IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2017

CORAM:

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.21952 of 2012
and
M.P.No.1 of 2012

A.Lakshmipathy
Assistant Commissioner (Commercial Taxes),
Mannadi West Assessment Circle,
191, N.S.C.Bose Road,
Chennai 600 001 ... Petitioner

vs.

1) The State of Tamil Nadu,
Rep., by the Secretary to Government,
Commercial Taxes Department,
Fort St.George,
Chennai 600 009

2) The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai 600 005 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records in respect of the charge memo issued by the second respondent in Ref.No.CD2/23503/2010 dated 18.04.2012.

For Petitioner : Mr.P.Wilson,
Learned Senior Counsel for
Mr.Richardson Wilson

For Respondents : Mrs.Narmadha Sampath,
Special Government Pleader (Taxes)

O R D E R

The charge memo dated 18.04.2012 issued by the second respondent is sought to be quashed in the writ petition.

2.The learned senior counsel appearing for the writ petitioner made a submission that the writ petitioner was working as Commercial Tax Officer in Harbour II Assessment Circle during the period from 14.07.2009 to 30.09.2010. Further, he was holding the charge of the post of Assistant Commissioner (Commercial Taxes) of the same circle since there was no regular incumbent was posted to that said post. On account of certain allegations, a charge memo has been issued to the writ petitioner in proceedings dated 18.4.2012 and the charges against the writ petitioner are as under:-

> "Charge No.1:
>
> The said Thiru.A.Lakshmipathy, Assistant Commissioner (CT) Mannady West Assessment Circle, Chennai (East) Division, formerly Commercial Tax Officer, Harbour II Assessment Circle, Chennai (North) Division had allowed one Thiru.Venugopal to serve as Clerk and Binder unauthorisedly at Harbour II assessment circle for three and half years for salary on daily basis and thereby he failed to maintain absolute integrity in discharging his official duty.
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> Charge No.2:
>
> The said Thiru.A.Lakshmipathy, Assistant Commissioner (CT) Mannady West Assessment Circle, Chennai (East) Division, formerly Commercial Tax Officer, Harbour II Assessment Circle, Chennai (North) Division had allowed one Thiru.Ganesan, Assistant Commecial Tax Officer (re-deployed), Office of the JC(CT) Chennai (Central) Division, to serve as Clerk unauthorizedly at Harbour II Assessment circle on 25.06.2010 and thereby he failed to maintain absolute integrity in discharging his official duty.
>
> Charge No.3:
>
> The said Thiru.A.Lakshmipathy, Assistant Commissioner (CT) Mannady West Assessment Circle, Chennai (East) Division, formerly Commercial Tax Officer, Harbour II Assessment Circle, Chennai (North) Division while fundtioning as the Commercial Tax Officer, Harbour II Assesment Circle, Chennai (North) Division, by his aforesaid lapses, had failed to discharge his duties diligently and thereby, acted in a manner unbecoming of a Government servant, violative of rule 20 (1) of the Tamil nadu Government Servants Conduct Rules, 1973."

3. On a perusal of the charges, this Court is of the view that certain irregularities took place with regard to the engagement of a person as clerk and binder unauthorizedly at Harbour II, Assessment Circle for about 3 ½ years for salary on daily basis etc. Such irregularities are to be certainly enquired into and a full-fledged enquiry is warranted in this regard.

4.The learned senior counsel appearing on behalf of the writ petitioner made a submission that the charges framed are incapable of proceeding with further and also contrary to the facts and circumstances of the case. In this regard, the learned senior counsel urged this Court that, the charges are directly in contravension with the report submitted by the vigilance officers and further, the factual circumstances are totally different than that of the one set out in the impugned charge memo. This apart, the learning senior counsel is of the opinion that on reading of the nature of the charges, the same ought to have been framed for imposing minor 17 (a) and invoking of Rule 17 (b) Tamil Nadu Service and Regulations are untenable. Further, in respect of Charge No. 2, the Government has dropped the same and in respect of the other delequent officials, the same benefits have to be extended to the petitioner also.

5. The learned Special Government Pleader appearing on behalf of the respondents opposed the contentions by stating that the charges are framed based on certain records available in the department and all the charges are serious in nature and the same are to be enquired into, by conducting a full-fledged departmental enquiry. The charges framed against the petitioner cannot be challenged on the ground that other similarly placed persons or inrespect of another person, the charge was dropped. The report of the Vigilance officials are otherwise recommendatory in nature and the same has to be considered while conducting the enquiry by the Enquiry Officer. At the outset, the learned senior counsel as well as the special government pleader appearing on behalf of the respondents made an attempt to explain the facts and circumstances of the case and the incidents set out in the charge memo.

