IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 19.09.2023

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.A.No.1328 of 2019 and
C.M.P.No.9043 of 2019 and
C.M.P.No.16899 of 2021

B.Suseel Kumar ... Appellant

Vs.

1.The Government of Tamil Nadu,
Rep. By Secretary to Government,
Commercial Taxes Department,
Fort St. George, Secretariat,
Chennai – 600 009.

2.The Commissioner of Commercial Taxes
O/o Commissioner of Commercial Taxes,
Ezhilagam, Chennai – 600 005.

3.The Inquiry Officer /
Additional Commissioner (Service Tax Cell)
(On deputation)
O/o Commissioner of Commercial Taxes,
Ezhilagam, Chennai – 600 005. ... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying to set aside the order dated 21.03.2019 in W.P.No.19578 of 2018.

For Appellant : Mr.V.Prakash
For Mr.K.Krishnamoorthy

For Respondents : Mr.Haja Nazirudeen
Additional Advocate General
Assisted by
Mr.R.Venkateshwaran
Spl. Government Pleader for R1 to R3

JUDGMENT

[Judgment of the Court was delivered by R.SURESH KUMAR, J.]

This writ appeal has been directed against the order passed by the Writ Court dated 21.03.2019 made in W.P.No.19578 of 2018.

2. The present appellant is the writ petitioner against whom the charge has been framed to be enquired by way of disciplinary proceedings on 12.06.2014.

3. Pursuant to which, in order to conduct the enquiry, the Enquiry Officer was appointed by the proceedings issued by the Commissioner of Commercial Taxes on 11.07.2018.

4. When such a proceeding dated 11.07.2018 was issued by the Commissioner, that was questioned by the appellant/writ petitioner before the Writ Court on the ground that, as per third proviso to Rule 12(2) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, the immediate higher officer if he wants to conduct an enquiry by himself to conduct an enquiry otherwise if he wants to appoint an Enquiry Officer to conduct an enquiry, he should refer the matter to the competent authority to appoint such an Enquiry Officer who shall conduct an enquiry and after completing the enquiry, the paper shall be placed including the reply given to the show cause notice to the competent authority to take a decision.

5. In the present case, the appellant/petitioner is a Joint Commissioner, Commercial Taxes, therefore the competent authority to impose punishment against the appellant/petitioner is the Secretary to Government, Commercial Taxes Department. Therefore, if at all an Enquiry Officer is to be appointed, it shall be appointed only by the Secretary to Government not the Commissioner, Commercial Taxes as who may be the higher authority of the delinquent but not competent to appoint an Enquiry Officer. Therefore, on that ground when this was

challenged, the learned Judge, who heard the writ petition, not accepted the said proposition or not impressed with the said proposition submitted on behalf of the writ petitioner and ultimately dismissed the writ petition in W.P.No.19578 of 2018 dated 21.03.2019.

6. Assailing the said order, Mr.V.Prakash, learned Senior Counsel appearing for the appellant would contend that, the third proviso to Rule 12(2) of the said Rule made it very clear that, in case of a higher authority of the delinquent, he wants to conduct an enquiry he can do it, however if he does not want to conduct the enquiry and the Enquiry Officer in this regard is to be appointed, the immediate higher authority does not have the power to appoint such an Enquiry Officer, instead he has to refer the matter to the competent authority to impose punishment against the delinquent to appoint the Enquiry Officer. When that being the clear legal position as per the rule, in violation of the said rule since the order impugned before the Writ Court dated 11.07.2018 was issued, that was questioned on the said ground, however the learned Judge who heard the writ petition has not considered the said ground in proper perspective, therefore the said order which is impugned herein is liable to be interfered with, he contended.

7. On the other hand, Mr.Haja Nazirudeen, learned Additional Advocate General appearing for the respondents on instructions would submit that, apart from the legal issue that has been raised in this case, the factual matrix is concerned, though Enquiry Officer has been appointed by order dated 11.07.2018, subsequently since he being an IRS Officer, he has been relieved from the said position and he joined in some other position as Commissioner of Customs, therefore he is no more Enquiry Officer as of now. Therefore, it become necessitated now to appoint a fresh Enquiry Officer and in that case, without going to the controversy that has arisen in this case, the competent authority viz., Secretary to Government will appoint the Enquiry Officer before whom let the appellant/petitioner appear for enquiry and let the enquiry go on on merits and in accordance with law to reach its logical conclusion, he contended.

