IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09-10-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.8324 of 2015
And
M.P.No.1 of 2015

M.Ravi ... Petitioner

..Vs..

1.Principal Secretary,
Commissioner of Commercial Taxes,
Chepauk,
Chennai-600 005.

2.The Joint Commissioner (CT),
Chennai (South) Division,
Chennai-6.

3.The Joint Commissioner (CT)(FAC),
Enforcement-I,
Chennai-6. ... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in Charge Memo in reference No.7351/2013/A1 dated 25.7.2013 on the file of the Joint Commissioner (CT), Chennai (South Division), the Respondent No.2 herein and quash the same, consequently direct to revoke the reversion order in reference Rc. 6096/2014/A1 dated 18.12.2014 on the file of Joint Commissioner (CT) (FAC) Enforcement-I, Chennai-6, the Respondent No.3 herein.

For Petitioner : Mr.S.R.Sundaram

For Respondents : Mr.M.Hariharan,
Additional Government Pleader (Taxes).

O R D E R

The present writ petition has been filed challenging the charge memo issued to the writ petitioner in proceedings dated 25.7.2013 by the second respondent-Joint Commissioner of Commercial Taxes, Chennai (South) Division and consequently, direct the third respondent to revoke the reversion order issued in proceedings dated 18.12.2014.

2. The writ petitioner was appointed as a Typist in the Commercial Tax Department, on 27.1.1997 and he was promoted to the post of Assistant on 17.8.2007. The first respondent, in proceedings dated 13.2.2013, prepared the temporary list of Assistants fit for appointment as Deputy Commercial Tax Officer by way of recruitment by transfer of service for the State Unit for the year 2012. The writ petitioner was selected and accordingly appointed as a Deputy Commercial Tax Officer and joined in the promoted post on 4.3.2013.

3. The first respondent initiated disciplinary proceedings on the allegation that the writ petitioner has submitted a bogus Junior Grade Accountancy Certificate and placed the writ petitioner under suspension. The deemed suspension order was made on 16.7.2013, after promoting the writ petitioner to the post of Deputy Commercial Tax Officer. The deemed suspension order was in force even at the time of filing of the writ petition and the writ petitioner was out of employment.

4. The second respondent issued a charge memo in proceedings dated 25.7.2013. The charges against the writ petitioner are extracted hereunder:-

> Charge-I: That the said Thiru M.Ravi, formerly Assistant and now Deputy Commercial Tax Officer/Superintendent (under suspension) has produced bogus Junior Grade Accountancy Certificate and has secured promotion as Deputy Commercial Tax Officer by fraudulent means.
>
> Charge-II: That the said Thiru M.Ravi, formerly Assistant and now Deputy Commercial Tax Officer/Superintendent (under suspension) has failed to maintain absolute integrity and devotion to duty. He has thus acted in the manner which is unbecoming of a Government Servant and thereby violated Rule 20(1) of Tamil Nadu Government Servant Conduct Rules, 1973.”

5. The allegations set out in the charge memo are that the writ petitioner has produced bogus Junior Grade Accountancy Certificate and has secured promotion to the post of Deputy Commercial Tax Officer by fraudulent means.

6. Annexure-II to the charge memo enumerates the statement of allegations, namely, imputation of misconduct or misbehaviour in support of the charges framed. Annexure-III stipulates the list of documents relied upon. Thus, there is no infirmity in respect of the charge memo issued against the writ petitioner.

7. The learned counsel for the writ petitioner states that the order of reversion was passed without conducting any enquiry and therefore, the same is to be scrapped. However, the writ petitioner was under suspension till this Court passed an order on 12.12.2017 in WP No.38215 of 2016 and therefore, the order of reversion was not implemented during the period in which the writ petitioner was under suspension.

