IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.10.2018

CORAM

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

W.P.No.701 of 2015 &
MP.No.1 of 2015

T.Padmavathi
..Petitioner

vs

1.The Secretary to Government,
Commercial Taxes Department,
Fort St.George,
Chennai-09.

2.The Principal Secretary,
Commissioner of Commercial Taxes, Chepauk,
Ezhilagam, Chennai-05. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 2nd respondent in connection with the impugned charge memo issued by him in CD1/2436/2012 dated 20.02.2014 and quash the same.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.M.Hariharan
Additional Government Pleader (Taxes)
for R1 and R2

O R D E R

The charge memo dated 20.02.2014 issued by the 2nd respondent is under challenge in this writ petition.

2. The writ petitioner was appointed as Agricultural Officer on 23.09.1996 and subsequently was participated in the Group I Selection for the year 1998-99 conducted by the Tamil Nadu Public Service Connection and was appointed as Commercial Tax Officer (CTO) on 31.05.2002. The petitioner was promoted as Deputy Commissioner on 26.04.2010. On account of certain allegations, the following charges are framed against the writ petitioner:

Annexure-I

Statement of charges framed against Tmt.T.Padmavathy, formerly DC (CT) Zone-I, Coimbatore, now Secretary, Sales Tax Appellate Tribunal (AB), Madurai.

Charge No.1:

You Tmt.T.Padmavathy, formerly Deputy Commissioner (CT), Zone-I, Coimbatore, now secretary, Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai during your tenure as DC(CT), Zone-I, Coimbatore have failed to verify the correctness of the adjustments made in CD2 ledgers and there is no proof available for such adjustments. Moreover no step has been taken to recover the short payment as per returns in respect of Tvl.Saradhambal Automobiles Erode Ltd., for the year 2007.

Charge No.2:

You Tmt.T.Padmavathy, formerly Deputy Commissioner (CT), Zone-I, Coimbatore, now secretary, Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai during your tenure as DC(CT), Zone-I, Coimbatore have failed to take action for realization of 4 cheques of the dealers right from the year 2009 nor returned from the bank till date, as the period of time is a maximum of 4 days for the realisation of cheques.

Charge No.3:

You Tmt.T.Padmavathy, formerly Deputy Commissioner (CT), Zone-I, Coimbatore, now secretary, Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai during your tenure as DC(CT), Zone-I, Coimbatore have failed to ascertain the status of 4 cheques of the dealers from the bank. Even though the cheques were not realized, endorsements have been made as if the cheques were realised to protect the interest of the dealer illegally.

Charge No.4:

You Tmt.T.Padmavathy, formerly Deputy Commissioner (CT), Zone-I, Coimbatore, now secretary, Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai during your tenure as DC(CT), Zone-I, Coimbatore have failed to supervise during your inspection as to whether bank seal was affixed on the challans and failed to watch procedures of obtaining the signatures of the concerned official of the bank who endorsed realization.

Charge No.5:

You Tmt.T.Padmavathy, formerly Deputy Commissioner (CT), Zone-I, Coimbatore, now secretary, Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai during your tenure as DC(CT), Zone-I, Coimbatore have not allowed the AC (CT) Singanallur Circle, to peruse the bank records in connection with the delay in realization of cheques sent by the office observing that there is no concrete evidence to suspect any irregularity in tax payments by Sri Saradhambal Automobiles (Coimbatore) Pvt. Ltd., which is nothing but an expression of a biased view in a casual way. Moreover, you have not investigated the records received from the bank, SBI, Treasury Branch, Coimbatore, which is a grievous wrong fro the reasons not known.

Charge No.6:

You Tmt.T.Padmavathy, formerly Deputy Commissioner (CT), Zone-I, Coimbatore, now secretary, Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai during your tenure as DC(CT), Zone-I, Coimbatore have failed to check whether the procedures for scrutinizing the cheques were followed in the office concerned. The cheque number is not found in the challans of 94 remittances in the case of Tvl.Saradhambal Automobile Coimbatore Ltd., from 01.04.2007 to 20.4.2011. In the case of Saradhambal Automobile Coimbatore Erode Ltd., in 49 remittances, no cheque number is written in the challan from 01.04.2008 to 19.09.2009. This provides scope for manipulation in cheque realization. There is no intervention from your side to correct the continuing malpractices, though you have joined the post of DC (CT), Zone I, Coimbatore on 26.04.2010.

Charge No.7:

You Tmt.T.Padmavathy, formerly Deputy Commissioner (CT), Zone-I, Coimbatore, now secretary, Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai during your tenure as DC(CT), Zone-I, Coimbatore have failed to notice the malpractices/frauds of destroying and deliberate loss of cheques. This is nothing but tampering of records committed in Singanallur Circle, which have been allowed to go unnoticed by you.

