BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 29.08.2019
CORAM:
**THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR**

W.P(MD)No.4568 of 2016 and
WMP(MD).Nos.4139 and 4140 of 2016

A. Shanthakumari ... Petitioner

Vs.

1. The Secretary to Government,
Commercial Taxes & Registration (E) Department,
Government of Tamil Nadu,
Fort. St. George,
Chennai – 600 009.

2. The Principal Secretary / Commissioner of
Commercial Taxes, Chepauk,
Chennai – 600 005. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned charge memo of the 2nd respondent in proceedings CD 2/16647/2014-IV dated 30.10.2014, quash the same and consequently, direct the respondents herein to consider the promotion of the petitioner to the post of Joint Commissioner of Commercial Taxes Department on par with junior with all monetary and attendant benefits.

For Petitioner : Mr.Veera Kathiravan
Senior counsel for
M/s. Veera Associates
For Respondents : Mr. Aayiram K. Selvakumar
Addl. Govt. Pleader

**ORDER**

This writ petition has been filed to quash the impugned charge memo issued by the 2nd respondent vide proceedings in CD 2/16647/ 2014-IV, dated 30.10.2014 and consequently, to direct the respondents herein to consider the promotion of the petitioner to the post of Joint Commissioner of Commercial Taxes Department on par with her junior with all monetary and attendant benefits.

2. The Writ Petitioner appointed as Assistant Commissioner (Commercial Taxes) on 22.09.2009 and after completing seven years of service in the Department, she was promoted as Deputy Commissioner of Commercial Taxes on 27.11.2013 by the orders of the first

respondent and posted at Madurai East CT District, vide G.O.Ms.No.152 / Commercial Taxes & Registration (E) Department dated 27.11.2013. The region viz., Madurai East CT District contains 11 Assessment Circles coming under the jurisdiction of the petitioner and she was also given additional charge of Dindigul District as per the order of the Joint Commissioner (CT), Maudrai Division in ROC.No.A1/1441/2013, dated 02.12.2013. Considering the performance of the petitioner in recovering taxes due from the assessees, the petitioner was appreciated by the higher authorities in all the meetings. While being so, she received a charge memo issued by the 2nd respondent, dated 30.10.2014 under Rule 17(b) of the Tamil Nadu Civil Services Subordinate (Discipline & Appeal) Rules. There is no adverse remarks against the petitioner and her and performance of recovering the tax due, were appreciated by the Department.

3. According to the learned Senior counsel appearing for the petitioner, the entire charges framed against the petitioner are vague and there is no specific allegation against her that there is negligence on the part of the petitioner in recovering the tax amount due from the Assessees. Due to the petitioner's efforts only, the tax amount was recovered from the Assessees. During the said period she has also taken additional charge in Dindigul District and also performed the duty of calculation of Tax amount from the Assessees in the aforesaid District also. Further, it is stated that during the period 2013-2016, the petitioner collected the tax amount and the tax due is only Rs.1,57,49,488/-. Therefore, the allegations levelled against the petitioner is totally vague. According to the petitioner, there is no tax arrears for the period as stated in the Charge memo and, therefore, the allegations in the charge memo are false and there is no material to substantiate the allegations made in the charge memo. Without taking note of the aforesaid facts into consideration, the charges framed against the petitioner and therefore, there is no substance in the said charges and hence, the charge memo is liable to be quashed.

4. The learned Senior counsel appearing for the petitioner, further submitted before this Court that during the aforesaid period, the charges levelled against the co-delinquent viz., N. Saravanakumar are similar to the charge framed against the petitioner and the same was quashed by this Court in W.P(MD).No. 29030 of 2015, dated 30.09.2015 and the said order has been followed by quashing the charge memos issued to other co-delinquent employees viz.,, M.Sarojini and R.Karunanithi, who filed WP(MD).No. 34989 of 2015 and W.P(MD).No. 11575 of 2016, by order dated 01.11.2017. He would further submit that the co-delinquent viz., Sarojini was promoted as Joint Commissioner. The identical charges framed against other co-delinquents were quashed by this Court. Therefore, following the order, dated 01.11.2017, passed in WP(MD).No.34989 of 2015 and W.P(MD).No. 11575 of 2016, the impugned charge memo issued by the second respondent against the petitioner is liable to be quashed.