8. We have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

9. As has been rightly pointed out by the learned Senior Counsel appearing for the appellant, the relevant rules viz., Rule 12(2) third proviso reads thus:

> "*Provided also that all authorities directly higher to the members holding the posts included in the State Services may frame charges against such members of the State Services under Rule 17(b) or issue show cause notice under Rule 17(a) even if they are not the competent authority to impose the penalty and they may conduct the inquiry themselves or request the competent authority to appoint an inquiry officer to conduct the inquiry. They shall remit the papers to the competent authority for passing final orders, after the case is processed up to the level of completion of inquiry or after receipt of explanation to show cause notice, as the case may be.*"

10. The rule has made it clear that, all authorities directly higher to the members holding the posts may frame charges against such members under Rule 17(b) or issue show cause notice under Rule 17(a) even if they are not the competent authority to impose the penalty.

11. The rule further says that, they may conduct the enquiry themselves or request the competent authority to appoint the inquiry officer to conduct the inquiry.

12. Therefore, if at all the higher authority wants to conduct an

enquiry on the charges already been framed, they can conduct the enquiry, however if the immediate higher authority does not want to conduct an enquiry by his own and he wants an Enquiry Officer in this regard to be appointed to conduct an enquiry, he has to make a request to the competent authority to appoint the Enquiry Officer.

13. When that being the position, in the present case against the delinquent the Commissioner of Commercial Taxes is the higher authority or immediate higher authority, therefore if at all he wants to conduct enquiry by him, he can do it. However if he does not want to conduct the enquiry by himself, he can refer the matter to the competent authority i.e., the Secretary to Government, Commercial Taxes Department to appoint an Enquiry Officer.

14. However, in the present case by order dated 11.07.2018, the Commissioner of Commercial Taxes himself since has been appointed as Enquiry Officer, without referring the matter to the competent authority to appoint an Enquiry Officer, that action on the part of the Commissioner directly runs contra to the third proviso to Rule 12(2) of the said Rules. Therefore, the point that has been taken by the

appellant/petitioner before the Writ Court ought to have been accepted by the learned Judge, however it was not considered in proper perspective by taking note of the mandate that has been provided in the said proviso to the Rule 12(2), hence we are of the view that, the impugned order is liable to be interfered with.

15. On the side of the respondents also the learned Additional Advocate General has pointed out that, the Enquiry Officer so appointed through the impugned order before the Writ Court dated 11.07.2018 himself has got relieved as he is being an IRS Officer joined in some other position as Commissioner of Customs, that become necessitated to appoint new Enquiry Officer. Therefore, when new Enquiry Officer is appointed, the rule will be taken care of and it would be appointed only by the competent authority viz., Secretary to the Government. In view of the said stand now taken by the respondents, the order impugned passed by the learned Judge dated 21.03.2019 would not be sustained, therefore it is liable to be interfered with. In the result, the following orders are passed in this writ appeal:

(i) That the impugned order is set aside. As a sequel, the order which is impugned before the Writ Court dated

11.07.2018 passed by the Commissioner of Commercial Taxes is also set aside. Therefore, there shall be a direction to the respondents i.e., 1st respondent / Secretary to Government, Commercial Taxes Department to appoint an Enquiry Officer to conduct the enquiry on the basis of the charges that has already been framed against the appellant/petitioner and complete the same within a period of three months from the date of receipt of a copy of this judgment.

(ii) Full opportunity shall be given to the appellant/ petitioner during the enquiry and the appellant/petitioner also without taking any unnecessary adjournment shall cooperate with the Enquiry Officer and based on the Enquiry Officer's report, the Disciplinary Authority shall take a decision to conclude the disciplinary proceedings either way thereafter within a period of eight weeks after giving second opportunity to the delinquent/writ petitioner/appellant.

16. With the above observation and directions, this Writ Appeal is

ordered accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

[R.S.K. J] [K.B. J.]

19.09.2023

Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

Sgl

To

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