IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.4744 of 2023
and WMP.No.4745 of 2023

P.Sivlingam ... Petitioner

Vs.

1.The State of Tamil Nadu
rep. by The Secretary to the Government,
Commercial Taxes and Registration (H1) Department,
St. George Fort, Secretariat,
Chennai-600 009.

2.The Inspector General of Registration,
Registration Department,
100, Santhome High Road,
Chennai-600 028.

3.The Secretary to Government/Commissioner
for Disciplinary Proceedings,
III Floor, Kuralagam,
Chennai-600 104. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Order No.A1/588/2020 dated 10.01.2023 conveying the charges framed in TDP Case No.18/2021 by the third respondent and quash the entire proceedings as being illegal, arbitrary and unconstitutional and consequently, direct the respondents to consider and promote the petitioner to the post of Assistant Inspector

General of Registration, based on his seniority and on par with his juniors with all attendant service benefits.

For Petitioner : Mr.C.K.Chandrasekar

For Respondents : Mr.V.Stalin Abhimanyu, AGP

ORDER

Heard Mr.C.K.Chandrasekar, learned counsel for the petitioner and Mr.V.Stalin Abhimanyu, learned Additional Government Pleader appearing on behalf of the respondents. With the consent of the learned counsel appearing for the parties, the main Writ Petition is taken up for disposal, at the admission stage itself.

2. Based on the joint surprise check conducted by the officials of the Inspection Cell along with the officials of the Vigilance and Anti-Corruption, charges of alleged corruption came to be framed against the petitioner herein by the Tribunal for Disciplinary Proceedings, Chennai [TDP] through a charge memo dated 10.01.2023 in TDP. Case No.18/2021, which is put under challenge in the present Writ Petition.

3. The charges levelled against the Writ Petitioner are:

i) A sum of Rs.31,200/- (Rupees Thirty One Thousand and

Two Hundred Only) was found and seized inside a Stamp Act Book kept amidst a shawl in your (Accused Officer's) table drawer.

ii) A sum of Rs.23,920/- (Rupees Twenty Three Thousand and Nine Hundred and Twenty Only) was found and seized from your (Accused Officer's) office premises.

iii) A sum of Rs.3,00,740/- (Rupees Three Lakh Seven Hundred and Forty Only) was found and seized from the licensed, unlicensed document writers and brokers who were present in the above said office premises and this amount is meant to you (Accused Officer) as illegal gratification.

iv) Accused Officer have engaged a private individual namely, Tr. Kumar as sweeper in your (Accused Officer's) office without any orders from the competent authority.

4. The learned counsel for the petitioner submitted that the licence of the document writers, from whom some amounts were seized, was cancelled and such action was challenged before this Court in a Writ Petition in W.P.No.21180 of 2022, wherein an order of interim stay was granted. In view of the same, the learned counsel submitted that the very basis of the charges itself, cannot be sustained. He further submitted that the CCTV recordings from the premises, would

reveal that the Directorate of Vigilance & Anti Corruption (DVAC) team had gone to the premises of the document writers, collected the money, before conducting the raid in the petitioner's office and therefore, the charge itself, is baseless.

5. Per contra, the learned Additional Government Pleader submitted that all these grounds can be canvassed by the petitioner in the disciplinary proceedings before the TDP and therefore, quashing of the charge memo, is unwarranted.

6. The scope of interference to a charge memo in a departmental action by exercising powers under Article 226 of Constitution of India, is very limited and the exceptions to such interference have been spelt out in various decisions of the Honourable Apex Court, as well as by this Court. Among such exceptions, if the delay in the proceedings causes prejudice to the party and by taking into account the gravity of offence, this Court would be justified in interfering with the charge memo, as held in the case of the ***Secretary, Ministry of Defence and others Vs. Prabhas Chandra Mirdha*** reported in ***(2012) 11 SCC 564***. Likewise, in ***Union of India and others Vs. Upendra Singh*** reported in ***(1994) 3 SCC 357***, it was held that the High Court can interfere with

the charge memo, if the charges framed do not construe any misconduct or irregularity or is contrary to law. Likewise, the incompetency of authority and mala-fides have also been held as exceptions in ***K.Thirumurugan Vs. Additional Chief Secretary*** reported in ***CDJ 2019 MHC 2167***.

7. In *Upendra Singh's case (supra),* which has been referred above, the scope of interference to a charge memo by a Tribunal or a Court was dealt with in the following manner:-

> *"6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the*

correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons and others. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus:

> *"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the*

decision making process but also on the correctness of the decision itself."

7. Now, if a court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is ununderstandable how can that be done by the tribunal at the stage of framing of charges? In this case, the Tribunal has held that the charges are not sustainable (the finding that no culpability is alleged and no corrupt motive attributed), not on the basis of the articles of charges and the statement of imputations but 5 1992 Supp (2) SCC 312 mainly on the basis of the material produced by the respondent before it, as we shall presently indicate."

8. Thus, while the High Court may be justified in interfering with the charge memo when the charges framed therein, do not constitute or contribute any misconduct or any irregularity or contrary to law, consideration of the defence of the delinquent which is based on factual aspects, for interfering with the disciplinary proceedings, will not be permissible and such exercise requires to be done during the course of the inquiry only.

9. In this background, the grounds raised by the petitioner touches upon the factual matrix of the matter. If the petitioner is of the view that the CCTV footage would stand to his disadvantage, he can always establish the same before the TDP by letting in appropriate oral and documentary evidences.

10. Likewise, the comparison of the action initiated against the document writers by cancellation of their licences, will not in any way help the petitioner's case. The misconduct attributed to the petitioner herein is to the effect that, he had failed to maintain absolute integrity and devotion to duty in violation of Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973. Merely, because this Court had entertained a Writ Petition challenging the cancellation of the licence of the document writers and granted an order of interim stay, cannot be construed that the charge against the petitioner viz., seizure of money from his table drawer, as well as from his office premises, has to nullified, since the action against them and the delinquency / misconduct attributed to the petitioner, will have no nexus with each other. If the petitioner is of the view that he is innocent, it is always open to him to establish the same before the TDP.

11. It is also pertinent to note that none of the grounds raised by the petitioner fall under the exceptions to which this Court may interfere with the charge memo. Thus, I do not find any merits in the present Writ Petition. Accordingly, the Writ Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

22.02.2023

Index :Yes / No
Order : Speaking / Non Speaking
Neutral Citation: Yes / No

DP

To

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State of Tamil Nadu,
Commercial Taxes and Registration (H1) Department,
St. George Fort, Secretariat,
Chennai-600 009.

2.The Inspector General of Registration,
Registration Department,
100, Santhome High Road,
Chennai-600 028.

3.The Secretary to Government/Commissioner
for Disciplinary Proceedings,
III Floor, Kuralagam,
Chennai-600 104.

M.S.RAMESH,J.

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