organisation or Local Authority or to a Local Body, while on deputation, by negligence or breach of orders;

(vi) Compulsory retirement;

(vii) Removal from the Civil Service of the State

Government;

(viii) Dismissal from the Civil Service of the State

Government; and

(ix) Suspension, where a person has been suspended under rule 17(e), to the extent considered necessary by the authority imposing the penalty."

Rule 8 of the Discipline and Appeal Rules further provides that item Nos. (i) to (iii), (v) & (ix) are minor penalties and item Nos.(iv), (vi) to (viii) are major penalties.

16. Rule 9(c) of the Discipline and Appeal Rules provides that the Governor or any other authority empowered by him through a general or a special order may -

- (i) institute disciplinary proceedings against any Government servant;
- (ii) direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is competent to impose under these rules any of the penalties specified in rule 8.

17. Rule 12 of the Discipline and Appeal Rules provides that the State Government may impose any of the penalties specified in items (i) and (iii) to (viii) in rule 8 on members of the State Services; Provided that if the Governor of Tamil Nadu is himself, the appointing authority for any service or class or category thereof, he may himself impose any of the said penalties. Rule 12(i) further states that in case of the members of the Services specified in column(1) of Appendix IV to these rules, the authority which may impose any of the penalties mentioned in items (i),(iii), so far as it relates to withholding of increments, and (v) in rule 8 shall be the authorities specified in the corresponding entries in columns (2),(3) and (4) thereof.

18. Rule 12(2) of the Discipline and Appeal Rules provides that the appointing authority or any authority administratively higher to the appointing authority may impose the penalties specified in items (i),(iii) to (viii) and (ix) of rule 8 on members of the State Service. However, Rule 2 provides that in the case of members of the State Services who have been appointed by the Government or by any

authority administratively higher than the appointing authority, major penalties shall be imposed only by the Government or by an authority higher than the appointing authority. The third proviso to Rule 12(2) of the Discipline and Appeal Rules, which are relevant in this case read as under:-

"Provided also that all authorities directly higher to the members holding the posts included in the State Services may frame charges against such members of the State Services under rule 17(b) or issue show cause notice under rule 17(a) even if they are not the competent authority to impose the penalty and they may conduct the inquiry themselves or request the competent authority to appoint an officer to conduct the inquiry. They shall remit the papers to the competent authority for passing final orders, after the case is processed upto the level of completion of inquiry or after receipt of explanation to show cause notice, as the case may be."

19. A perusal of the said proviso would show that all authorities directly higher to the members holding the posts included in the

State Services may frame charges against all the members of the State Services under rule 17(b) or issue show cause notice under rule 17(a) even if they are not the competent authority to impose the penalty and they may conduct the inquiry themselves or request the competent authority to appoint an officer to conduct the inquiry.

20. Rule 17(e)(1) of the Discipline and Appeal Rules, reads as under:-

(e) (1) A member of a service may be placed under suspension from service, where-

** (i) where-a disciplinary Proceedings against him is contemplated or is pending; or*

(ii) a case against him in respect of any criminal offence is under investigation, inquiry or trial.

Rule 14(a)(1) as it originally stood read as under:-

“The authority which may impose suspension pending enquiry into grave charges under Rule 17(e) or the penalties of

i) Censure

ii) Fine

iii) withholding of increments, and

iv) recovery from pay of the whole or part of any pecuniary loss caused to the State Government or the Central Government or to a local body by negligence or by breach of orders

On a member of a Subordinate Service shall be his immediate superior Gazetted officer or, where the appointing authority for such member is a non-gazetted officer, such officer or any higher authority:

Provided that such Gazetted officer shall, before imposing the penalty of withholding of increments on a member, report the matter to the appointing authority and obtain its prior sanction."