8. When the writ petitioner was under continuous suspension, he filed WP No.38215 of 2016, challenging the order of suspension dated 16.7.2013, this Court passed an order on 12.12.2017, allowing the writ petition on the ground that the prolonged suspension is bad in law and the writ petitioner during the pendency of the disciplinary proceedings shall be reinstated and posted in any one of the non-sensitive post.

9. However, the learned Additional Government Pleader (Taxes) now brought to the notice of this Court that pursuant to the orders of this Court dated 12.12.2017, the writ petitioner was reinstated and posted as an Assistant in the Office of the Deputy Commissioner of Commercial Taxes, Cuddalore.

10. In view of the fact that the writ petitioner was under continuous suspension for a long duration and he had not served in the reverted post for about five years, it is not preferable to interfere with the order of reversion at this point of time. However, the charge memo issued against the writ petitioner is to be proceeded with and an enquiry in accordance with the provisions of the Discipline and Appeal Rules must be conducted.

11. This Court is of an opinion that the writ petitioner has to submit his explanations/objections in respect of the allegations set out in the charge memo and defend his case by establishing his innocence or otherwise. Contrarily, the charge memo, at this point of time, cannot

be quashed in view of the fact that the allegations raised in the charge memo are certainly serious and in relation to the submission of bogus Junior Grade Accountancy Certificate in order to secure promotion to the post of Deputy Commercial Tax Officer.

12. The grounds raised in the writ petition for quashing of the charge memo are neither candid nor convincing in respect of the reversion order was passed by the third respondent-The Joint Commissioner of Commercial Taxes, Enforcement-I, Chennai-6 and necessary charges were framed against the writ petitioner and the writ petitioner was placed under suspension. Therefore, the enquiry proceedings initiated must be allowed to be completed in all respects by passing final orders and by affording all reasonable opportunities to the writ petitioner contemplated under the Discipline and Appeal Rules.

13. Therefore, this Court is of the opinion that there is no infirmity in the charge memorandum framed against the writ petitioner. A charge memo can be challenged on a limited ground and a judicial review against the charge memo is certainly limited. A charge memo can be challenged on limited grounds and the Court can entertain a writ petition on exceptional circumstances. A charge memo can be challenged if the same was issued by an incompetent authority having no jurisdiction, an allegation of mala fides is raised if the same is in violation of statutory rules. Even in case of raising the allegation of mala fides, the authority against whom such an allegation is raised, has to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any such legal grounds, no charge memo can be entertained by way of writ petition.

14. 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.

15. 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, held that the charge memo cannot be challenged and paragraph-6 of the judgment 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)

"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."

16. 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.

17. 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.

18. In view of the legal principles settled by the Apex Court in respect of the revision petition against the charge memo and the fact remains that the order of suspension issued against the writ petitioner was revoked, this Court is of an opinion that the writ petitioner should co-operate for the conclusion of the disciplinary proceedings and for passing final orders.

19. This being the factum of the case, the respondents are directed to conclude the departmental disciplinary proceedings initiated in the impugned charge memo dated 25.7.2013 and pass final orders on merits and in accordance with law and by affording all opportunities to the writ petitioner contemplated under the Discipline and Appeal Rules, within a period of four months from the date of receipt of a copy of this order.

20. The writ petitioner is directed to co-operate for the conclusion of the enquiry in all respects. In the event of non-co-operation on the part of the writ

petitioner, the same shall be recorded by the Competent Authorities and if any such instances are found, then the time limit granted by this Court will not be binding on the respondents.

21. With the above directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Svn
To

1.Principal Secretary,
Commissioner of Commercial Taxes,
Chepauk,
Chennai-600 005.

2.The Joint Commissioner (CT),
Chennai (South) Division,
Chennai-6.

3.The Joint Commissioner (CT)(FAC),
Enforcement-I,
Chennai-6.

+1cc to Mr.S.R.Sundaram , Advocate SR.No. 69637
+1 CC TO GOVERNMENT PLEADER SR.NO. 70218

WP No.8324 of 2015

ASK(08/11/2018)