IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2021

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.23713 OF 2021

A.Madurai Pandian .. Petitioner

Vs

1. The Joint Commissioner (Sale Tax),
   Office of the Joint Commissioner (S.T.),
   Commercial Taxes Department
   Chennai (Central) Division No.1,
   Greams Road, Chennai - 600006.

2. Mrs.M.Raji,
   Office of the Joint Commissioner,
   GST - Appeal, Office of the Principal Secretary/
   Commissioner of Commercial Taxes,
   Commercial Taxes Department,
   Chennai.

.. Respondents

Prayer:-

Writ petition filed under Article 226 of the Constitution of India praying to direct the 1st respondent to pass orders based on my preliminary explanation, dated 03.09.2021 in respect of charge memo bearing reference No.RC.1160/2021/A3 and further direct them to furnish the documents referred to in charge memo bearing reference No.RC. 1160/2021/A3, dated 19.07.2021.

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

For Respondents: Mr.V.Manoharan
Government Advocate

O R D E R

This Writ Petition has been filed seeking direction to the first respondent to pass orders based on petitioner's preliminary explanation, dated 03.09.2021 in respect of charge memo bearing reference No.RC.1160/2021/A3 and further direct them to furnish the documents referred to in charge memo, bearing reference No.RC. 1160/2021/A3, dated 19.07.2021.

2. The petitioner is an Assistant Commissioner (ST), working in the Commercial Taxes Department, Government of Tamil Nadu. He was issued with a charge memorandum, dated 19.07.2021, containing five articles of charges, relating to the period when he was functioning as Assistant Commissioner (ST), Nandanam Assessment Circle, in respect of the issue of refunds under the Legacy Act during the year 2017-2018, 2018-2019 and 2019-2020. The charges relate to improper maintenance of refund voucher books, irregularities found in the maintenance of TNTC register, non-submission of refund files to audit, non-compliance of the instructions of the Additional Chief Secretary, Commercial Taxes, in respect of issue of refunds and non-submission of fortnight diary to the Deputy Commissioner (ST).

3. In response to the said charge memorandum, preliminary explanation was submitted by the petitioner on 03.09.2021, setting out the entire facts on record and he also, in the explanation, appeared to have sought copies of documents relied on by the first respondent. According to the petitioner, the first respondent issued the charge memorandum, without conducting any preliminary enquiry for the purpose of ascertaining as to whether formal departmental action was necessary at all to proceed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) rules.

4. The petitioner has also drawn reference to the ruling of the Hon'ble Supreme Court, wherein preliminary enquiry was held to be mandatory before initiating formal departmental action on certain contingencies. The grievances herein of the petitioner are that no preliminary enquiry was conducted, copies of certain relevant documents have not been furnished, etc. Further, according to him, the charge memorandum has been issued on the eve of his promotion to the next higher post, with a view to prevent him from being promoted In the above circumstances, the Writ Petition has been filed.

5. Mr.V.Prakash, learned Senior Counsel, appearing for the petitioner reiterated the above facts and the legal objections against initiation of the disciplinary action against the petitioner/Company. According to the learned Senior Counsel, it is incumbent upon the first respondent to conduct preliminary enquiry to ascertain whether there is a material or substance at all to go ahead with a formal issuance of the charge memorandum. It is also incumbent to furnish copies of the documents referred to in charge memorandum. The learned Senior Counsel also contended that the first respondent is under legal obligation to pass orders in response to preliminary explanation submitted by

the petitioner herein dated 03.09.2021. If only the first respondent considers the preliminary explanation and pass orders, only then, whether a charge sheet was required to be issued against the petitioner at all or not, could be ascertained. Moreover, non-furnishing of the copies of the documents sought by the petitioner, he is prevented from making effective representation against the charges levelled against him.

6. This Court is unable to countenance such specious arguments advanced by the learned Senior Counsel, for the simple reason that, when a charge memorandum is issued, it is in fact incumbent upon the petitioner to give his explanation to the charge and then participate in the ensuing disciplinary proceedings. He cannot be allowed to approach the Court at every stage of disciplinary proceedings and seek relief on an adhoc basis. The petitioner, having chosen to submit preliminary explanation on his own without any legal requirement, there is no concomitant duty cast upon the authority to respond to the representation.

7. In the absence of any legal compulsion on the part of the first respondent to respond to the preliminary explanation, this Court cannot entertain the prayer for issue of Writ of Mandamus and give a direction to the first respondent to pass orders on the petitioner's preliminary explanation, dated 03.09.2021. As a matter of fact, the petitioner appears to have given a detailed and a comprehensive explanation covering the entire gamut of the charges, yet chosen to call it as preliminary explanation.

8. Moreover, the petitioner has not explained in the affidavit as to the nature of the documents, the copies of which have been sought and how they are relevant to give relief at the stage of the disciplinary action. It is always upon to the petitioner to seek copies of the documents that are relevant during the course of the disciplinary proceedings and he may even be provided with an opportunity to peruse the relevant materials at the appropriate stage. This Court certainly cannot come to a conclusion as to whether non-furnishing of copies of documents is prejudicial to the rights of the petitioner at the embryonic stage of the enquiry.

9. On the whole, this Court is of the view that the present Writ Petition is not at all maintainable and it cannot be entertained as the same being premature and motivated too. From the averments and the materials placed on record, this Court can infer that the present Writ Petition is filed with a view to protract the disciplinary proceedings initiated against him for serving in his own ends.

10. With the above observations, the Writ Petition stands dismissed at the admission stage. No costs. Consequently, W.M.P.No.24958 of 2021 is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

grs

To

The Joint Commissioner (Sale Tax),
Office of the Joint Commissioner (S.T.),
Commercial Taxes Department
Chennai (Central) Division No.1,
Greams Road, Chennai - 600006.

+1cc to the Special Government Pleader, S.R.No.57721

W.P.No.23713 of 2021

KV(CO)
PM/30/11/2021