21. There was an amendment in the Discipline and Appeal Rules in the year 1954. The notification by which Sub Clause 4 of Clause-1 of Rule 14(a) was amended read as under:-

“(2) In clause(1) of rule 14(a), for sub-clause (iv), the following sub-clause shall be substituted, namely:-

“(iv) (a) Recovery from pay of the whole or part of any pecuniary loss caused to the State Government or the Central Government or to a local body by negligence or breach of orders, or

b) Recovery from pay to the extent necessary of the monetary value equivalent to the amount of increments

ordered to be withheld, where such an order cannot be given effect to”;

22. The rule therefore should read as under:-

“The authority which may impose suspension pending enquiry into grave charges under Rule 17(e) or the penalties of

- i) Censure*
- ii) Fine*
- iii) withholding of increments*

“(iv) (a) Recovery from pay of the whole or part of any pecuniary loss caused to the State Government or the Central Government or to a local body by negligence or breach of orders, or

b) Recovery from pay to the extent necessary of the monetary value equivalent to the amount of increments ordered to be withheld, where such an order cannot be given effect to”;

On a member of a Subordinate Service shall be his immediate superior Gazetted officer or, where the appointing authority for such member is a non-gazetted officer, such officer or any higher authority:

Provided that such Gazetted officer shall, before imposing the penalty of withholding of increments on a member, report the matter to the appointing authority and obtain its prior sanction.”

23. Unfortunately in most of the books the rule has been wrongly quoted as under:-

"14.(a)(1) The authority which may impose suspension referred to in rule 17(e) or penalties of -

- (i) censure,*
- (ii) fine,*
- (iii) withholding of increments, and*
- (iv) (a) recovery from pay of the whole or part of any pecuniary loss caused to the State Government or the Central Government or to a local body by negligence or breach of orders, or*
- (b) recovery from pay to the extent necessary of the monetary value equivalent to the amount of increments ordered to be withheld, where such an order cannot be given effect to, on a member of a Subordinate Service shall be his immediate superior Officer of the State Services or, where the appointing authority for such members is an Officer of the Subordinate Services, such officer or any higher authority ;*

This has led to lot of confusion as to whether the officer immediately superior to the delinquent officer can pass an order of suspension or not, which is the question which arises for adjudication

in this case. This Court requests the various book publishers to be careful in incorporating amendments in the books, lest the Courts might take erroneous decisions which will be detrimental to the interests of people.

24. Rule 14(a) (supra), provides that the authority which may impose suspension referred to in rule 17(e) or penalties of censure, fine, withholding of increments is the immediate Superior Officer of the State Services or, where the appointing authority for such member is an officer of the Subordinate Services, such officer or any higher authority.

25. On a perusal of above mentioned Rules, it is apparent that the District Munsif-cum-Judicial Magistrate is a higher authority to the assistant, however an authority lower than the appointing authority, in this case namely the Principal District Judge. Under Rule 12 quoted above, the District Munsif-cum-Judicial Magistrate therefore has the power to initiate disciplinary proceedings against the writ petitioner. But the issue is as to whether the writ petitioner

can be placed under suspension or not.

26. The State of Tamil Nadu has passed G.O.Ms.No.19, P&AR(N) Department, dated 11.02.2008. The relevant portions of the G.O. and the notification read as under:-

"3. The Government have examined the matter carefully. Article 311 (1) of the Constitution of India inter-alia provides: that no person who is a member of Civil Service of a State or holds a civil post under a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. As such, there is no bar for the appointing authorities to impose minor and major penalties and suspension. Further, the Supreme Court of India in its Order dated 1.12.1994 in Civil Appeal Nos. 8561-62 of 1994 have also observed that initiation of inquiry by an authority subordinate to the appointing authority is unobjectionable. Therefore it is considered to delegate the powers to impose minor and major penalties and also suspension under rule 17 (e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rule to the

appointing authorities concerned in respect of those members of the State Services for which the Government are not the appointing authority. It is also considered that if delegation of powers are given to the appointing authorities to impose minor and major penalties and suspension under rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on members of State Services and also all officers directly higher to the delinquent officers to frame charges and conduct the inquiry into them, it may lead to quick disposal of disciplinary cases as they are only in better position to assess the nature of irregularities committed by the delinquent officers. The said delegation of powers may also relieve the Heads of Departments and Government from unnecessary burden of work at their level and this will save time and the Heads of Departments may be entrusted with more responsibilities.

