IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.01.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.24646 of 2019
and
WMP No.34305 of 2019

M.Raji ...Petitioner

Vs.

1. Government of Tamil Nadu
   Rep.by its Principal Secretary
   Commercial Taxes and Registration Department
   Fort St.George
   Chennai 600 009.

2. The Commissioner
   Commercial Taxes
   Ezhilagam, Chepauk
   Chennai 600 005.

..Respondents

Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, after calling for the concerned records from the 2nd respondent, quash the order of the 2nd respondent dated 29.03.2019 bearing Proc.No.CD2/13233/2017 as illegal, arbitrary and contrary to law and consequently direct the Respondents not to omit the name of the Petitioner on the basis of censure while preparing the panel for promotion to the post of Joint Commissioner.

For Petitioner : Mr.Balan Haridas
For Respondents : Mr.A.N.R.Jayaprathap
Government Advocate (T)

O R D E R

This writ petition has been filed challenging the impugned order passed by the 2nd respondent dated 29.03.2019, imposing a punishment of censure against the petitioner.

2.The petitioner was working as a Deputy Commissioner, Enforcement at Coimbatore. The Joint Commissioner issued a Show Cause Notice on 02.05.2017, to the petitioner on the ground that the petitioner was irregular in attending the training. The petitioner gave a reply for the said Show Cause Notice on 15.06.2017. The Joint Commissioner issued another Show Cause Notice dated 02.05.2017, with three allegations and the petitioner also gave a reply for the same on 15.06.2017 for each of the allegations made against the petitioner.

3.The petitioner was again issued with the Show Cause Notice on 10.05.2017, on the ground of unauthorized absence without any information to higher officials. The petitioner also gave an explanation for this Show Cause Notice on 15.06.2017.

4.The 2nd respondent passed an order dated 29.03.2019, by considering the explanation given by the petitioner to the Show Cause Notice and imposed the punishment of censure. This order has become a subject matter of challenge in the present Writ Petition.

5.Mr.Balan Haridas, learned counsel appearing for the petitioner primarily challenged the impugned Order passed by the 2nd respondent, on the ground that the 2nd respondent even without initiating disciplinary proceedings issuing a Charge Memo under Rule 17 of the Tamil Nadu Civil Services [Discipline and Appeal] rules, has proceeded to impose a punishment against the petitioner and the impugned Order is liable to be interfered on this ground alone. The learned counsel further submitted that even though an appeal was filed before the 1st respondent, since there is violation of principles of natural justice, the alternate remedy is not a bar and the impugned Order passed by the 2nd respondent requires interference.

6.Per contra, the learned counsel appearing on behalf of the respondents submitted that the petitioner was given an opportunity to explain the charges levelled against the petitioner in the Show Cause Notices. The learned counsel submitted that the Show Cause Notices itself is in the nature of a Charge Memo and only a technical plea has been raised in this Writ Petition to the effect that a punishment has been imposed without issuing a Charge Memo. The learned counsel submitted that the petitioner was given sufficient opportunity to submit her explanation and only after considering the explanation, the 2nd respondent has proceeded to pass the order imposing a punishment of censure. The learned counsel further submitted that the petitioner was also given an opportunity to file an appeal before the 1st respondent and the petitioner having filed an appeal before the 1st respondent, cannot be permitted to parallelly maintain a Writ Petition before this Court. The learned counsel therefore sought for the dismissal of the writ petition.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.It is an admitted case that Show Cause Notices were issued by the 2nd respondent to the petitioner and the petitioner has also given an explanation to the Show Cause Notice. If the 2nd respondent was not satisfied with the explanation given by the petitioner, the 2nd respondent ought to have initiated disciplinary proceedings against the petitioner under the Tamil Nadu Civil Services [Discipline and Appeal] rules. This rule contemplates the issuance of a Charge Memo to the delinquent employee and conducting an enquiry based on the explanation given by the delinquent employee. Admittedly, this mandatory requirement has not been followed in the present case.

9.The petitioner is admittedly a Government servant and therefore, the rights of the petitioner is safeguarded under the relevant rules and whenever any disciplinary proceedings are initiated and punishment is imposed, the same can be done only in accordance with rules, failing which, the proceedings will warrant interference of this Court.

10.It is true that the petitioner has filed an appeal before the 1st respondent. Under normal circumstances, this Court will not interfere in exercise of its jurisdiction under Article 226 of the Constitution of India wherever, there is an alternative remedy provided. However, this is more in the nature of a self-imposed restriction and it is not an absolute rule where this Court finds that an order has been passed in latest violation of a rule or an order has been passed in violation of principles of natural justice. Under such circumstances, alternative remedy cannot be made as a ground to deny the relief to the writ petitioner. Useful reference can be made in this regard to the judgment of the Hon'ble Supreme Court in Satwati Deswal .v. State of Haryana and Others reported in [2010 1 SCC 126].

11.In the light of the above discussion, the impugned order passed by the 2nd respondent dated 29.03.2019, requires interference and accordingly the same is quashed. If the 2nd respondent is not satisfied with the explanation given by the petitioner for the Show Cause Notice, it is always open to the 2nd respondent to initiate disciplinary proceedings against the petitioner by issuing a Charge Memo as contemplated under the Tamil Nadu Civil Services [Discipline and Appeal] Rules. The procedure under these rules will have to be followed before imposing any punishment on the petitioner. It goes without saying that the petitioner is entitled to give her explanation and defend herself in the disciplinary proceedings. It is made clear that this order will not stand in the way of the 2nd respondent initiating disciplinary proceedings against the petitioner in accordance with law.

This Writ Petition is accordingly allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

KP
To

1. The Principal Secretary
Commercial Taxes and Registration Department
Fort St.George
Chennai 600 009.

2. The Commissioner
Commercial Taxes
Ezhilagam, Chepauk
Chennai 600 005.

+1 CC to M/s. Balan Haridas, Advocate sr 4525.
+1 CC to The Spl. Government Pleader(T) sr 4271.

W.P.No.24646 of 2019

CP(CO)
SP(25/02/2020)