IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.A.No.1433 of 2018 and CMP.No.11333 of 2018

P.R.Mythili ... Appellant/Petitioner

Vs

1. State of Tamil Nadu
rep. by Principal Secretary,
Commercial Taxes & Registration Department,
Fort St. George, Chennai-104.

2. Joint Commissioner (ST),
Enforcement-I,
Chennai-6. ... Respondents/Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 26.04.2018 made in W.P.No.10599/2018 by a learned Single Judge.

W.P.No. 10599 of 2018: Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records in respect of the Charge Memo issued by the Second respondent in Charge Memo No.3265/ 2015/ A1 dated 20.02.2018 and quash the same.

For Appellant :: Mrs.Dakshiyani Reddy
for Mr.Adithya Reddy

For Respondents :: Mr.M.Hariharan

JUDGMENT

(Judgment of the Court was pronounced by HULUVADI G.RAMESH, J.)

The Writ Appeal is directed against the order dated 26.04.2012 made in W.P.No.10599/2018 by a learned Single Judge.

2. The Writ Petition has been filed challenging the Charge Memo issued by the 2nd respondent dated 20.02.2018 and to

quash the same. After hearing both sides, the learned Single Judge by order dated 26.4.2018, disposed of the same by directing the writ petitioner to submit his explanation and to participate in the departmental enquiry and thereafter to pass final orders. Aggrieved over the same, the Writ Petitioner is before this Court with this Writ Appeal.

3. Heard the learned Counsel on either side. We have also carefully perused the materials available on record.

4. A perusal of the charge memo dated 20.02.2018 issued by the 2nd respondent reveals that the writ petitioner/appellant while working as Commercial Tax Officer, Roving Squad-V (Deputation), Enforcement (North), Now State Tax Officer/Group-III, Office of the Joint Commissioner (ST), ISIC, failed to record the statement from the drivers of the offence booked vehicle and to obtain signature in the compounding notice/order from the person, whom the offence was booked. Therefore, according to the respondents, it was evident that the appellant had fabricated all the OR files.

5. It is pertinent to note that in respect of the same offences, initially, she was issued with a Charge Memo under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules on 20.7.2011 for which the petitioner has submitted her explanation also. The same was kept pending for long years. While so, it appears that after a lapse of 6 ½ years the present Charge Memo dated 20.02.2018 by converting 17 (a) into 17(b) came to be issued on her. Challenging the same, the writ petitioner/appellant has filed the W.P.No.10599/2018. The learned Single Judge, while disposing of the said Writ Petition, by order dated 26.4.2018 has held as follows:

> ''8. On a perusal of the charges, this Court is of the opinion that certain charges are minor in nature and other charges are serious in nature. For instance Charge No.5, ''Fabrication/tampering of crucial related records''. When such serious charges are framed, this Court cannot adjudicate the matter on merits and the same to be ascertained during the course of the enquiry proceedings. The truth or otherwise are to be ascertained only by way of an enquiry in these kind of charges. Thus, this Court is not inclined to interfere with the impugned charge memo and the writ petitioner has to submit his explanations/objections and participate in the process of enquiry and prove her innocence and the disciplinary authorities should proceed with the departmental proceedings and conclude the same in all respects and pass final orders in the departments proceedings within a period of four (4) months from

the date of receipt of a copy of this order. Time limit as prescribed is subject to th condition that the writ petitioner co-operates for the completion of the enquiry proceedings in all respects. In the event of non-co-operation, the same shall be recorded by the enquiry officer in the proceedings.''

6. At this stage, a perusal of the Show Cause Notice dated 20.07.2011 issued under Rule 17(a) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, reveals that the charges alleged against the appellant were minor in nature and it was specifically mentioned that ''C'' Fees of Rs.2,000/- alone was collected. Therefore, loss of revenue in these cases could not be valued. While so, after a lapse of 6 ½ years, there is no meaning in once again issuing charge memo against the appellant by converting the charge memo already issued under Rule 17(a) into Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, which is more prejudicial to the appellant. Since the amount has already been collected and remitted properly and the same is not disputed by the respondents, the act of the appellant in not getting signatures in the compounding notice and in the compounding order cannot be treated as a major offence and it is to be treated as a lapse on the part of the appellant. Further, in a similar circumstance, a Division Bench of this Court in a decision dated 27.10.2005 in A.Obaidhullah vs. The State of Tamil Nadu rep by the Secretary to Government, Home Department and another (W.P.Nos.32335/2002 etc. batch) has held that in the absence of any explanation for not pursuing the first charge memo and issuance of fresh charge memo could not be sustained and on the ground of unexplained inordinate delay, the charges against the appellant have to be quashed. Therefore, we are of the view that there would be no meaning in prolonging the matter by converting the minor charges into major charges and the same are liable to be quashed.

7. In the result, the Writ Appeal stands allowed and the the Charge Memo issued by the 2nd respondent dated 20.02.2018 against the appellant is hereby set aside. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary,
   State of Tamil Nadu,
   Commercial Taxes & Registration Department,
   Fort St. George, Chennai-104.

2. Joint Commissioner (ST),
   Enforcement-I,
   Chennai-6.

+1cc to Mr.Adithya Reddy, Advocate, S.R.No. 56748
+1cc to the Special Government Pleader(Taxes), S.R.No. 56943

W.A.No.1433/2018

JP(CO)
GN(10/09/2018)