4. The Government have, therefore, decided, -

(i) to delegate the powers to impose minor and major penalties on all members of the State Services and the

powers to suspend them under rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, to the appointing authorities ; and

(ii) to delegate the powers to frame charges under rule 17(b) or to issue show-

cause notice under rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules to all authorities who are immediately above the members of the State Services even though they are not competent to impose penalties on them.

5. Accordingly, the Government pass the following orders:-

All the appointing authorities for the posts included in the State Services, (wherever the Government are not the appointing authority) may impose minor and major penalties on the members of State Services and they may suspend such members; under rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. However, where such members of State Services were originally appointed by the Government, they shall remit

the papers to Government for passing final orders in the cases of disciplinary proceedings instituted under rule 17(b) of the said Rules, after following all the procedures upto the stage of completion of inquiry to satisfy the requirement in Article 311 (1) of the Constitution of India. The said appointing authorities are to exercise the above powers subject to the provisions in rule 9 A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules."

(ii) All authorities directly higher to the members holding the posts included in the State Services may frame charges against such members of, State Services under rule '17(b) or issue show cause notice under rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, subject to provisions in rule -9 A of the said Rules, even if they are not the competent authority to impose the penalty' and they may conduct the. inquiry themselves or request the competent authority to appoint an inquiry officer to conduct the inquiry. They shall remit the papers to the competent authority for passing final,orders, after the case is processed upto the level of completion of

inquiry or after the-receipt of explanation to show cause notice, as the case may be.

6. In the light of the order in paragraph 5 above, the Government have also decided to amend rules 9(c)(1)(ii), 12, 13, 20(3),20,(4) and Appendix IV and to omit rule . 11of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

7. The following Notification will be published in the Tamil Nadu Government Gazette.

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendments to the Tamil Nadu Civil Services (Discipline and Appeal) Rules (in Volume I of the Tamil Nadu Services Manual, 1987).

2. The amendments hereby made shall come into force on the 11th February, 2008.

AMENDMENTS

In the said Rules,-

(1) in rule 9, in sub-rule (e), in clause (1); in sub-clause (ii), for the expression "rule 11", the expression "rule 12" shall be substituted;

(2) rule 11 shall be omitted;

(3) in rule 12,-

(i) in sub-rule (1), after the second proviso, the following proviso shall be added, namely:-

"Provided also that the High Court of Judicature at Madras may impose on members of the Tamil Nadu State Judicial Service any of the penalties specified in items (i), (iii), (iv), (v) and (ix) in rule 8.";

(ii) for sub-rule (2), the following sub-rule shall be substituted, namely:-

"(2) Notwithstanding anything contained in these rules, the appointing authority or any authority administratively higher to the appointing authority may impose the penalties specified in items (i), (iii) to (viii) and (ix) of rule 8 on members of the State Services:

Provided that where the members of the State

Services have been appointed by the Government or by any authority administratively higher than the appointing authority, the penalties mentioned in item (iii) in so far as it relates to withholding of promotion and items (iv), (vi), (vii) and (viii) in rule 8 shall be imposed only by the Government or by such higher authority:

Provided further that where the State Government are the appointing authority for members holding the posts included, in the State Services, the Heads of Departments concerned may impose any of the penalties specified in items (i) and item (iii) in so far as it relates to withholding of increments and items (v) and (ix) in rule 8 on those members other than such members who are immediately below such Heads of Departments:

Provided also that all authorities directly higher to the members holding the posts included in the State Services may frame charges against such members of the State Services under rule 17(b) or issue show cause notice under rule 17(a) even if they are not the competent authority to impose the penalty and they may conduct the

inquiry themselves or request the competent authority to appoint an inquiry officer to conduct the inquiry. They shall remit the papers to the competent authority for passing final . orders, after the case is processed upto the level of completion of inquiry or after receipt of explanation to show cause notice, as the case may be:

Provided also that where the appointing authority. or the authority administratively higher to the appointing authority, have passed orders of suspension under rule 17(e) on the members of the State Services, they may exercise the power to impose the penalty specified in item (ix) in rule 8 on such members."

