

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.06.2019
CORAM:
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.15731 of 2016 and W.M.P.Nos.13658 & 37582 of 2016,
24520 of 2017 and 28515 of 2018

K.Isaivani

... Petitioner

-vs-

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

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

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 2nd respondent in CD2/13679/2013 dated 13.04.2015 and quash the same and pass such other further orders as this Hon'ble Court may deem fit in the circumstances arising out of the case and thus render justice.

For Petitioner : Mr.V.Prakash, Senior Counsel
For Mr.K.Krishnamoorthy

For Respondents : Mr.V.Haribabu

O R D E R

This Writ Petition has been filed, challenging the order of the 2nd respondent dated 13.04.2015 made in CD2/13679/2013, by which the petitioner was issued a charge memo.

2. The case of the petitioner is that she, who was appointed as Commercial Tax Officer (CTO) on 13.08.1997, was promoted to the post of Deputy Commissioner (CT) and is serving as Joint Commissioner (Legal). The grievance of the petitioner is that after a lapse of three years, the 2nd respondent has issued a charge memo dated 13.04.2015 under Rule 17(b) of the TNCSC (D&A) Rules, on the ground that she had failed to consider the turnover prior to 2010-2011 and that she had failed to point out the mistake committed in determining the tax liability for the year 2010-2011, thereby approving the proposal of the subordinate without any application of mind. It was alleged that the petitioner has caused revenue loss to the State Exchequer due to her negligence and lack of supervision and control over the subordinates.

3. It is the further case of the petitioner that the charges levelled against her are vague, bald and untenable and till date, she was neither permitted to inspect the documents nor furnished a copy of the same by the 2nd respondent, despite sending several reminders. She has stated that as per the settled proposition, if there was no dishonest intention on the part of the employee for personal gain, then no charges under Rule 17(b) of the Tamil Nadu Civil Services (D&A) Rules, can be invoked.

4. The petitioner has also submitted that there was no revenue loss to the State Exchequer, as action had already been initiated against the dealer for the defects noticed in the subsequent inspection and the dealer also filed W.P.Nos.21204 and 21205 of 2014 and moreover, there was no witness or evidence adduced to support the case of the 2nd respondent. The petitioner has further stated that the authorization for surprise inspection was issued on 09.03.2012 in Authorization No.195/2011-12 based on the investigation file submitted by her predecessor and it was not the petitioner, who initiated the inspection. Therefore, it is prayed that the impugned charge memo is liable to be quashed.

5. Learned counsel for the respondents has contended that there was a revenue loss to the tune of Rs.12,35,80,424/-, for which, the petitioner was held responsible and therefore, a charge memo was issued against her for the proven irregularities. He has further contended that though the petitioner sought for inspection of documents, subsequently, she refused to receive it and went on leave. The petitioner, without exhausting the departmental remedies and without submitting any explanation to the charge memo, has straightaway approached this Court, which is not acceptable and the wrong committed by the petitioner would be unearthed only by a full-fledged enquiry and therefore, the impugned charge memo does not warrant any interference by this Court and the Writ Petition is liable to be dismissed in limine.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. It is a settled proposition that the Courts must be slow in quashing the charge memo and it should not be mechanically interfered with, unless the same is perverse and is passed without application of mind. In the present case on hand, insofar as the primary charge against the petitioner is concerned, she had failed to evaluate the proposal before giving approval to the surprise inspection in the business premises of Tvl.Ben Foundations (P) Ltd., (in short the "Company") for the year ended 2010-2011 and 2011-2012. It is seen that the said Company had not filed its monthly returns in respect of its business activities and conducted the business without any registration under the TNVAT Act from 2005 till 2011. It is further seen that the Company was registered only on 02.03.2011 and the Commercial Department has taken action against the Company for various illegal activities, which are subjudice before the Courts. In the impugned order itself, it is stated that the petitioner was the Approving Authority for the period from 25.06.2012 to 29.01.2014 and the issue regarding non-consideration of turnover of the Company

relates to the period 2010-2011. It is not understood as to how the delinquency, regarding non-inclusion of the tax liability on the Company for the period upto 2010 was foisted on the petitioner, who was admittedly posted in the place in question on 25.06.2012, that is much after the incident had taken place and therefore, the act of the respondents in issuance of charge memo in casual and unethical manner is deprecated, especially when there was no proof of collusion between the petitioner and the Company. Thus, it is obviously clear that the 2nd respondent had issued the charge memo to the petitioner without proper application of mind and also without following the principles of natural justice.

