IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.04.2018

CORAM

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

W.P.No. 10599 of 2018
and
W.M.P.No. 12565 of 2018

Tmt.P.R.Mythili ..Petitioner

Vs

1. State of Tamil Nadu
   Represented by Principal Secretary
   Commercial Taxes & Registration Department
   Fort St. George, Chennai -014.

2. The Joint Commissioner (ST)
   Enforcement-I, Chennai - 06. ... Respondents

PRAYER :
Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records in respect of the Charge Memo issue by the second respondent in charge memo No.3265/2015/A1 dated 20.02.2018 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondents : Mr.V.Kadhirvelu [For R1]
Special Government Pleader
Mr.M.Hariharan [For R2]
Additional Government Pleader
[Taxes]

O R D E R

The charge memo issued by the second respondent in proceedings dated 20.02.2018 is under challenge in this writ petition.

2. The writ petitioner is currently working as State Tax Officer in the Office of the Joint Commissioner (ST), ISIC. On account of certain allegations, a charge memo under Rule 17(a) was issued to the writ petitioner vide proceedings dated 20.07.2011. The writ petitioner also submitted her explanation responding the show cause notice issued to the writ petitioner.

However, no decision was taken during the appropriate point of time. The matter was kept pending for long years. Now, surprisingly the impugned charge memo was issued after a lapse of about 6 1/2 years in proceedings dated 20.02.2018.

3.The learned counsel for the petitioner states that the writ petitioner had submitted a reply during the year 2011 itself. The authorities ought to have passed orders on the charges issued under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal Rules), for imposing minor punishment. However, without taking any decision during the appropriate point of time, now they have converted the charges 17 (a) into 17(b) and issued the impuged proceedings dated 20.02.2018. Thus, the same is liable to be quashed on the ground of delay.

4.The learned counsel for the respondents opposed the contention by stating that the allegations set out against the writ petitioner are serious in nature and therefore, the charge memo need not be quashed. The learned counsel appearing on behalf of the respondents admitted the fact that there is a delay in issuing the charge memo though the initial show cause notice was issued in the year 2011.

5.Considering the arguments advanced by the learned counsel for the writ petitioner as well as the respondents, this court is of an opinion that charge memo can be entertained only an exceptional circumstances and not in a routine manner. A charge memo can be challenged on the ground of jurisdiction or incompetency or on the ground of malafides. Even in the case of raising the plea of malafides, the said person has to be impleaded as a party in his personal capacity. In the absence of these legal grounds, no writ can be entertained challenging the charge memo. This Court cannot adjudicate the merits and demerits of the charges at this stage and it is for the writ petitioner to defend his case and prove his innocence before the enquiry to be conducted by the disciplinary authority.

6. However, this Court cannot consider all these aspects at this point of time in view of the fact that the allegation set out in the charge memo has to be inquired into and a logical conclusion has to be arrived. The constitutional court at the stage of charge memo cannot adjudicate the merits and demerits of the issue involved in the charges. It is left open to the writ petitioner to submit her explanations /objections and participate in the process of enquiry and prove her innocence. A person against whom such serious charges are set out, she shall not be allowed to escape from the clutches of enquiry and disciplinary proceedings.

7.Thus, the disciplinary authority has to proceed with the enquiry proceedings by giving all reasonable opportunity to the writ petitioner and conclude the same in accordance with law and the procedures as contemplated under the Discipline and Appeal Rules. In the present case, no doubt, there is a delay of 6 and 1/2 years for convertion of charges 17(a) to 17(b) and the delay is certainly not explained by the respondents. This court is of an opinion that the disciplinary authority on initiation of disciplinary proceedings against public servant must be vigilant and they must conclude the same within a reasonable period of time. The disciplinary proceedings initiated against the public servant will cause prejudice in respect of their further promotion and settlement of their terminal and pensionary benefits. Thus, the disciplinary proceedings initiated must be concluded without causing any undue delay. Any further unnecessary delay in concluding the departmental proceedings will prejudice the right of the writ petitioner.

8. On a perusal of the charges, this court is of an 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 departmental proceedings within period of four(4) months from the date of receipt of a copy of this order. Time limit as prescribed is subject to the condition that the writ petitioner cooperates for the completion of the enquiry proceedings in all respects. In the event of non cooperation, the same shall be recorded by the enquiry officer in the proceedings.

9. Accordingly, the writ petition stands disposed of. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary
   Commercial Taxes & Registration Department
   Fort St. George, Chennai -014.

2. The Joint Commissioner (ST)
   Enforcement-I, Chennai – 06.

+1cc to Mr.Adithya Reddy, Advocate, S.R.No.31406

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and
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GMR(CO)
CS/18/05/18