27. A perusal of para 3 of G.O.Ms.No.19, would show that the Government wanted to give the power to place an employee under suspension under Rule 17(e) of the Discipline and Appeal Rules to an authority higher than the delinquent employee, even though he might not be the appointing authority. The above mentioned G.O gives the power to initiate disciplinary proceedings under Rule 17(b)

to an authority higher than the delinquent employee by making amendments in Rule 12 which deals with powers of the State Government and Head of the Department to institute disciplinary proceedings. It is to be noted that while Rule 12 deals with the power of State Government and Heads of the Department to impose penalties, Rule 14(a)(1) deals with the authorities competent to pass orders of suspension and minor penalties except withholding of promotion on member of Subordinate Service.

28. Learned counsel for the respondents has placed reliance on the judgment of the learned Single Judge in the case of ***P.Jeyarani Vs. The Principal Secretary to Government, Social Welfare & Ors.***, WP(MD).No.4901 of 2013, dated 01.04.2013, wherein the learned Single Judge held that the authority higher to the delinquent employee is competent to suspend the delinquent employee.

29. The learned counsel for the respondents also placed reliance on the judgment of ***Union of India Vs. J.A.Munaff***, 1968

(17) FLR 14, wherein the Hon'ble Supreme Court observed as under:-

"10. The situation here seems to be different. The expression "Disciplinary Authority" has a two fold meaning. For the purpose of imposing penalties of compulsory retirement, removal or dismissal it can only be the appointing authority whereas in relation to the issue of charge-sheets etc. Under Rules 1709 to 1712 and 1716 it can be any authority competent to impose any of the penalties specified in Rule 1707. Rule 1707 as already noted enumerates the various penalties which can be imposed on a railway servant including those mentioned above. Rule 1705 read with Schedule II (for the purpose of this case) shows that the Head of the Department is competent to impose some of the penalties on Class IV artisans and Class II staff. If therefore, the charge-sheet issued to the Respondent in this case was in conformity with Rule 1705 read with Schedule II there was nothing irregular in the enquiry and it was open to the appointing authority namely the General Manager to impose on the Respondent the penalty of dismissal from service. In the absence of all the

available material we find ourselves unable to accept the judgment of the High Court in this case. We therefore set aside the judgment appealed from and remand the matter to the High Court for consideration of the point canvassed before us afresh if necessary by giving the parties opportunity of adducing evidence by affidavit as to whether the Respondent belonged to Class IV or Class III staff or was an artisan and whether the charge sheet was issued by the Head of the Department to which the Respondent belongs."

30. Similarly, the learned counsel for the respondent also placed reliance in the case of **Transport Commissioner, Madras Vs. A.Radha Krishna Moorthy**, 1995 (1) SCC 332, wherein the Hon'ble Supreme Court observed as under:-

"8. Insofar as initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable. The initiation can be by an officer subordinate to the appointing

authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority. Accordingly it is held that this was not a permissible ground for quashing the charges by the Tribunal."

31. The learned counsel for the respondent also placed reliance on the judgments of the Hon'ble Supreme Court in ***State of Orissa and others Vs. Shiva Parashad Das***, (1985) 2 SCC 65, ***Corporation of the City of Nagpur, Civil Lines, Nagpur and Another Vs. Ramachandra & Ors.***, (1981) 2 SCC 714, ***P.V.Srinivasa Sastry & ors., Vs. Comptroller and Auditor General & Ors.***, (1993) 1 SCC 419 and ***Inspector General of Police & Ors., Vs. Thavasiappan***, (1996) 2 SCC 145.