8. At this juncture, it is worthwhile to refer to the judgment of this Court in the case of J.Jayanthi vs. The Secretary to Government, Chennai and others [W.P.No.17740 of 2012] decided on 20.02.2014, by which, this Court has categorically held that the Competent Authority must take into consideration all the relevant factors and materials before issuance of charge memo against a delinquency and in this case, such exercise is totally absent and the principle is not strictly adhered to. For the sake of brevity, the relevant portion of the judgment is extracted below:

"16. Further, the issuance of charge sheet is a serious matter and the Competent Authority may issue a charge sheet only when he has taken into consideration the relevant materials which prima facie indicates a case against delinquency and when he has come to a conclusion that it is necessary in public interest to go into the merits of allegations by issuing a formal charge sheet to an employee.

17. After all, a charge sheet for misconduct must disclose 1) the rules of conduct which an employee has violated, the allegations containing sufficient materials showing how a person has violated the specified rule of conduct and how he has been ex-facie found to be blameworthy requiring his explanation and 2) the Disciplinary Rule under which the charges against him are required to be enquired into. Also, the charge sheet must contain a list of documents on the basis of which charges against him are proposed to be established and a list of witness for oral evidence. It cannot be gainsaid that the issuance of charge memo/charge sheet puts a question mark to an employee's career."

9. A perusal of the documents, at the inception itself, amply proves the fact that the petitioner could not have involved in the activities, viz., failure to evaluate the proposal before giving approval to the surprise inspection in the business premises of Tvl.Ben Foundations (P) Ltd., that took place prior to her joining the service and therefore, I am of the view that the charge memo issued against the petitioner needs to be interfered with and the impugned order dated 13.04.2015 passed by the 2nd respondent in CD2/13679/2013 is liable to be set aside.

10. Accordingly, the Writ Petition is allowed and the impugned order dated 13.04.2015 passed by the 2nd respondent in CD2/13679/2013 is hereby set aside. However, it is made clear that this order will

not preclude the respondents from identifying the Officers concerned, who failed to discharge their duties in an effective manner and were in service during the period in question and from proceeding against them, if so advised, even if they are in promoted posts or working in some other place. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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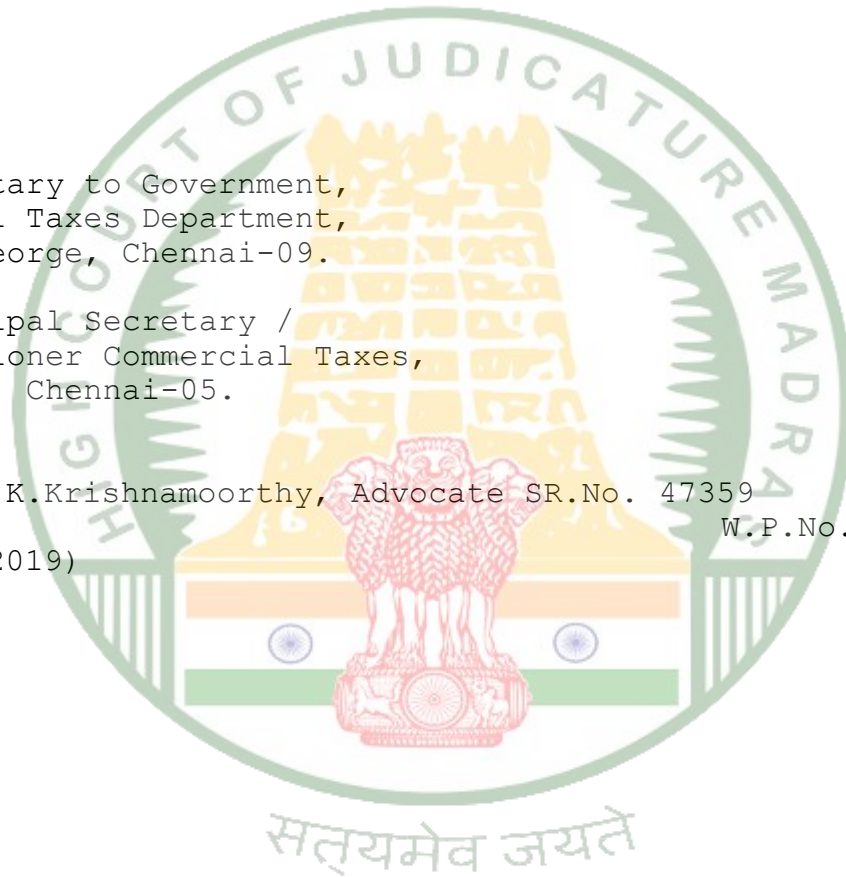
To:

- 1.The Secretary to Government,
Commercial Taxes Department,
Fort St.George, Chennai-09.
- 2.The Principal Secretary /
Commissioner Commercial Taxes,
Ezhilagam, Chennai-05.

+lcc to Mr. K.Krishnamoorthy, Advocate SR.No. 47359

W.P.No.15731 of 2016

A.SK(25/06/2019)



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