IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.09.2021

CORAM
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No.34663 of 2019
and W.M.P.Nos.35417 & 35418 of 2019

(Through Video Conferencing)

N.Vadivel

..Petitioner

vs.

The Commissioner of Commercial Taxes,
Chepauk, Chennai-5.

..Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for the records pertaining to the charge memo issued by the respondent in his proceeding No.CD2/30466/2016 dated 30.10.2019 and quash the same.

For Petitioner : Mr.V.Prakash, Sr.Counsel for Mr.K.Krishnamoorthy

For Respondent : Mr.L.S.M.Hasan Fizal Government Advocate.

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorari, calling for the records pertaining to the charge memo issued by the respondent in his proceeding No.CD2/30466/2016 dated 30.10.2019 and quash the same.

2. It is the case of the petitioner that the petitioner got married on 11.09.2008. At the time of marriage, his wife received sreedhana articles in the form of gifts from her parents which are jewellary and silver items. The petitioner was later appointed as an Assistant Commissioner (ST), Valluvarkottam, Assistant Circle, Chennai with the respondent on 08.12.2008. Admitted facts of the case is that the petitioner failed to make declaration under Rule 7 (3) (c) of the Tamil Nadu Government Servant's Conduct Rules 1973 regarding these items given by his in-laws to his wife/their daughter at the time of the marriage on 08.12.2008. An investigation was

initiated against him pursuant to which, the Government had also issued G.O.(2D) No.21, Commercial Taxes and Registration (A1) Department dated 18.02.2019, wherein, it was confirmed that the said allegation was not substantiated and recommended that further action against the petitioner be dropped merely because the petitioner had failed to make appropriate declaration. Meanwhile, the petitioner has also filed declaration in terms of Rule 7(4) of the aforesaid Rules though belatedly on 16.3.2016.

3. The respondent also decided to drop the proceedings, by their proceeding dated 18.02.2019 in G.O (2D) No.21, Commercial Taxes and Registration (A1) Department which reads as under : -

> The Accused Officer Thiru N.Vadivel, Assistant Commissioner (Commercial Taxes) Valluvarkottam Assessment Circle, Chennai, during the period between 01.04.2009 and 31.03.2015, alleged to have acquired assets and pecuniary sources in his name and in the names of his family members, disproportionate to his known sources of income.
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> (2) Based on the detailed enquiry conducted into the above allegation, the appropriate investigation authority has held the said allegation as not substantiated and recommended that further action may be dropped against Tr.N.Vadivel, Assistant Commissioner (Commercial Taxes) Valluvarkottam, Assessment Circle, Chennai.
>
> (3) The Government, after careful consideration of the recommendation of the appropriate investigation authority have decided to drop further action on the allegation held as not substantiated against Tr.V.Vadivel, Assistant Commissioner (Commercial Taxes), Valluvarkottam Assessment Circle, Chennai and ordered accordingly.

4. After deciding to drop the aforesaid proceedings, the respondents have now issued the impugned charge memo dated 30.10.2019. The allegation against the petitioner in the impugned Charge Memo reads as under:-

> Annexure – I
> Charge :

You, Thiru.N.Vadivel, formerly Assistant (ST) Valluvarkottam Assessment Circle, Chennai ( now Assistant Commissioner (Adjudication), Intelligence, Erode), entered into the Government Service on 18.12.2008 as Deputy Commercial Officer. You have got married on 11.09.2008 and at the time of marriage you have acquired 225 sovereign of gold, 6 kg of Silver and 20 carat of Diamond jewellary by shreethan from your father-in-law.

You have not filed your return of assets and liabilities as on 31.12.2008 on or before 31.03.2009 and thereafter at an interval of 5 years, on or before the 31st day of March of the year immediately following the year to which the return relates to giving the particulars relating to acquisition of movable and immovable properties.

Whereas, you have intimated your return of assets and liabilities on 31.07.2014 only for the purpose of the enquiry conducted by DVAC against you and thereby you have violated rule 7(3) (d) of the Tamil Nadu Government Servant's Conduct Rules, 1973.

Annexure II

Charge :-

You, Thiru.N.Vadivel formerly Assistant Commissioner (ST), Valluvarkottam Assessment Circle, Chennai (now Assistant Commissioner (Adjudication), Intelligence, Erode) have failed to intimate the acquisition of the movable properties 225 sovereigns of gold, 6 kgs of silver and 20 carat of diamond claimed, you have obtained at the time of marriage on 11.09.2008 from your father-in-law as shreethan.

As soon as you have entered in the department on 08.12.2008, you have become Government Servant. Hence, you have are a responsible for intimating the acquisition of movable properties to the concern department within stipulate time in the prescribed proforma. You have failed to intimate the above said acquisition of movable property in which you are violated the Rule 7(3)(d) of the Tamil Nadu Government Servants Conduct Rules, 1973.

You, Thiru.N.Vadivel, formerly Assistant Commissioner (ST) Valluvarkottam Assistant Circle, Chennai (now Assistant Commissioner (Adjudication), Intelligence, Erode) have joined on 08.12.2008, have not filed return of assets and liabilities as on 31.12.2008 on or before 31.03.2009 and thereafter at an interval of five years on or before to which the return relates giving the full particulars relating to acquisition of movable and immovable properties. But you have only filed the return on assets and liabilities for the year ending 31.12.2015 on 16.03.2016.