32. All these judgments deal with the power to initiate disciplinary proceedings. In view of Rule 12 of the Discipline and Appeal Rules as amended from time to time, District Munsif-cum-Judicial Magistrate being a higher authority has the power to initiate

W.P.No.30961 of 2019

disciplinary proceedings. A holistic reading of Rule 14 read with para 3 of G.O.Ms.No.19, P&AR(N) Department, dated 11.02.2008, gives the power to an authority higher than the delinquent employee to place a delinquent employee under suspension under Rule 17(e) of the Discipline and Appeal Rules pending departmental proceedings.

33. In view of the above, the writ petition is dismissed. The respondents are directed to proceed with the departmental enquiry and complete the same within a period of 16 weeks from the date of receipt of a copy of this order. No Costs.

(A.P.S., C.J.) (S.P., J.)
20/12/2019

Index : Yes
Internet : Yes
Speaking order
pkn.

WEB COPY

To

1. The Registrar General,
High Court Madras, Chennai 104.
2. The District Judge,
Thiruvallur, Thiruvallur District.
3. The District Munsif-cum-Judicial Magistrate,
O/o.the District Munsif-cum-Judicial Magistrate
Court,
Gummidipoondi, Thiruvallur District.



WEB COPY

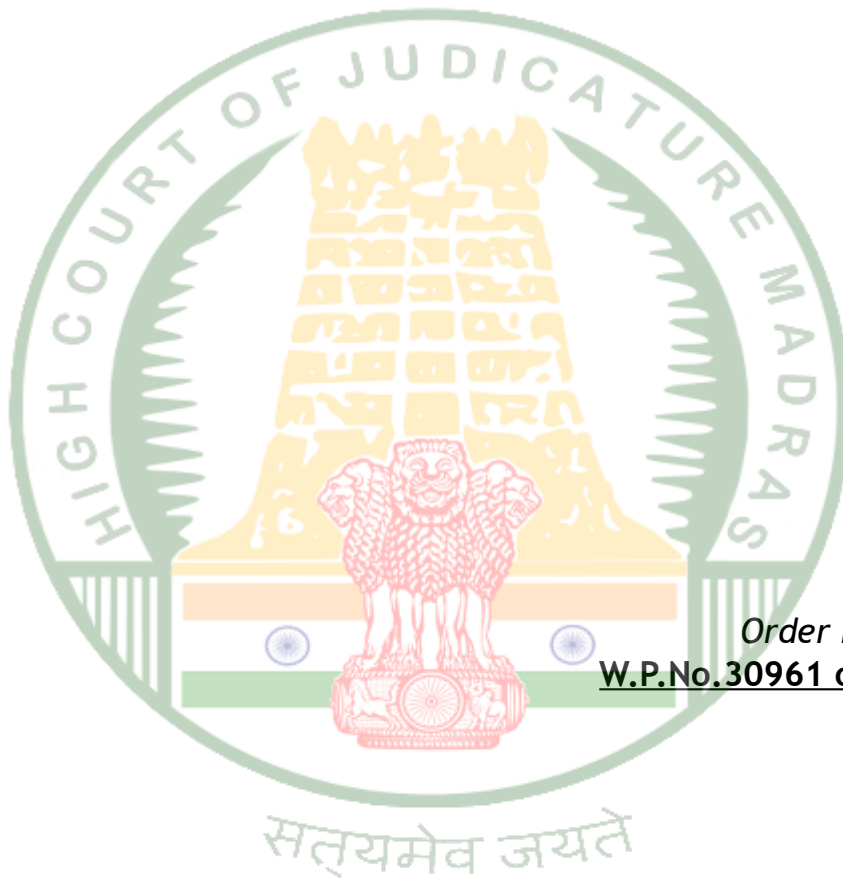
W.P.No.30961 of 2019

The Hon'ble Chief Justice

a n d

SUBRAMONIUM PRASAD, J

pkn.



Order made in
W.P.No.30961 of 2019

WEB COPY

20/12/2019