BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2022

CORAM :

THE HON`BLE MR.JUSTICE B.PUGALENDHI

W.P(MD) No.345 of 2022 and
WMP(MD) No.265 of 2022

M.Divankanth ...Petitioner

Vs.

1.The Deputy Commissioner (State Tax),
State Tax Department,
Office of the Deputy Commissioner,
Commercial Tax Buildings (RDO Campus),
North Prathatchanam Road,
Karur - 639 001.

2.Selvi V.Anitha
The Inquiry Officer,
Assistant Commissioner (ST),
Karur -2 Assessment Circle,
Commercial Tax Buildings (RDO Campus),
North Prathatchanam Road,
Karur - 639 001.

3.Mr.R.Ponnusamy,
Assistant Commissioner,
State Taxes,
O/o. Assistant Commissioner (ST),
Vellakkovil Assessment Circle,
Kangeyam, Tiruppur District. ...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned final notice issued by the third respondent in Na.a.238/2021, dated 29.10.2021 and quash the same as illegal and arbitrary consequently directing the respondents to keep the disciplinary proceedings against the petitioner in Na.a.238/2021/ஆ1-1 in abeyance, pending disposal of the criminal cases registered in Cr.No.278 & 280 of 2019, on the file of the Karur Town Police Station and in Crime No.166 of 2019, on the file of the Thannthondrimalai Police Station, Karur.

For Petitioner :Mr.R.Sevugaraja
For Respondents :Mr.A.Kannan
Additional Government Pleader

O R D E R

This writ petition is filed as against the final notice issued by the enquiry officer in Na.Ka.No.238 of 2021/A1, dated 29.10.2021, in and by which, the enquiry officer directed the petitioner to co-operate for the enquiry and to cross examine the remaining witnesses in the departmental proceedings.

2.The learned counsel for the petitioner submits that when the petitioner was working as driver under the first respondent, a charge memo has been issued to him, pursuant to the criminal case registered against him in Crime.Nos.278 & 280 of 2019, on the file of the Karur Town Police Station and in Crime No.166 of 2019, on the file of the Thannthondrimalai Police Station, Karur and final reports were not filed in the said crime numbers. In the meantime, the departmental proceedings has been proceeded in a hurried manner. Therefore, he approached this Court to abstain the enquiry, till the conclusion of the criminal cases, which were pending against this petitioner. The learned counsel appearing for the petitioner has also relied on similar orders passed by this Court in W.P(MD) No.21790 of 2021, dated 08.12.2021.

3.Mr.Kannan, learned Additional Government Pleader who takes notice for the respondents submits that this petitioner is facing serious allegations of job rocketing and this petitioner has already moved a writ petition in W.P(MD) No.10447 of 2020, as against the order of suspension and on 31.08.2020, the writ petition was disposed of in the following terms:-

> "14.In view of the said submission made by the learned Special Government Pleader appearing for the respondent, on the aforesaid pointed queries about the proposal with regard to the departmental proceedings to be initiated against the petitioner, this Court is inclined to dispose of the writ petition, by taking into account the said submission made by both sides, with the following order:-
>
> "that the respondent is hereby directed to initiate disciplinary proceedings against the petitioner by issuance of charge memo, with definite charges and on receipt of the same, the petitioner shall be at liberty to respond.
>
> Thereafter, it is for the respondent to decide as to whether proceed with the enquiry or not and once they decided to proceed with the enquiry, that shall be completed after giving a second opportunity to the petitioner, and the same shall be completed by passing of final orders within a period of four months from the date of receipt of a copy of this order."
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> 15.It is made clear that, the petitioner shall give his fullest cooperation for the completion of the

> disciplinary proceedings, as indicated and once the disciplinary proceeding is initiated, the petitioner shall not make any attempt to clog such proceedings by approaching this Court on the ground that, criminal proceedings are pending, therefore, the departmental proceedings cannot go on.
>
> 16.If any such attempt is made, and by virtue of that, if the departmental proceedings could not be progressed as indicated above, for which, no reason can be attributed on the respondent and only the reason attributable will be on the petitioner's side and if the departmental proceeding is delayed, as a result of which, the petitioner cannot seek indulgence of this Court for revocation or review of the impugned suspension order."

4. Thereafter, the petitioner was issued with the charge memo on 07.09.2020, under Section 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules. During the enquiry, seven witnesses were examined and they were also cross examined by the petitioner. Two more witnesses are yet to be cross examined and though witnesses appeared before the enquiry officer, the petitioner has evaded and therefore as a final chance to cross examine the remaining witnesses, the petitioner was issued with the notice, dated 29.10.2021. The learned Special Government Pleader further submits that the petitioner has also filed W.P(MD) No.408 of 2021 with a prayer to permit the petitioner to cross examine the witnesses and the same was allowed by this Court on 02.03.2021.

5. This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

6.Though the petitioner is facing criminal cases, final reports are yet to be filed in those cases. The pendency of criminal cases is not a bar for the department to proceed with the departmental proceedings. Even, if the criminal case is ended in acquittal, the department may proceed with the departmental proceedings and conclude the same. In this case, the petitioner has already filed a writ petition in W.P(MD) No.10447 of 2020, as against the order of suspension. This Court by order, dated 31.08.2020 has issued certain directions to the concerned authority to conclude the departmental proceedings within the reasonable time and also directed the petitioner to co-operate for the enquiry. The petitioner has also filed another writ petition with a prayer to permit him to cross examine the witnesses. This Court allowed the said writ petition, permitting the writ petitioner to cross examine those witnesses. He also cross examined seven witnesses and two more witnesses are yet to be cross examined. At this juncture, the petitioner approached this Court to abstain the enquiry proceedings, by referring the pending criminal cases, which are pending against him, for the serious allegations of job rocketing, more particularly, final reports are yet to be filed in those cases.

7.In such view of the matter, this Court is not inclined to entertain this writ petition. Accordingly, this writ petition is dismissed with a liberty to the petitioner to appear before the enquiry officer on the next date of hearing, if the enquiry is not concluded till date and one more opportunity may be provided to the petitioner to cross examine the remaining witnesses and the petitioner shall pay a cost of Rs.5,000/- each to the witnesses for their appearance for cross examination. The cost shall be paid to the witnesses directly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2022
Sub Assistant Registrar

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy,shall be the responsibility of the advocate/litigant concerned.

To
1.The Deputy Commissioner (State Tax),
State Tax Department,
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North Prathatchanam Road, Karur - 639 001.

2.The Inquiry Officer,
Assistant Commissioner (ST),
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3.The Assistant Commissioner, State Taxes,
O/o. Assistant Commissioner (ST),
Vellakkovil Assessment Circle,
Kangeyam, Tiruppur District.

+1 CC to M/s.SPL GP (SR-1285[F] dated 11/01/2022)

Order made in
W.P(MD) No.345 of 2022 and
WMP(MD) No.265 of 2022
10.01.2022

VRN
MS/18.03.2022/4P.5C