IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.12.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.25778 of 2021
and
W.M.P.Nos.27232 and 27235 of 2021

S.Thiagarajan, S/o B.Sampath ...Petitioner

Vs.

1. The Additional Chief Secretary/Commissioner,
   Commercial Taxes,
   Chepauk, Chennai-05.

2. The Deputy Commissioner/Enquiry Officer,
   Commercial Taxes Department (ST) (FAC),
   Vellore. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the respondent in connection with the impugned order passed by the respondent in No.E2/20545/2011-I, dated 02.01.2019 and the enquiry report submitted by the second respondent, dated 27.05.2020 and quash the same.

For petitioner : Mr.S.Sivakumar
For respondents: Mr.Richardson Wilson, Addl.G.P.

ORDER

This Writ Petition is filed praying for issuance of a Writ of Certiorari to call for the records of the respondents in connection with the impugned order passed by the first respondent in E2/20545/2011-I, dated 02.01.2019 and the enquiry report submitted by the second respondent, dated 27.05.2020 and quash the same.

2. The case of the petitioner is that, while he was working as Assistant/Sales Tax Collection Inspector, Office of the Assistant Commissioner/(CT), Mannady East Assessment Circle, Chennai-600 001, he was falsely implicated in a criminal case

under the provisions of the Prevention of Corruption Act. He was placed under suspension on 10.06.2011. According to him, a criminal case which was registered against him, ended in acquittal on 20.12.2017 in C.C.No.6 of 2013 on the file of the Special Court for the cases under the Prevention of Corruption Act, Chennai-600 104.

3. After the criminal case ended in acquittal, departmental charges have been framed against him and enquiry was also conducted into the charges. At this, the petitioner protested against the departmental action being initiated for the same set of charges, as he was acquitted by the Criminal Court and demanded closure of the disciplinary action against him. Finally, enquiry was completed and the petitioner himself had participated in the enquiry and enquiry report was submitted holding that the charges framed against him, stood proved. Challenging the enquiry report, the present Writ Petition is filed for the relief stated supra.

4. The principal legal contention made on behalf of the petitioner is that, when once the petitioner had been acquitted by the Criminal Court, for the same set of charges, the question of holding departmental action against him, did not arise at all. Therefore, the findings of the Enquiry Officer is not sustainable and the same is liable to be set aside.

5. The entire crux of the Writ Petition is only on the basis of the acquittal by the Criminal Court and the grounds raised therein are also focussed only on that principal contention.

6. This Court is unable to countenance such cliched arguments and grounds for the simple reason that, it is always open to the Department to proceed against the delinquent official by initiating departmental action even in the event of the official being acquitted of the criminal charges by the Criminal Court.

7. There is no hard and fast rule to hold that when once an official is acquitted by the Criminal Court, the Department has to blindly close the case against the official concerned. It is always open to the Department to proceed against the official concerned departmentally, if it finds that there are enough materials to hold him guilty or there are enough materials to sustain the charges from the perspective of the departmental action.

8. It is needless to mention that to prove the charges in the departmental action, preponderance of probability is fair enough to hold the official guilty of the charge(s), unlike in the Criminal Case, where standard of proof is strictly to be proved beyond reasonable doubt.

9. The Honourable Supreme Court and this Court, have repeatedly held that the Department's hands cannot be tied merely because the Government official stood acquitted in the Criminal Case. Moreover, in this case, the disciplinary action has reached finality and the disciplinary authority has still not applied its mind and not yet passed any order, but the petitioner has chosen to approach this Court at this preliminary stage when the Enquiry Report is submitted for consideration by the disciplinary authority. The Writ Petition can be dismissed on this ground alone as being premature.

10. When the disciplinary action has been set in motion and the enquiry proceedings having been completed and the Enquiry Report has also been filed, the petitioner has to wait for the final outcome of the disciplinary proceedings. The role of the disciplinary authority or the appellate authority in the matter, cannot be allowed to be scuttled by approaching this Court at this stage.

11. On the whole, this Court is of the view that the present Writ Petition is a gross abuse of process of Court and it ought not to be entertained at all.

12. Accordingly, the Writ Petition is dismissed as not maintainable. No costs. Consequently, W.M.Ps. are closed.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

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To
1. The Additional Chief Secretary/Commissioner,
   Commercial Taxes,
   Chepauk, Chennai-05.

2. The Deputy Commissioner/Enquiry Officer,
   Commercial Taxes Department (ST) (FAC),
   Vellore.

+1 CC to Mr.S.Sivakumar, Advocate sr 64162
+1 CC to The Special Government Pleader sr 64743.

W.P.No.25778 of 2021

SSV(CO)
SP(16/12/2021)