5. The learned Additional Government Pleader appearing for the respondents submitted before this Court that charge levelled against the petitioner is that she has failed to take action for collection of tax arrears to the tune of Rs.17,57,49,488/-. He further submitted that the impugned order cannot be quashed mainly on the ground that the writ petitions filed by the co-delinquents viz., R.Karunanithi and M. Sarojini were allowed in favour of them and consequently, the disciplinary proceedings initiated against them were quashed. He further submitted before this Court that the respondents have taken steps to set aside the earlier order passed in W.P(MD).No. 29030 of 2015, dated 30.09.2015 and therefore, the writ petition is liable to be dismissed.

6. From the materials available on record, it is seen that the the second respondent issued the impugned charge memo to the petitioner on 13.10.2014 under Rule 17(b) of Tamil Naadu Civil Services ( Discipline and Appeal) Rules, which contains the following charges:

"***Charge No.1:***

*That Thirumathi, A. Santhkumari, Deputy Commissioner (CT) while holding the post of Deputy Commissioner (CT) Madurai (East) during the period from 29.11.2013 to till date had failed to take action relating to arrear collection of Rs.17,57,49,488/- from Tvl. Solaimalai Automobiles (P) Ltd., (TIN : 3344941175) under Tamil Nadu Revenue Recovery Act, 1864 read with Section 49 of TNVAT Act, 2006, and Section 15 of Tamil Nadu Tax on Entry of Motor Vehicles to Local Areas Act, 1990 and thereby caused loss of revenue to the State.*

***Charge No. 2:***

*That Thirumathi. A. Santhakumari, Deputy Commissioner (CT) during the aforesaid period in the aforesaid office had failed to exercise proper control and instruct her subordinates which resulted in non finalisation of Assessments of Tvl. Solaimalai Automobiles (P) Ltd., (TIN : 33449411175) under the TNVAT Act, 2006 and Tamilnadu Tax on Entry of Motor Vehicles to Local Areas Act, 1990 for the years 2009-10, 2012 - 13.*

***Charge No.3:***

*That Thirumathi A .Santhakumari, Deputy Commissioner (CT) during the aforesaid period in the aforesaid office being the custodian of the Public Revenue for the division and incharge of reconciliation of the division failed to instruct the Assessing Authority to take action under the*

*Negotiable Instruments Act, 1881, on the dishonouring of the cheques by Tvl. Solamalai Automobiles (P) Ltd., (TIN: 3344941175) to an amount of Rs.14,36,49,078/- and thereby acted against the interest of Public Revenue.*

***Charge No. 4:***

*That Thirumathi A .Santhakumari, Deputy Commissioner (CT) during the aforesaid period had failed to produce true facts to the superiors. As per statistics for the Madurai Division upto August 2014 the revenue involved relating to uncollected dishonored cheques is Rs.5.10 crore only. Whereas actual revenue involved because of dishonored cheque relating to Tvl. Solamalai Automobiles (P) Ltd., alone amounts to Rs.14.36 crores. This discrepancy points out to deliberated intention on the part of Thirumathi A. Santhakumari, Deputy Commissioner (CT), Madurai, to suppress true facts from the superior authorities.*

***Charge No.5:***

*That Thirumathi A .Santhakumari, Deputy Commissioner (CT), by her aforesaid acts during the aforesaid period in the aforesaid post had failed to maintain absolute integrity and devotion to duty and thereby caused huge loss of revenue to the exchequer and by the above said lapses she has thereby violated Rule 20(I) of the Tamil Nadu Government Servants Conduct Rules, 1973."*