Charge No.8:

You Tmt.T.Padmavathy, formerly Deputy Commissioner (CT), Zone-I, Coimbatore, now secretary, Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai during your tenure as DC(CT), Zone-I, Coimbatore have failed to notice the modus operandi in which after receipt of cheques, they wee kept in the office or given to outsiders till their presentation to the bank. Most of the challans were prepared after one or two days of the receipt of the cheques and kept without presenting the same to the bank for months together. The bank seal affixed on challans for having received shows the belated presentation of the cheques into bank. The cheques were realized after two or three days from the date of its presentation. The period in between the date of challan and the date of receipt in bank shows the period of delay in presentation. The above facts shows that the malpractices were performed continuously, and there was no effective monitoring in this regar, which leads to huge loss of revenue to the State Exchequer.

Charge No.9:

You Tmt.T.Padmavathy, formerly Deputy Commissioner (CT), Zone-I, Coimbatore, now secretary, Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai during your tenure as DC(CT), Zone-I, Coimbatore have failed to monitor the omission of entry of cheques in despatch register. For the period from December 2008 to December 2009 the total number of entry tax cheques received was 81, out of which despatch entry is available only for 31 cheques, for remaining 50 cheques there is no entry available in the despatch register. Similar practice was also gone unnoticed during the period from January 2010 to September 2010.

Charge No.10:

You Tmt.T.Padmavathy, formerly Deputy Commissioner (CT), Zone-I, Coimbatore, now secretary, Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai during your tenure as DC(CT), Zone-I, Coimbatore have failed to watch the pendency of realization of the cheques. From the assessment year 2008-09 to 2010-11, in respect of Singanallur Assessment Circle and in most of the months the pending realization of cheques are more than 75%. For instance in the month of March 2011, out of total collection Rs.652 lakhs, pending realization is at Rs.514.28 lakhs, which is 79% of the total collection. Had the charged official reviewed the performance of the office periodically, this type of continuous delay in realization would have been averted and the pendency averted.

Charge No.11:

You Tmt.T.Padmavathy, formerly Deputy Commissioner (CT), Zone-I, Coimbatore, now secretary, Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai during your tenure as DC(CT), Zone-I, Coimbatore have failed to watch the credit of the tax amount in the bank. In the case of 8 cheques relating to Tvl.Saradhambal Automobiles (P) Ltd., alone, the taxes paid in May 2009 that are not yet credited, amounts to Rs.2,35,77,473/-. In addition to this, the amount of tax pertaining to several cheques that are not yet credited totalling to Rs.4,79,81,198/-. But, in March 2010, in the DCB statement under Entry Tax on vehicles, the balance amount to be collected had been reported as Rs.49,93,307/- (thus short reporting of Rs.4,29,87,891/-) This aspect have been gone unnoticed by you in periodical reviews, and the cursory visit on 09.02.2011. Thus, you have sent a misleading report to the JC (CT), Coimbatore, in this regard.

Charge No.12:

You Tmt.T.Padmavathy, formerly Deputy Commissioner (CT), Zone-I, Coimbatore, now secretary, Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai during your tenure as DC(CT), Zone-I, Coimbatore have refused to grant permission requested by the AC (CT), Singanallur Assessment Circle, to verify the bank records stating that there is no concrete evidence to suspect any irregularity in tax payments by Tvl. Saradhambal automobiles Pvt.Ltd., have occurred either at this end or at the bank. It is a definite fault on your part and a definite indicator towards an incriminating move in the matter. You have also declined to initiate action against the suspected staff on the malpractices committed. Thus you have blocked the initiatives of AC (CT) to avert the irregularities and malpractices happened in the circle.

Charge No.13:

You Tmt.T.Padmavathy, formerly Deputy Commissioner (CT), Zone-I, Coimbatore, now secretary, Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai during your tenure as DC(CT), Zone-I, Coimbatore have not taken any steps to get details for the bounced cheques of the above said dealer and not initiated any action against the persons who have received the bounced cheques and want only not handed over, thereby you have indirectly helpted the dealer for belated realization of the cheques.

Charge No.14:

You Tmt.T.Padmavathy, formerly Deputy Commissioner (CT), Zone-I, Coimbatore, now secretary, Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai during your tenure as DC(CT), Zone-I, Coimbatore, have written a letter directly to the Secretary to Government, CT&R Department, by passing the superiors, viz. JC (CT) and CCT, stating that the charged official had already noticed the belated realization of cheques relating to October 2010 and unrealization of cheques involving a revenue of Rs.19.45 crore but you have failed to mention the same in the cursory visit on 09.02.2011. This is a clear case of gross inconsistency and impropriety on your part.

