IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.20176 & 21287 of 2018
&
WMP.Nos.23641 & 24953 of 2018

P.Ganga Shree ..Petitioner in WP.No.20176 of 2018
K.Kothaimathi ..Petitioner in WP.No.21287 of 2018

Vs.

1.State of Tamil Nadu,
rep. by its Principal Secretary,
Commercial Taxes and Registration Department,
Fort St George, Chennai-600 009.

2.The Commissioner of Commercial Taxes,
Office of the Commissioner of Commercial Taxes,
Ezhilagam, Chennai-600 005.

3.The Joint Commissioner(ST),
Enforcement I, PAPJM Buildings,
Greams Road, Chennai-600 006.
..Respondents in both Wps.

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the proceedings in Ref.No.CD2/6885/2016 dated 11.05.2018 on the file of the second respondent and to quash the same as illegal, arbitrary and without jurisdiction( prayer in both Wps).

For Petitioners : Mr.Sharath Chandran
For Respondents : Mrs.Narmadha Sampath, AAG, assisted by Master Ganesh, AGP(T)



ORDER

Similar question of facts and law being involved in both these writ petitions, the same are taken up together and disposed of by this common order.

2. It appears that the petitioners in these cases challenge the issuance of charge memos dated 10.03.2016, against them to be illegal, arbitrary inasmuch as the same are actuated with malafide and contrary to G.O.(D) No.307,

Commercial Taxes and Registration (A1) Department dated 14.07.2017 and therefore, the petitioners made a prayer to quash the same.

3.From the materials available on record, it would go to show that the employees of the respondent Department along with petitioners went on strike for settling their long demands. It is alleged that during the course of such strike, that the petitioners alongwith other employees participated in strike and remained unauthorizedly absent and did not allow any one to enter into the Office. Thereafter, when the strike was over, they resumed duty, but treating their period of absence during strike as unauthorised absence, disciplinary proceedings were initiated against some employees including the writ petitioner. It is alleged in the charge memo that they had violated the code of conduct as they put on lock in their respective Office premises and did not allow any one to enter into the Office besides unauthorised absence. The petitioners had filed writ petitions in W.P.Nos.43438, 43439, 43828 of 2016 dated 18.09.2017, challenging such charge memos before this Court for dropping the charges issued. Subsequently, the Government on consideration of the representation of the Union decided to condone such absence vide G.O.(D) No.307, Commercial Taxes and Registration (A1) Department dated 14.07.2017, to regularise the period of the strike from 03.02.2016 to 23.02.2016, with a further direction to the authorities to treat the absence of the officers as eligible for leave. This Court taking note of the decision of the Government to regularise the service, disposed of the writ petition vide order dated 18.09.2017 with a direction to dispose of the representations to be made by the petitioners in this regard in the changed facts and situation i.e., in view of the said Government Order, in accordance with law. In spite of the above direction, the petitioners such representations were not considered and the charge memos continue to remain against the petitioners. Therefore, the petitioners have come forward to challenge the same on the ground that after condoning the period of absence during the strike, in all fairness of things the charge memo issued should have been withdrawn. However, the respondent for no reason decided to proceed against the petitioners and did not drop the charge memos. Hence, the prayer to quash the charge memos vide the proceedings impugned.

4. During the course of hearing, it is submitted by the learned counsel for the petitioners that the entire genesis of the charges are based on the unauthorised absence and participation in the strike to force the Government to accept their legitimate demand with regard to service condition. After the strike was over, when the Government vide its Order dated 14.07.2017, on due consideration of facts and circumstances, decided to regularise the period of unauthorised absence during the strike period i.e., from

03.02.2016 to 23.02.2016, to treat the absence of the officers as eligible leave, condoning the delinquency of such unauthorised absence, thereafter, keeping the charge memo issued alive for such condoned delinquency against the petitioners is illegal, arbitrary, and actuated with malafide. Therefore, the learned counsel submits that the aforesaid charge memos against the petitioners be quashed.

