IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.03.2019

CORAM

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

W.P.No.19578 of 2018
and
W.M.P.No.23009 of 2018

B.Suseel Kumar ..Petitioner

vs

1.The Government of Tamil Nadu
Rep.by Secretary to Government
Commercial Taxes Department
Fort St.George, Secretariat
Chennai - 600 009.

2.The Commissioner of Commercial Taxes
O/o Commissioner of Commercial Taxes
Ezhilagam, Chennai - 600 005.

3.The Inquiry officer/
Additional Commissioner(service tax cell)(on deputation)
O/o.Commissioner of Commercial Taxes
Ezhilagam, Chennai - 600 005. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in connection with ref.No.CD2/16033/2014 dated 11.07.2018 issued by the 2nd respondent and quash the same.

For Petitioner : Mr.V.Prakash, Senior counsel for M/s.K.Krishnamoorthy

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

O R D E R

Appointment of an Enquiry officer in proceedings dated 11.07.2018 is under challenge in the present writ petition.

2.The learned Senior counsel appearing on behalf of the writ petitioner mainly contended that the Commissioner of Commercial Taxes, who issued the impugned proceedings dated 11.07.2018, appointing an Enquiry officer to conduct an enquiry is without any competency and jurisdiction. The writ petitioner joined in the Commercial Taxes Department as Commercial Tax officer. He was promoted as Deputy Commissioner of Commercial Taxes and further, promoted to the Post of Joint Commissioner of Commercial Taxes during the year 2015. On account of certain allegations, a charge memo was issued against the writ petitioner in proceedings dated 12.06.2014. The charges against the writ petitioner are extracted hereunder:-

"Charge No.1:-

You, Thiru.B.Susheel Kumar, formerly DC(CT), Chennai Enforcement(South) now Administrative Deputy Commissioner(CT), Tirunelveli Division, while you were functioning as DC(CT), Chennai Enforcement(South), along with unknown person not duly authorized by the competent authority entered the business premises without establishing the identity to the dealers even on demand by the dealers have carried out inspection of the place of business of Tvl.DABC, on 15.4.2013, and thereby you have acted in a manner unbecoming of a Government Servant.

Charge 2:-

You, Thiru.B.Susheel Kumar, formerly DC(CT), Chennai Enforcement(South) now Administrative Deputy Commissioner(CT), Tirunelveli Division, had entered the business premises of Tvl.DABC on 15.4.2013 at 8.29 PM., along with an unknown person not part of the inspection team and within 20 minutes of entering the place of business of Tvl.DABC you took away the main computer server and surveillance systems without proper shut down and without giving acknowledgment and thereby caused unwanted inconvenience to the dealers. As per Section 65(3) of the TNVAT Act, 2006, you cannot take away any records either in soft copy or hard copy without handing over any records either in soft copy or hard copy without handing over any acknowledgment slip. Thus, you have not followed the procedure envisaged in TNVAT Act, 2006 and thereby acted in a manner unbecoming of a Government Servant.

Charge 3:-

You, Thiru.B.Susheel Kumar, formerly DC(CT), Chennai Enforcement(South) now Administrative Deputy Commissioner(CT), Tirunelveli Division, failed to hand over the items seized without acknowledgment including the computer server and surveillance systems from 15.4.2013 to 9.7.2013 till your relief, or even after evolving proposals and sending the same to the Assessing Officer on 20.06.2013, but retained them without the permission of the next higher authority viz., the JC(CT), Enforcement II, Chennai. As per Rule 20 of the TNVAT Act-2006, the recovered documents cannot be retained for ever and that too without permission of the next higher authority.

Charge 4:-

You, Thiru.B.Susheel Kumar, formerly DC(CT), Chennai Enforcement(South) now Administrative Deputy Commissioner(CT), Tirunelveli Division, by your aforesaid lapses, has proved your irregularity and negligence in the discharge of official duties with a dishonest motive and thereby, acted in a manner unbecoming of a Government Servant, violative of rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973."

3.Earlier, the writ petitioner filed W.P.No.17272 of 2014, to quash the charge memo dated 12.06.2014. This Court passed an order on 19.01.2018 and the paragraphs 63 & 64 are extracted hereunder:-

"63. Thus, in the interest of justice to all and to lay down the correct proposition in respect of entertaining a writ petition in the matter of charge memo, this Court is inclined to direct the respondents to proceed with the enquiry proceedings forthwith and conclude the same by providing opportunity to the writ petitioner as per the rules and pass final orders in the disciplinary proceedings as early as possible and preferably, within a period of six months from the date of receipt of a copy of this order. The writ petitioner is also directed to cooperate for the conclusion of the disciplinary proceedings in all respects by the respondents and if any non-cooperation on the part of the writ petitioner, the respondents are at liberty to record such non-cooperation in the enquiry proceedings itself.

64. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. In view of the final orders passed, the impleading petition i.e., M.P.No.4 of 2014 is also closed."

4.Subsequently, the Commissioner of Commercial Taxes appointed the Enquiry Officer in proceedings dated 11.07.2018. The writ petitioner challenged the very appointment of the

Enquiry Officer by the Commissioner of Commercial Taxes and an interim stay was granted. Thus, the respondents are not in a position to proceed with the enquiry and conclude the same. Thus, the earlier orders of this Court, directing the disciplinary authority to conclude the disciplinary proceedings within a period of six months, cannot be insisted upon as the writ petitioner himself filed another writ petition, challenging the appointment of the Enquiry officer.

5.The learned Senior counsel appearing on behalf of the writ petitioner is of an opinion that Rule 12 of the Tamil Nadu Civil Services(Discipline and Appeal) Rules[hereinafter referred to as "T.N.C.S.(D&A)" Rules], contemplates that the disciplinary authority, who is empowered to impose the punishment under the Rules alone is competent to appoint the Enquiry officer. Thus, the impugned proceedings issued by the Commissioner of Commercial Taxes is untenable as the Government alone is competent to appoint an Enquiry officer to conduct an enquiry against the writ petitioner, who is serving in State Services.

6.The learned Senior counsel is of an opinion that in view of the fact that Rule 12(2) of the "T.N.C.S.(D&A)" Rules, provides that the disciplinary authority alone should pass final orders, that includes the appointment of an Enquiry officer and therefore, the appointment of Enquiry officer by the Commissioner of Commercial Taxes is in violation of Rule 12(2) of the "T.N.C.S.(D&A)" Rules.

7.The learned Special Government Pleader appearing on behalf of the respondents disputed the contentions by stating that the next higher authority to the writ petitioner even in State Services are empowered to institute the disciplinary proceedings, frame charge memo, conduct enquiry proceedings and the files along with the enquiry report is to be submitted before the disciplinary authority for taking decision and passing final orders. Therefore, there is no infirmity in respect of the order passed by the Commissioner in appointing an Enquiry officer to conduct a domestic enquiry.

8.In the case of Inspector General of Police and another Vs. Thavasiappan, reported in 1996 2 SCC 145, the Hon'ble Supreme Court of India held as follows:-

> "9. As to who shall initiate and conduct a disciplinary proceeding, the Rules are silent. Rule 2-A which provides that the Governor or any other authority empowered by him may institute disciplinary proceedings is an enabling provision. From the way it is worded it is not possible to infer that the rule-making authority intended to take away the power of otherwise competent authorities, like the appointing authority,

> disciplinary authority or controlling authority and confine it to the authorities mentioned in Rule 2-A only. Moreover, it is difficult to appreciate how this provision can be helpful in deciding whether the charge should be framed and the enquiry should be held by that authority only which is competent to impose the penalties mentioned in Rule 3(b)(i). An act of instituting a disciplinary proceeding is quite different from conducting an enquiry. Rule 3(b)(i) provides how an enquiry should be held in a case where it is proposed to impose on a member of the service any of the penalties specified in clauses (d), (h), (i) and (j) of Rule 2."

9.Let us now examine the Rules independently.

10.Proviso to Rule 12(2) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which reads as under:-

> "Provided also that all authorities directly higher to the members holding the posts included in the State Services may frame charges against such members of the State Services under rule 17(b) or issue show cause notice under rule 17(a) even if they are not the competent authority to impose the penalty and they may conduct the inquiry themselves or request the competent authority to appoint an officer to conduct the inquiry. They shall remit the papers to the competent authority for passing final orders, after the case is processed upto the level of completion of inquiry or after receipt of explanation to show cause notice, as the case may be."

11.Let us now examine the Provision in its real spirit and meaning.

12.Phrase of the provision is that "all authorities directly higher to the members holding the posts included in the State Services may frame charges against such members of the State Services under rule 17(b) or issue show cause notice under rule 17(a) even if they are not the competent authority to impose the penalty."

13.The said portion of the provision is unambiguous that the next higher authority to the members holding the Posts of State Services are empowered to frame charges against the members of the State Services either under Rule 17(a) or under Rule 17(b).