7. The charges framed against the petitioner, during the period from 2013 to 2016, she has not taken effective steps for collection of tax arrears, which accumulated to the tune of Rs.17,57,49,888/- from one Solamalai Automobiles (P) Ltd., as per the TNVAT Act. While the petitioner was working as a Joint Commissioner, Commercial Taxes, Madurai Circle, the tax arrears amount have been collected excluding the interest portion from Solamalai Automobiles (P) Limited. The respondents framed separate charges against the co-delinquent officers viz., Elangovan, Joint Commissioner, CT(FTC), Madurai, R. Karunanithi, Commercial Tax Officer, Melur Assessment Circle, M. Sarojini, Deputy Commissioner (CT), Madurai (East), now, promoted as Joint Commissioner and N. Saravanakumar, Commercial Tax Officer, Melur Assessment Circle and the Writ Petitions filed by the co-delinquents viz., M.Sarojini and R.Karunanithi in WP(MD).No. 34989 of 2015 and W.P(MD).No. 11575 of 2016, were quashed by this Court on 01.11.2017. Admittedly, the co-delinquent officers were discharged from the aforesaid charges. This court also in identical issues, quashed the charge memo, vide order, dated 30.09.2015 in WP(MD).No.29030 of 2015. The relevant portion of the order read as under:

*''18. The petitioner has obtained informations by invoking the provisions of the Right to Information Act. Thiru K. Vijayaragavan, Commercial Tax Officer, Melur Assessment Circle, Madurai District has furnished information to the petitioner under the Right to Information Act, vide letter in ROC.No. 226/2015/B1 dated 28.05.2015. In the considered opinion of the Court, authenticity of the said information obtained by the petitioner under Right to Information Act, cannot be doubted and the two communications dated 28.05.2015 addressed to the petitioner in that regard are documents are sterling in character and unimpeachable. Two letters have been sent by Thiru.J. K.Vijayaragavan, Commercial Tax Officer, Melur Assessment Circle, Madurai District to the petitioner furnishing under Right to Information Act and it would disclose that Thiru R. Rajasekaran was the Commercial Tax Officer and he has also not collected the balance amount of tax and so also his successor, namely Thiru R. Senraya. Para 20 of the communication dated 28.05.2015 relates to the period the petitioners worked as Commercial Tax Officer, Melur Assessment Circle and it is relevant to extract the same:*

*"20. Year wise break-up details of Arrears of Tax due relating to Tvl. Solamalai Automobiles Pvt. Ltd., Madurai under TN Entry Tax Act & TNVAT for the Assessment years 2012-13 ( Return month from July '12 to Dec '12) which was NOT COLLECTED AND KEPT PENDING ARREARS by Thiru N. Saravanakumar, formerly CTO, Melur, when he was left from Melur Assessment Circle on 28.02.2014, may be furnished in the following format:*

| Year | Act | TOTAL TAX DUE (Return Month July'12 to Dec'12 | Amount of TAX COLLECTED by Thiru N.Saravanakumar,, formerly CTO, Melur | Balance amount of TAX COLLECTED & KEPT PENDING as arrears by Thiru N.Saravanakumar, formerly, CTO, Melur. |
|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) |
| 2012 - 2013 | TN ENTRY TAX | 3,16,48,801 | 3,16,48,801 | 0 |
| | TNVAT | 1,08,64,643 | 1,08,64,643 | 0 |
| | TOTAL | 4,25,13,444 | 4,25,13,444 | 0 |

*The above said details would disclose that the petitioner has collected the amount of taxes falling under Tamil Nadu Entry Tax Act and TNVAT Act and no amount is due and payable.*

*19. The second respondent / disciplinary Authority, while framing the charges has failed to advert to the relevant satutory provisions of the TNVAT Act, which prescribes self assessment after the introduction of the sai Act and even for the sake of arguments the petitioner has failed to collect the arrears of tax from the concerned dealer and so also the predecessor of the petitioner, admittedly no action has been taken against them or information with regard to action taken against him has not been furnished by the respondents and it is the specific cases of the petitioner that Thiru. R. Rajasekaran was also permitted to retire on attaining the age of superannuation for which also permitted to retire on attaining the age of superannuation for which also, there is no denial.*

