IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.16306 OF 2012
AND
M.P.NO.1 OF 2012

N.Elangovan ...Petitioner

-Vs-

1. The Secretary to Government, Commercial Taxes and Registration Department, Secretariat, Chennai - 600 009.

2. The Commissioner of Commercial Taxes, Chepauk, Chennai - 600 005.

3. Tribunal for Disciplinary Proceedings, Coimbatore, Rep. by Commissioner of Disciplinary Proceedings.

...Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent bearing No.CD.2/29463/2010 dated 31.03.2011 and the records of the first respondent bearing No.17292/F1/2011-1 dated 25.01.2012 confirming the order of the second respondent, quash the same with consequential direction to the third respondent to complete the proceedings bearing T.D.P. Case No.21/2012 pending on the file of the third respondent in accordance with law.

For Petitioner : Mr.M.Muthappan

For R1 & R2 : Mr.Richardson Wilson
Additional Government Pleader

For R3 : Tribunal

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.



2. The charges against the petitioner are that he had failed to give prior notice before acquiring certain properties in his name and his wife's name. This charge memo dated 31.03.2011 was framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules (hereinafter referred to as 'the Rules'). Through a representation dated 24.05.2011, the petitioner had made a request seeking for submitting an explanation with regard to the departmental action, provided the charges are altered into one under Rule 17(a) instead of Rule 17 (b). His request was rejected by the second respondent on 17.06.2011. The review, as well as the appeal before the first respondent, were also rejected on 14.09.2011 and 25.01.2012 respectively. These rejection orders, along with the charge memo, are put under challenge in the present writ petition.

3. Insofar as the challenge to the charge memo is concerned, the scope of interference by this Court, exercising its powers under Article 226 of the Constitution of India, is very limited. The predominant ground raised by the petitioner is that, when the charges are minor in nature, which may attract a major penalty, he should be proceeded under Rule 17(a) of the Rules. This ground cannot be an exception for this Court to exercise its power under Article 226 of the Constitution of India, for the purpose of quashing the charge memo.

4. Insofar as the impugned orders are concerned, this Court is of the view that if at all the petitioner is of the view that the charges require to be proceeded with only under Rule 17(a), it would be appropriate that he gives his explanation to the levelled charges and the respondents also will be in a position to consider as to whether his request can be accepted or not only on appreciation of the explanation. Hence, it would not be feasible for the respondents to straightaway take a decision for the mode of enquiry, without receiving the explanation from the petitioner.

5. The learned counsel for the petitioner placed reliance on the explanation to Rule 7(1)(a) of the Tamil Nadu Government Servants' Conduct Rules and submitted that, when a member of the family acquires or disposes an immovable property from their own resources, the Government servant is not required to give prior notice. Among the various charges levelled against the petitioner, some of the charges state that the petitioner herein had not given prior notice when his spouse had acquired the property.

6. In the light of the explanation under Rule 7(1)(a), such a notice may not be required. In this background also, the petitioner's request requires consideration, which can be done by granting liberty to the petitioner to give his reply to the impugned charged memo.

7. In the light of the above observations, the orders dated 17.06.2011 and 14.09.2011 passed by the second respondent herein and the order of the first respondent dated 25.01.2012, are quashed. Consequently, the petitioner is called upon to give his explanation to the impugned charge memo issued by the second respondent dated 31.03.2011, within a period of 15 days from the date of receipt of a copy of this order, together with another representation, seeking for alteration of the disciplinary proceedings from Rule 17(b) to Rule 17(a). On receipt of the petitioner's explanation and the representation, the second respondent shall pass appropriate orders on its own merits and in accordance with law, within a period of 30 days from the date of receipt of such a representation.

8. In the light of the observations made in this order, no interference is required in the challenge made to the charge memo and hence, the prayer seeking to quash the charge memo stands dismissed.

9. It is made clear that this Court has not expressed any of its views with regard to the petitioner's request for proceeding with the departmental action under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

10. Accordingly, the Writ Petition stands partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Secretary to Government,
   Commercial Taxes and
   Registration Department,
   Secretariat, Chennai - 600 009.

2. The Commissioner of Commercial
   Taxes, Chepauk,
   Chennai - 600 005.

3. The Commissioner of Disciplinary Proceedings.
   Tribunal for Disciplinary Proceedings,
   Coimbatore.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.13984
+1cc to the Government Pleader, S.R.No.15064
+1cc to the Special Government Pleader, S.R.No.14328(24/03/2022)

W.P.No.16306 of 2012
and
M.P.No.1 of 2012

SJ(CO)
PM/16/03/2022