14.It is pertinent to note that 17(a) is for minor penalty and summary proceedings are to be followed. Thus, the next higher authority is empowered to issue show cause notice and receive objections / explanations from the delinquent official and thereafter, place the file for passing final orders before the competent authority for imposing penalty under the Discipline and Appeal Rules. Thus, there is no impediment for the next higher authority to the members holding the Post of State Services to frame charges against the officials serving under State Services.

15.The next limp of the Proviso Clause enumerates that "they may conduct the inquiry themselves or request the competent authority to appoint an officer to conduct the inquiry".

16.In the above portion of the Rules "they" means the next higher authority to the members holding the post of State Services, "to appoint an officer to conduct enquiry" means the next higher authority as contemplated above is empowered to appoint an Enquiry officer to conduct the enquiry. The provisions are unambiguous that the next higher authority to the holders of the Post of State Services are empowered to frame charges and conduct an enquiry into the allegations and also request the competent authority to appoint an Enquiry officer to conduct enquiry. Thus, the next higher authority himself can conduct an enquiry or request the competent authority to appoint an officer to conduct an enquiry.

17.Two circumstances are possible. The authorities, who framed the charges himself can conduct an enquiry or such authority shall request the competent authority to appoint an officer to conduct the enquiry. Thus, it is unambiguous that the Commissioner of Commercial Taxes, who framed the charge memo in proceedings dated 12.06.2014 is empowered to appoint the Additional Commissioner of Commercial Taxes to conduct an enquiry.

18.It is unambiguous that the last portion of the Rule clarifies that "they shall remit the papers to the competent authority for passing final orders, after the case is processed upto the level of completion of inquiry or after receipt of explanation to show cause notice, as the case may be."

19.The above portion of the Provision of the Rules unambiguously enumerates that the next higher authority shall proceed with the enquiry and on receipt of the final enquiry report, such authorities shall remit the papers to the competent authority for passing final orders, after the case is processed upto the level of completion of inquiry. Therefore, there is no doubt in respect of the Rule 12(2) Proviso Clause is concerned.

The next higher authority, who is empowered to initiate the disciplinary proceedings is empowered to process the enquiry upto the level of completion of enquiry. This being the spirit of the Rules, the very ground raised by the writ petitioner that the respondents have no jurisdiction to issue an order, appointing the Enquiry officer cannot be accepted.

20.Apart from these Rules, it is pertinent to note that the Commissioner of Commercial Taxes is the Head of the Department. Under the Commissioner, many number of Additional Commissioner of Commercial Taxes are appointed in order to share the works for efficient public administration. The Additional Commissioners are appointed in order to share the workload of the Commissioner of Commercial Taxes. The workload of the Commissioner can be delegated to the Additional Commissioners for discharging the functions. Thus, even otherwise also, the appointment of the Additional Commissioner as Enquiry officer is to be construed as that of the Commissioner himself has shared his work with the Additional Commissioner, who is empowered to perform the duties and responsibilities.

21.Under these circumstances, the Discipline and Appeal Rules does not prohibit the next higher authority to institute disciplinary proceedings, frame charges and to appoint an Enquiry officer, conduct an enquiry. Only requirement is that, after completion of the enquiry proceedings and on receipt of the final enquiry report, the Commissioner of Commercial Taxes shall place the records along with the enquiry report to the Government for passing final orders in the disciplinary proceedings. This being the procedures as contemplated and the interpretation to be adopted constructively, this Court is of an opinion that the grounds raised for quashing the order, appointing the Enquiry officer is untenable and liable to be rejected.

22.The learned Senior counsel is of an opinion that the writ petitioner is deprived of his service benefits including further promotional opportunities. This Court is of an opinion that when certain serious allegations are raised against the writ petitioner and a charge memo is framed, the writ petitioner is bound to participate in the departmental disciplinary proceedings and establish his innocence or otherwise by producing documents and adducing evidences by availing the opportunities to be provided by the authorities competent.

23.Under these circumstances, the writ petitioner has not made out any acceptable ground for the purpose of considering the relief as such sought for in the present writ petition.

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

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1.The Secretary to Government
Commercial Taxes Department
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Chennai - 600 009.

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3.The Inquiry officer/
Additional Commissioner(service tax cell)(on deputation)
O/o.Commissioner of Commercial Taxes
Ezhilagam, Chennai - 600 005.

+1cc to Mr.K.Krishnamoorthy, Advocate SR.No.27827

+1cc to Special Government Pleader(Taxes) SR.No.27694

W.P.No.19578 of 2018

SSD(CO)
GMY(04/04/2019)