5. These charges were framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. The petitioner has also sent a representation dated 18.11.2019 and has requested the respondent to withdraw the charges against the petitioner.

6. Appearing on behalf of the petitioner, the learned Senior counsel for the petitioner submits that the impugned charge memo is liable to be quashed as the aforesaid charge memo has been issued even though the decision has been already taken to drop the investigation against the petitioner vide Government order in G.O.(2D) No.21, Commercial Taxes and Registration (A1) Department, dated 18.02.2019, G.O.(2D) dated 18.11.2019.

7. The learned Senior counsel for the petitioner further submits that there was only technical and venial breach of Rule 7(3) of the Tamil Nadu Government Servants Conduct Rules 1973 and therefore he submits that the impugned charge memo is liable to be quashed. It is further submitted that the impugned charge memo will also adversely affect the career of the petitioner inasmuch as the petitioner's promotion will be unnecessary held back and the impugned proceeding was nothing but an unnecessary harassment to the petitioner. It is the case of the petitioner that the entire proceedings emanated from the proceedings of the Director of Vigilance and Anti Corruption Agency and no case of any correction was made out. It is therefore submitted that the respondent having dropped the proceedings earlier cannot be allowed to resurrect the same in the impugned Charge Memo.

8. Appearing on behalf of the respondent, the respondent submits that the writ petition is liable to be dismissed. In the counter affidavit which has been filed reads as follows:-

> " Based on the detailed inquiry conducted to the said allegations, the appropriate investigation authority has held that the said allegations not

substantiated and recommended that further action may be dropped against the petitioner. Accordingly, the appropriate investigation authority have decided to drop further action as not substantiated against the petitioner.

The appropriate investigation authority has informed that the petitioner has not intimated the acquisition of the above movable properties to the department. Therefore, the Government have directed to initiate departmental disciplinary proceedings against the petitioner for having failed to intimate the acquisition of the movable properties to the Department in violation of Rule 7 (3)(d) of the Tamil Nadu Government Servant's Conduct Rules, 1973. As per Rule 7 of the Tamil Nadu Government Servants Conduct Rules, 1973, a Government servant who enters into any transaction concerning any movable property shall report to the prescribed authority within one month from the date of every such transaction.

He further stated that the petitioner has entered into service on 8.12.2008 and he should have within three months of his first appointment to any service or post, submitted his return of assets and liabilities as on his entry into service, in the above Forms and thereafter as prescribed above even though the period in which he submitted his return of assets and liabilities on his first appointment to the service or post is less than five years period. As per Rule 3-A of the Tamil Nadu Government Servants Conduct Rules 1973, no Government servant shall give or take abet the giving or taking of dowry ; or (ii) demand, directly or indirectly, from the parents or guardian of a bridegroom as the case may be any dowry. He further stated that getting dowry from the his spouse's parents at the time of marriage is violative of Rule 3-A of Tamil Nadu Government Servant Conduct Rules and non-submission of returns of assets and liabilities of movable and immovable properties to the department is also violative of Rule 7 of Tamil Nadu Government Servant Conduct Rules. Since the aforesaid lapses are very serious in nature, the respondent has taken disciplinary proceedings against the petitioner under Rule 17(b) of Tamil Nadu Civil Services (Disciplinary and Appeal) Rules which warrants major punishment to the petitioner. Hence this petition is liable to be dismissed”.

9. Heard the learned Senior Counsel for the petitioner and the learned Government Advocate for the respondent.

10. The facts are not in dispute. The proposed disciplinary proceedings in terms of the impugned charge memo is nothing but to resurrect a state issue which was earlier decided to be dropped in G.O.(2D) dated 18.11.2019. There is no other fresh allegations against the petitioner in the impugned Charge Memo. The only purpose of the impugned Charge Memo appears to delay the career progression of the petitioner by few years and give disappointment and heart burns to the petitioner, even though, the respondent has clearly accepted the petitioner has not indulged any corrupt corruption. There is only a technical and venial breach of the conditions of the Tamil Nadu Government Servants Conduct Rules 1973. Having decided to drop the proceeding on an earlier occasion, the impugned Charge Memo proposing to impose major penalty under Rule 17(b) of the Tamil Nadu Civil Services ( Discipline and Appeal) Rules 1955 is ex facie arbitrary and therefore cannot be allowed to be continued. The charges against the petitioner stems from their failure to file declaration required under the Tamil Nadu Government Servants Conduct Rules 1973 in 2008 when the petitioner entered service . Post facto, the petitioner has also filed the declaration on 16.02.2016. Though the petitioner was required to file declarations under the aforesaid Rules, fact of the matter is that in the Director of Vigilance and Anti Corruption Investigation, it was found that the petitioner had not indulged in corruption and the appropriate authority also decided to drop the criminal case. The failure to file declaration, though violates the Rule, fact remains the failure was not wilful or deliberate. Therefore, it would be unfair to subject the petitioner to disciplinary proceeding.

11. Considering the over all facts and circumstances of the case, the impugned Charge Memo dated 30.10.2019 is liable to be quashed and is hereby quashed. Consequently, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kkd

To

The Commissioner of Commercial Taxes,
Chepauk, Chennai-5.

+1 CC to Mr.K.Krishnamoorthy, Advocate sr 48380.
+1 CC to The Special Government Pleader sr 48972.

W.P.No.34663 of 2019

GJ(CO)
SP(11/11/2021)