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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.4388 of 2022
and
W.M.P.Nos.4515 & 4517 of 2022

K.Selvam ... Petitioner

vs.

1.Principal Secretary/Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 005.

2.The Additional Commissioner (Administration),
O/o. Principal Secretary/ Commissioner of Commercial
Taxes, Ezhilagam, Chepauk, Chennai - 600 005.

3.The Deputy Commissioner (ST) (RAIL),
O/o. Joint Commissioner (ST),
Salem State Taxes Division,
Integrated Commercial Taxes Building,
Pitchards Road, Hasthampatti, Salem. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned order of the 2nd respondent in Memo Ref No.E1/10350/2014 dated 10.11.2020 and preceded impugned charge memo of the first respondent in charge Memo No.E1/10350/2014 dated 07.06.2016 and consequential impugned suspension order of the 1st respondent in proceedings No.E1/10350/2014 - I dated 24.05.2019 and Consequential impugned order of the 1st Respondent in proceedings No.E1/10350/14 II Dated 24.05.2019 and quash the all as illegal and unconstitutional consequently direct the respondents to permit the petitioner to retire from service as State Tax Officer with effect from 31.05.2019 with all monetary and service benefits more particularly within a time frame as may be stipulated by this Court.

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For Petitioner : Mr.J.Pooventherarajan

For Respondents : Mr.R.Siddharth
Government Advocate

ORDER

This writ petition has been filed for issuance of Writ of Certiorarified Mandamus, to quash i) the Memo dated 10.11.2020, calling further representation on the enquiry report; ii) charge memo dated 07.06.2016; and iii) suspension order dated 24.05.2019 and consequently direct the respondents to permit the petitioner to retire from service as State Tax Officer with effect from 31.05.2019 with all monetary and service benefits, within a time frame as fixed by this Court.

2. The case of the petitioner in brief:

The petitioner was appointed as Junior Assistant in the office of Commercial Tax Officer, Rasipuram on 29.08.1983 and subsequently, he was promoted as Commercial Tax Officer with effect from 24.12.2013. A charge memo was issued on 07.06.2016, framing charges that he had purchased a house site in his wife's name Mrs. Sumathi and had constructed a terraced house, without getting prior permission from the competent authority, violating Rule 7 of the Tamil Nadu Government Servants Conduct Rules 1973 and consequently, violated the Rule 20(1) of the above Rules. Thereafter, the petitioner was suspended from service with effect from 24.05.2019, thereby, he was not allowed to retire from service on 31.05.2019.

2.1. According to the petitioner, his wife, who is a self entrepreneur, runs a tailoring institute and Beauty Parlor and she purchased the lands out of her own income. Hence, the petitioner, as a government servant, is not required to give notice to the prescribed authority. However, the third respondent conducted De-nova enquiry and filed a report on 28.09.2020 stating that the charges leveled against the petitioner are proved. Accepting the enquiry report, the second respondent called for further explanation from the petitioner vide order dated 10.11.2020. Thereafter, the petitioner sought time to give further explanation on the enquiry report and subsequently, filed the present writ petition.

3. The learned counsel appearing for the petitioner submitted that, the impugned order issued by the second respondent is illegal. He further submitted that, as the disciplinary authority, the second respondent has to decide the issue independently and to pass final orders. But, since the

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second respondent issued the show cause notice accepting the report filed by the enquiry officer, he cannot decide the issue and pass final orders and hence, the show cause notice issued by the second respondent is liable to quashed as it is predetermined.

4. The learned Government Advocate appearing for the respondents submitted that the second respondent had appointed the third respondent as an enquiry officer and the report of the enquiry officer was also communicated to the petitioner. He further submitted that, the impugned show cause notice dated 10.02.2021 has been issued, providing an opportunity to the petitioner to give his further representation on the enquiry report. If the petitioner is having any grievance, he can give his explanation to the respondents and the same would be considered in accordance with law.

5. A perusal of the records shows that pursuant to the order dated 03.05.2019 issued by the second respondent, the petitioner had appeared for De-nova enquiry before the enquiry officer and he had submitted his explanation. The enquiry officer filed a report on 28.09.2020. Based on the enquiry report, the present show cause notice dated 10.11.2020 has been served to the petitioner. According to the petitioner, the second respondent has not decided the issue independently and simply accepted the findings of the enquiry officer and issued the show cause notice. Hence, the impugned show cause notice is predetermined.