6. This Court, at this stage, in this writ petition cannot adjudicate the facts and circumstances of the case and it is for the appropriate competent authority to conduct a full-fledged enquiry and cull out the truth behind the incidents and thereafter, take a final decision. The facts, circumstances, documents, evidences etc., are to be considered by the competent authority while conducting the enquiry proceeding and this Court cannot appreciate the facts and circumstances when the very charge memo itself is under challenge in this writ petition.

7. On a perusal of the charge memo, this Court is of the opinion that the charges are serious in nature and the same warrants a full-fledged enquiry. It is left open to the writ petitioner to submit his explanation/ objections on the charge memo and defend his case in accordance with the Rules. A charge memo can be challenged only by way of writ proceeding only on exceptional circumstances, the writ cannot be entertained in a routine manner.

A charge memo can be challenged, if the same was issued by an incompetent authority, having no jurisdiction or if the same was issued on malafides or if the same is in violation of any statutory rules.

8. Even in case of raising the allegations of malafides, the authority against whom such an allegations is raised, to be impleaded as party respondent in his personal capacity in the writ proceedings. In the absence of any one of the legal grounds, no writ can be entertained against the charge memo. Intermittent intervention in departmental disciplinary proceedings are certainly not preferable, as Courts while exercising its power of judicial review should be cautious in entertaining such writ petitions challenging the charge memo/ show cause notice or enquiry notice etc. Initiation of departmental proceedings based on the facts by the competent authorities should be allowed to be concluded in accordance with rules and all such proceedings should be read with logical conclusion. Thus, this Court is of the clear opinion that in the absence of any such legal ground, the charge memo cannot be quashed by adjudicating the facts, circumstances and allegations set out in the charge.

9.The learned senior counsel raised yet another ground that the nature of the charge warranting an action for minor penalty under Rule 17 (a) of the Discipline and Appeal Rules and this cannot be construed as a serious charge warranting action under Rule 17 (b) of the Disciplinary and Action Rules. In this regard, the Hon'ble Division Bench of this Court has considered the disposal, elaborately in the case of R.Bhagayalakshmi vs The Principal District Judge and other, published in 2017 in II Writ Law Reporter, Page.367, wherein the relevant paragraphs are extracted hereunder:-

> " 4. Learned counsel for the writ petitioner has criticised that the Memo, dated 15.02.2016, has been drawn by the Principal District Judge with regard to the events, which have taken place quite sometime past, as the lapses themselves point out that the instructions said to have been given on 30.08.2013, 29.01.2014, 07.11.2014 etc., have not been faithfully carried out by the writ petitioner. The reason why such lapses have not been taken serious

note of prior to 15.02.2016, warranting drawing of any show cause notice for minor penalties, is left to be wondered.

7. It is urged by Sri Subbiah that even if all the three charges are looked into as it is, there is no allegation of dishonesty or lacking in integrity. He would, therefore, urge that the proceedings, drawn under Rule 17 (b) of the Rules, are not sustainable. He places heavy reliance on a judgment rendered earlier by this Court, setting forth that proceedings under Rule 17 (b) cannot be drawn contrary to the guidelines issued by the Government, which clearly bring out that only in cases where dishonesty or lack of integrity is attributed, then proceedings under Rule 17 (b) can be drawn, but not otherwise.

10. With regard to the second charge, it is really surprising that the Principal District Judge has not thought it appropriate to initiate disciplinary proceedings against the writ petitioner in the immediate aftermath of 24.04.2015, on which date, at about 05.00 p.m., the writ petitioner was alleged to have disrespectfully replied to the Presiding Officer in the chambers that the information from Sheristadar should have been ascertained in her presence. There is no denying the fact that the Principal District Judge has been apprised of this incident on 24.04.2015 immediately thereafter. Why did the Principal District Judge wait nearly one year i.e., up to 15.02.2016, for initiating disciplinary proceedings ? Is it because the writ petitioner wanted to retire from service by submitting an application, dated 25.11.2015, seeking voluntary retirement ? Much more intriguing is the failure to cite the Presiding Officer as a witness in support of this charge. Whereas, the disciplinary authority has thought it appropriate to establish the charge by examining Sri C.Kumar, Sheristadar, who can vouch for the alleged disrespectful conversation that has taken place between the writ petitioner on one hand and the Presiding Officer on the other, in the chambers of the Presiding Officer. At the time when the alleged disrespectful conversation took place, it is obvious and clear, that Sri C.Kumar, Sheristadar of the Court, was not present. Therefore, one fails to understand as to why the Presiding Officer has not been examined or cited as a witness in support of the said charge. Thus, a feeling has been left