Charge No.15:

You Tmt.T.Padmavathy, formerly Deputy Commissioner (CT), Zone-I, Coimbatore, now secretary, Tamil Nadu Sales Tax Appellate Tribunal (AB), Madurai during your tenure as DC(CT), Zone-I, Coimbatore by your aforesaid lapses has acted with negligence and thee by failed to maintain absolute integrity and devotion in the discharge of your official duties and your conduct is unbecoming of a Government servant, thereby you had Violated Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules 1973.

3. Annexure II to the charge memo enumerates Statement of allegations namely imputations of misconduct or misbehavior in support of the charges framed against the writ petitioner.

4. Annexure III provided connected records and registers. In view of the fact that the allegations set out in the impugned charge memo are serious in nature, this Court is of an opinion that an enquiry is certainly warranted. This apart, there is no infirmity in respect of the charge memo issued against the writ petitioner. The writ petitioner instead of submitting her explanation / objection with reference to the allegations set out in the charge memo has chosen to file the present writ petition merely on the ground that there is a delay of four years on the part of the respondents for initiation of the disciplinary proceedings against the writ petitioner. This Court is of an opinion that the mere delay cannot be taken into account for the reasons that the disciplinary proceedings are initiated by the authorities competent, soon after they know about the irregularities or illegalities. Thus, the mere delay of four years from the date of allegations cannot be considered in a routine manner. However, the stand taken by the writ petitioner that the allegations are not relating to the writ petitioner and the same has been committed by her predecessor or other officers are to be considered by the disciplinary authority at the time of conducting an enquiry, while considering the defense statement submitted by the writ petitioner. However, this Court cannot entertain such merits and demerits in respect of the allegations set out in the charge memo. It is left open to the writ petitioner to adjudicate the merits and demerits before the Enquiry Officer to be appointed to conduct the enquiry into the charge memo framed against the writ petitioner and other grounds raised by the writ petitioner in relation to the merits of the case cannot be considered. The complex facts and circumstances arising on account of certain allegations cannot be entertained in a writ proceedings under Article 226 of the Constitution of India. All such factual consequences are to be considered only by the competent authority while undertaking the process of enquiry and thus, it is left open to the writ petitioner to submit her defense statements / objections and participate in the enquiry by availing the opportunity to be provided under law.

5. A charge memo can be challenged on the limited grounds and the judicial revenue against the charge memo is to be exercised cautiously. The writ petition against the charge memo can be entertained, if the same has been issued by an incompetent authority having no jurisdiction or an allegation of malafides are raised or if the same is in violation of the statutory rules in force. Even in case of raising allegation of malafides, the authority against whom such an allegations are raised has to be impleaded as a party in the writ proceedings in his personal capacity. In the absence of any one of these ground, no writ can be issued against the charge memo.

6. Intermittent intervention in the disciplinary proceedings is not preferable. However, only on exceptional circumstances, this Court can issue a direction against the proceedings and not in a routine manner. Mere issuance of a call letter to the writ petitioner directing him to participate in the domestic enquiry will not give any cause of action to move this writ petition under Article 226 of the Constitution of India. Thus, the writ petition is absolutely misconceived and the grounds raised in this writ petition cannot be considered.

7. The Hon'ble Supreme Court of India in the case of Union of India and others Vs. Upendra Singh, reported in (1994) 3 SCC 357 and the paragraph 6 which is extracted hereunder:

> "6.In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8)
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> "Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in

which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

8. In the case of Secretary, Ministry of Defence and Others Vs. Prabhash Chandra Mirdha [Civil Appeal No.2333 of 2007, Decided on May 29, 2012], the Apex Court of India held that normally, a Charge sheet is not liable to be quashed as it does not adversely affect the rights of an employee and does not give rise to any cause of action. A writ lies only when some right of a party is infringed. The charge sheet does not infringe the right of a party. It is only when a final order imposing punishment or otherwise, it may have a cause of action. Hence, writ petition challenging charge sheet by itself is not maintainable. However, it can be quashed on the ground that issuing authority being not competent to issue the same.

9.In the case of Union of India vs. Kunishetty Satyanarayana [(2006) 12 SCC 28], it was held that writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not be ordinarily exercised by quashing a charge sheet. No doubt, in some very rare and exceptional cases, the High Court can quash a charge sheet if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal.

10. In view of the above facts and circumstances, the writ petitioner has not established any acceptable ground for the purpose of interfering with the impugned charge memo against the writ petitioner and it is left open to the her to adjudicate the merits of her case at the time of conducting of an enquiry by the competent authority.

11. Accordingly, the writ petition is devoid of merits and stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Commercial Taxes Department,
Fort St.George, Chennai-09.

2.The Principal Secretary,
Commissioner of Commercial Taxes, Chepauk,
Ezhilagam, Chennai-05.

KR/25/10/18

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