6. At this juncture, it is worthwhile to point out that, a Division Bench of this court vide judgment dated 18.04.2017 passed in W.A.Nos.702 & 703 of 2016 (Additional Director General Vs. M.Rathakrishnan) [In the said judgment myself (DKKJ) is one of the members] , held as follows.

> 13. Further, relying on the decision in Oryx Fisheries Private Limited versus Union of India reported in 2011 (266) E.L.T. 422 (S.C.), the Writ Court has set aside the Show Cause Notices issued against the writ petitioners/respondents herein and allowed the Writ Petitions preferred by the respondents.
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> 14. After going through impugned notice and the order of the Writ Court, and after considering the rival submissions, the contention of the appellants that the first appellant is only an investigating authority whose role ends upon issuing a show cause notice on conclusion of investigation and he is not the adjudicating authority and therefore, the words used in the show notices such as concluded, revealed etc.,

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would not prejudice the case of the respondents, has to be countenanced and such words should be read in entirety. In the instant case, the investigating authority/first appellant is confined to investigating the case and submitting a report to the adjudicating authority and the first appellant cannot adjudicate the case as contemplated under the Act. As such, the investigating authority and the adjudicating authority are two different persons. Therefore, the decision relied on by the Writ Court in the case of Oryx Fisheries Private Limited versus Union of India reported in 2011 (266) E.L.T. 422 (S.C.), wherein the investigating authority and the adjudicating authority was one and the same person, is not applicable to the facts of the present case. Therefore, the contention of the respondents herein that the investigating authority has pre-determined and pre-judged cannot be accepted. Hence, the grounds raised by the writ petitioners/respondents are liable to be rejected. Further, the respondents have challenged the show cause notice and whether the same can be examined in the Writ Petitions has to be considered by this Court in the light of the following decision.

15. Moreover, a Writ against a show cause notice is not maintainable.

> (I) In Union of India v. Kunisetty Satyanarayana, reported in AIR 2007 SC 906, the Hon'ble Apex Court, at paragraphs 13, 14 and 16, held as follows:
> "13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramdesh Kumar Singh and Ors. [JT 1995 (8) SC 33], Special Director and Anr. v. Mohd. Ghulam Ghouse and Anr. [AIR 2004 SC 1467], Ulagappa and Ors. v. Divisional Commissioner, Mysore and Ors. [2001(10) SCC 639], State of U.P. v. Brahm Datt Sharma and Anr. [AIR 1987 SC 943] etc.
> 14. The reason why ordinarily a writ

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petition should not be entertained against a mere show-cause notice or charge-sheet is that, at that stage, the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.
16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

(ii) In Ministry of Defence vs. Prabhash Chandra Mirdha, reported in 2012 (11) SCC 565, the Hon'ble Apex Court has held as follows:-
''Ordinarily a writ application does not lie against a chargesheet or show cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge sheet does not infringe the right of a party. It

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> is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a chargesheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court.''

16. ...

17. In the light of the above discussions and decisions, we set aside the order passed by the Writ court and the impugned show cause notice issued by the first appellant is sustained with liberty to the respondents to submit their reply to the show cause notice dated 8.5.2015 within a period of six weeks from the date of receipt of a copy of this order and on receipt of the said reply, the first appellant is directed to consider the same on merits and in accordance with law. Accordingly, the Writ Appeals are allowed. No order as to costs. Connected Miscellaneous Petitions are closed

7. In the light of the above decisions, it is clear that the impugned show cause notice has been issued to provide an opportunity to the petitioner to put forth his case and he is at the liberty to raise his all objections. Therefore, the impugned show cause notice cannot be termed as predetermination as stated by the petitioner and the writ petition has no merits. However, it is open to the petitioner to submit his explanation or representation to the authorities concerned on the show cause notice, within two weeks from the date of receipt of a copy of this order, failing which, it is for the respondents to pass appropriate orders.

8. With the above observations, this writ petition is dismissed. No costs. Consequently, connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

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Sub Assistant Registrar

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To

1.The Principal Secretary/Commissioner,
Commercial Taxes, Ezhilagam,
Chepauk, Chennai - 600 005.

2.The Additional Commissioner (Administration),
Office of Commissioner of Commercial axes,
Ezhilagam, Chepauk, Chennai - 600 005.

3.The Deputy Commissioner (ST) (RAIL),
O/o. Joint Commissioner (ST),
Salem State Taxes Division,
Integrated Commercial Taxes Building,
Pitchards Road, Hasthampatti, Salem.

+1cc to the Special Government Pleader Taxes, S.R.No.14252

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