behind in our mind that the disciplinary proceedings, particularly, Charges 1 and 2, have been brought forth at this distant point of time, only for the purpose of delaying the settlement and terminal benefits of the writ petitioner, upon her retirement voluntarily on the afternoon of 29.02.2016. The disciplinary proceedings are not meant for achieving any such collateral objective. The disciplinary proceedings are intended not only to check indiscipline and/or associated misconduct on the part of a civil servant, but every such conduct has to be dealt with sternly and must be nipped in the bud. It cannot be allowed, all by lapse of time, to blossom into some kind of a practice. More importantly, indiscipline on the part of a civil servant, if at all tolerated, would send a wrong message across. It would also lead to the rot setting in, in the rank and file. Above all, no tolerance should be shown towards the indiscipline and also lapse of time in tackling the same effectively. Any such delay would lead to the dilution of the rigor and impact thereof. That is what had happened in this case.

15. The Government guidelines adverted to by two different Division Benches of this Court earlier have been reproduced by us, a little earlier. At the outset, it is apt to recall the legal principles governing the issue of enforceability of administrative instructions/executive orders/non-statutory guidelines. It is beyond any pale of doubt, that the aforementioned categories of instructions do not have any statutory backup or flavour. They are purely intended for regulating the business of the Government, to be carried out in a most effective manner. If a field is already occupied by a statutory provision or the rules made under a statute, administrative instructions or guidelines can never supplant the same. At best, such instructions or guidelines can only supplement the rule or the statutory provision. The administrative instructions or guidelines, therefore, have no enforceability. (see AIR 1982 SC 917, (2001) 3 SCALE 289, (1979) 2 SCC 491).

16. Administrative instructions or guidelines also confer no rights on any individual. (see Union of India v. K.P.Joseph, 1973 SCJ 1, (2001) 2 SLJ 258).

17. It is a settled principle of law that administrative instructions or guidelines should not

> be inconsistent with the statutory provisions or the rules made thereunder, which are meant for giving effect to the provisions of a statute. (see District Registrar v. M.B.Kutti, AIR 1979 SC 1060). Giving effect to the guidelines or instructions, which are inconsistent with a statutory provision or rule, would tantamont to an abuse. (see (1979) 2 SCC 491). "

10. This Court has considered the facts that the guidelines issued in this regard by the Government are only instructions and those instructions cannot form any basis for quashing the very charge itself. This apart, the learned senior counsel for the respondents raised the points regarding the vigilance report, the statements and other connected documents in relation to the charges set out in the impugned memo. Those documents reports or other orders shall be produced at the time of enquiry proceedings by the writ petitioner and all opportunity under the Rules to be provided to the writ petitioner while conducting an enquiry. The learned senior counsel appearing for the respondents also made a submission in this regard, that the documents stated in the charge memo have not been furnished by the writ petitioner. "

11. With regard to these contentions stated in the affidavit filed in support of the writ petition, the respondents in their counter affidavit, in paragraph 8 have stated that though the writ petitioner has requested for copies of records pertaining to the issue of charge memo, the records available in the office of the second respondent were made available for his perusal and this was intimated through his counsel, under the RTI Act, and those records pertaining to the office of the DVAC which were not available in the office of the second respondent could not be produced. This was also intimated to him by the Public Inspection Officer in proceedings dated 28.06.2012.

12. The statement made in the counter affidavit filed by the second respondent is clear that the documents available in the file are allowed to be perused by the writ petitioner and the documents which are not available on file cannot be produced to the writ petitioner. However, this Court is of the opinion that these facts are in relation to the availability of the documents, has to be treated before the Enquiry Officer by the Authority and the same may be recorded in accordance with law by providing incredible opportunity also.

13. At the outset, this Court cannot conduct an enquiry in this writ proceedings by considering the merits and the demerits, in relation to the charge set against the writ petitioner. It is left open to the writ petitioner to

participate in the enquiry proceedings, in the manner known to law and in order to defend his case and prove his innocence before the competent authorities.

14. Under these circumstances, this Court is not in a position to appreciate the contentions of the petitioner and the pleadings of the writ petitioner may not be allowed to be concluded in all respects and the truth may not be quashed based on the facts available on record.

15. Thus, no further adjudication is required on merits in this writ petition. Accordingly, the Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:
1) The Secretary to Government,
The State of Tamil Nadu,
Commercial Taxes Department,
Fort St.George,
Chennai 600 009

2) The Commissioner of Commercial Taxes,
Ezhilagam,
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+1 cc to Mr.Richardson Wilson Advocate sr 74303
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W.P.No.21952 of 2012

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