



WEB COPY



W.P.Nos.29527 and 29531 of 2022 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.Nos.29527 and 29531 of 2022
and WMP Nos.28910 and 28912 of 2022

M.Arunbabu

... Petitioner in both the writ petitions

Versus

The Treasury Officer,
District Treasury,
Namakkal District

.... Respondents in both the writ petitions

Prayer:-Petitions filed under Article 226 of the Constitution of India praying this Court to issue writ of certiorari to call for the records of the respondent in his proceedings bearing Se.Mu.Ka.No.5420/2018/a1 and quash impugned memo dated 10.01.2022 (WP No.29527 of 2022), and Na.Ka.No.5420/2018/A1 and quash the impugned second charge memo dated 13.09.2022.(W.P.No.29531 of 2022).

For Petitioner : Mr.P.T.Rakesh

For Respondent : Mr.V.Ravi
Spl.Govt.Pleader

COMMON ORDER

W.P.No.29527 of 2022 has been filed challenging the impugned

Memo dated 10.01.2022 issued to the petitioner, under which, the petitioner has



W.P.Nos.29527 and 29531 of 2022 of 2022

been called upon to pay a sum of Rs.11,74,071/- towards alleged misappropriation made by him.

W.P.No.29531 of 2022 has been filed by the very same petitioner challenging the Charge Memo dated 13.09.2022 issued to him in view of the above mentioned alleged misappropriation.

2. Heard Mr.P.T.Rakesh, learned counsel for the petitioner and Mr.V.Ravi, learned Special Government Pleader accepts notice on behalf of the respondent. By consent of both the parties, the main writ petition has been taken up for final disposal.

3. The petitioner is a Junior Assistant in the Treasury Department. According to the respondent, he has misappropriated a sum of Rs.11,74,071/-. Earlier, a Charge Memo was issued to the petitioner that he had misappropriated a sum of Rs.6,86,572/- and pursuant to the earlier charge memo, the petitioner had also paid the said money. It is the case of the respondents that after investigation, it was found that the petitioner had misappropriated a sum of Rs.11,74,071/- for which, they have issued the impugned memo dated 10.01.2022, which is the subject matter of the challenge



W.P.Nos.29527 and 29531 of 2022 of 2022

in WP No.29527 of 2022. The petitioner's contention is that without giving an opportunity to the petitioner to submit his explanation, arbitrarily, the impugned memo dated 10.01.2022 has been issued calling upon him to pay a sum of Rs.11,74,071/-. The petitioner denies that he had misappropriated the said amount.

4. The second charge memo dated 13.09.2022 issued to the petitioner which has been challenged in WP No.29531 of 2022 is pursuant to the impugned memo dated 10.01.2022, which is the subject matter of challenge in WP No.29527 of 2022. It is seen from the impugned memo dated 10.01.2022 issued to the petitioner that the petitioner has not been granted any opportunity to submit his explanation, but, instead, he has been directed to deposit a sum of Rs.11,74,071/-, which according to the respondents, is the amount misappropriated by him. Before passing final orders of recovery with regard to the alleged misappropriated sum, the respondents ought to have granted an opportunity for the petitioner to submit his explanation and only after considering the petitioner's explanation, a final order of recovery can be issued.

5. Having not done so in the impugned memo dated 10.01.2022, which is the subject matter of WP No.29527 of 2022, this Court is of the



W.P.Nos.29527 and 29531 of 2022 of 2022

considered view that the impugned charge memo dated 10.01.2022 will have to be treated as only a show cause notice and cannot be treated as final order for recovery.

6. Since the impugned charge memo dated 10.01.2022 which is the subject matter of WP No.29527 of 2022 is treated as show cause notice, the petitioner will have to submit his explanation to the same within a time frame to be fixed by this Court and the respondents shall consider such explanation and after affording one personal hearing to the petitioner, will have to pass final orders with regard to the amount to be recovered from the petitioner for the alleged misappropriation.

7. Insofar as the impugned 2nd charge memo dated 13.09.2022 which is the subject matter of challenge in WP No.29531 of 2022 is concerned, the petitioner will have to necessarily participate in the enquiry proceedings and he is not entitled for quashing of charge memo.

8. Admittedly, the petitioner had deposited a sum of Rs.6,86,572/- pursuant to the first charge memo and there also the petitioner was alleged to have misappropriated the said sum. While that be so, the question of quashing



W.P.Nos.29527 and 29531 of 2022 of 2022

the second charge memo dated 13.09.2022 issued for the alleged misappropriation by the petitioner to the tune of RS.11,74,071/- cannot be quashed. The petitioner will have to participate in the enquiry proceedings and cooperate in the same. However, the respondents will have to afford a fair hearing to the petitioner in the enquiry proceedings and only thereafter, after considering his explanation and other evidence both oral and documentary placed on record by him before the Enquiry Officer, final orders with regard to petitioner's punishment shall be passed.

9. For the foregoing reasons, this Court disposes of both the writ petitions by issuing the following directions:-

a) The impugned charge memo dated 10.01.2022 which is the subject matter of challenge in WP No.29527 of 2022 is treated as show cause notice. The petitioner is directed to send a reply to the impugned memo dated 10.01.2022 within a period of two weeks from the date of receipt of a copy of this order. On receipt of the said explanation from the petitioner and after affording one personal hearing to the petitioner, the respondents shall pass final orders with regard to the claim that the petitioner had misappropriated a sum of Rs.11,74,071/- within a period of eight weeks thereafter.



WEB COPY



W.P.Nos.29527 and 29531 of 2022 of 2022

ABDUL QUDDHOSE,J.,

sr

b) The petitioner shall participate and cooperate in the enquiry proceedings pursuant to the impugned second charge memo dated 13.09.2022 which is the subject matter of challenge in WP No.29531 of 2022. The respondents shall also afford a fair hearing to the petitioner in the enquiry proceedings including permitting him to produce oral and documentary evidence and only thereafter pass final orders. The respondents are directed to pass final orders in the enquiry proceedings within a period of six months from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petitions are closed.

09.11.2022

sr

Index: Yes/No

Speaking Order/Non-Speaking Order

To

The Treasury Officer,
District Treasury,
Namakkal District

W.P.Nos.29527 & 29531 of 2022