5.Counter affidavits in these cases have not been filed. However, the learned Additional Advocate General for the respondents would submit that though the Government in the aforesaid Government Order have condoned the delinquency of unauthorised absence during the period of strike of the petitioners and others allowing the same as to be eligible for leave, the same in no manner impacts the charge memo issued and the consequential disciplinary action against the petitioners for indulging in the delinquency of vandalism during the petitioners admittedly by putting on lock in the office premises misconducted themselves which was not condoned and the said being a charge in the charge memo therefore the petitioners have no case seeking the relief on the ground of condonation of their delinquency of unauthorised absence. Reliance has been placed on a decision of the Division Bench of this Court in W.P.No.18087 of 1996 in the case of (The Tamilnadu All Colleges Teachers Association rep. by its Honorary Executive President T.M.Kullan Vs. The Secretary to Government and 4 others) dated 06.11.2006, wherein, taking note of the facts and situations of the case, this Court had refused to accept the prayer to drop the charge memo with regard to the misconduct while disciplinary proceedings were initiated against the Delinquent public servant involved in the strike, though the period was allowed to be eligible for leave.

6. After hearing the learned counsel for the parties and going through the materials on record, it appears to this Court that genesis for issuance of charge memo against the petitioners is their unauthorised absence during agitation pressing to fulfill their demand. During such period, the petitioners remain unauthorised absence and did not allow anyone to enter into the Office in which they were working. Therefore, charge memos were issued for their such delinquency. However, as it appears that the Government thereafter, considering the demand of the Union on due consideration of facts and circumstances condoned the unauthorised absence allowing them such period as leave admissible. The unauthorised absence was a charge in the charge memo besides the delinquency of putting locks and not allowing the persons to enter into the Office. In the aforesaid Government Order, condoning the delinquency of unauthorised absence, it was never mentioned that the disciplinary proceeding initiated on any other charges except unauthorised absence during the period of agitation shall continue or such decision of the Government shall have no

impact on the same with regard to any other delinquency though the Government was alive to the fact that charge memos had been issued to some of the employees including the petitioners indicating the aforesaid unauthorised absence and some other charges. In W.P.No.18087 of 1996 cited supra by the respondent it was specifically indicated that condonation of such unauthorised absence in respect of the agitating employees in the said case shall have no impact on the disciplinary proceeding initiated against them for vandalism which were serious in nature. But here in this case, while condoning the delinquency of unauthorised absence it has not been mentioned that the same shall have no impact on the charge memo issued for other delinquency except the delinquency of unauthorised absence. Therefore, when the delinquency of such unauthorised absence has been condoned, which is the foundation for issuance of the charge memo, this Court is of the view that in all fairness of the things, the respondent should have withdrawn the charge memo consequentially, drop the proceeding pending against the petitioners pursuant to the same. However, the same having not been done, this Court is of the view that the petitioners are being kept under the tenterhook of a charge memo and consequential disciplinary proceeding for no justifiable reasons, for their participation in the strike alongwith others to press their demands, even though their delinquency of unauthorised absence has been condoned. Hence, I am constrained to say that the same is tainted with malafide and to harass the petitioner inasmuch as the continuance of such charge memo is a dent in the service record of the petitioners in their service prospect. Therefore, this Court is of the view that there being no foundation for such charge memo, the same is liable to be quashed.

7. Accordingly, the writ petitions are allowed and consequently the impugned proceedings wherein the charge memo against the petitioners have been issued, are quashed. No costs.

dn

Sd/-
Assistant Registrar(CS-IX)

//True Copy//



Sub Assistant Registrar

To

1.State of Tamil Nadu,
rep. by its Principal Secretary,
Commercial Taxes and Registration Department,
Fort St George, Chennai-600 009.

2.The Commissioner of Commercial Taxes,
Office of the Commissioner of Commercial Taxes,
Ezhilagam, Chennai-600 005.

3.The Joint Commissioner(ST),
Enforcement I, PAPJM Buildings,
Greams Road, Chennai-600 006.

+ 2 ccs to M/s.Govind Chandrasekhar, Advocate SR Nos.58952, 58953.

+1cc to the Spl.GP. (TAXES) Sr 58981

KR/17/10/18