*20. As regards charge Nos. 3 and 4 are concerned, the contention put forward on behalf of the petitioner deserves acceptance for the reason that the details of cheques dishonoured, for which no action has been taken under the provisions of Negotiable Instruments Act have been given and even as per Annexure No.III, Dishonored cheques Register pertain to the period from the year 2009 i.e., much prior to the tenure of the petitioner. So far as lifting of bank attachment is concerned, the petitioner merely followed the instructions of the second respondent, which was communicated through proper channel and it is also his specific stand that attachment came to be in force from 01.04.2013 and it is still in force and hence, the petitioner cannot be faulted for following the directions of the Superior Officers. As regards Charge Nos.5 and 6 are concerned, the information obtained under Right to Information Act would disclose that the petitioner had promptly collected Entry Tax, a well as Tamilnadu Value Added Tax whereas his predecessors in office, left the arrears uncollected, for which no action appears to have been taken against him and they may not be faulted with for the reason that collection of taxes / arrears is always an ongoing process, for which necessary in-built mechanism has also been provided under the provisions of the Statute / Rules / Regulations and it can be invoked for the purpose of taking appropriate action and hence, the petitioner cannot be attributed with any dishonest / oblique motive or with corrupt practice.*

*21. In Zunjarrao Bhilaji Nagarkar V. Union of India and others (1997 (7) SCC 409), the appellant therein has challenged the initiation of disciplinary proceedings and was unsuccessful before the Tribunal as well as before the High Court of India was allowed. The Hon'ble Supreme Court of India, in the said decision, observed that*

*42. Initiation of disciplinary proceedings against a officer cannot take place on information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer...*

*43. ... The Charge-sheet is sustained, will thus impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative adjudication where under quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing their functions without fear or favour because of the constant threat of disciplinary proceedings."*

*(emphasis supplied)*

*22. In Union of India V. P. Parameswaran (2008 (226) H.L.T. 696 (Mad) - DB) it has been observed that "it is necessary that before initiating disciplinary action, the Department must have a prima facie material to show recklessness and that the officer had acted negligently or by his order unduly favoured a party and his action was actuated by corrupt motive.... Entire articles of charges read as a whole would indicate that there is no specific allegation of recklessness or utter negligence of the quasi judicial function and similarly there is no specific allegation of any overt misconduct" This Court is of the view that the above cited decisions would be applicable to the facts of this case.*

*23. In the considered opinion of the Court, in the absence of specific imputation of dishonest / oblique motive, lack of bonafide or utter negligence in discharge of duties, initiation of disciplinary proceedings is required to be quashed. The allegations pertains to the alleged act of the petitioner during his tenure as Commercial Tax Officer, Melur Assessment Circle for the period between 30.07.2012 and 31.12.2012 and in pursuant to the orders passed in W.P.Nos. 11129 / 2013, 11324/2013 and 20336 of 2013, the petitioner and others were promoted as Assistant Commissioners and this Court is of the view that subsequent promotion of the petitioner has also washed out his alleged delinquency. The petitioner alone has been proceeded with* *for the reasons best known to the Disciplinary Authority and that apart, the charges framed against the petitioner are also very vague and in the absence of deliberate act of negligence or undue favour shown, the impugned charge memo cannot be sustainable."*



8. Considering the fact that the identical charges levelled against the co-delinquents were quashed by this Court as stated above and also considering the fact that due to the efforts taken by the petitioner during the period 2013-2014, the tax arrears amount has been collected by the petitioner. Therefore, this Court is of the view that the same yardstick has to be applied to the petitioner also. Hence, the impugned charge memo issued by the second respondent in proceedings CD 2/16647/2014-IV, dated 30.10.2014, is quashed and accordingly, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed. It is open to the petitioner to make representation before the authorities concerned for promotion in the light of charge memo quashed hereinabove. On receipt of such representation by the authorities concerned, the same shall be considered and pass appropriate orders on merit and in accordance with law.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS )

Trp

To

1. The Secretary to Government,
   Commercial Taxes & Registration (E) Department,
   Government of Tamil Nadu, Fort. St. George, Chennai – 600 009.

2.The Principal Secretary / Commissioner of Commercial Taxes,
   Chepauk, Chennai – 600 005.

+1 CC to M/s.VEERA ASSOCIATES, Advocate ( SR-84368[F] dated 30/08/2019 )
+1 CC to M/s.SPL GP ( SR-84563[F] dated 30/08/2019 )
+1 CC to M/s.C.GANGAI AMARAN, Advocate ( SR-84774[F] dated 30/08/2019 )

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