In the High Court of Judicature at Madras

Reserved on : 10.9.2024	Delivered on : 12.9.2024

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.18591 of 2023 &
WMP.No.17829 of 2023

V.Mahendiran ...Petitioner

Vs

1.The Government of Tamil Nadu,
rep.by the Secretary to
Government, Commercial Taxes
& Registration Department,
Chennai-9.

2.The Principal Secretary &
Commissioner of Commercial
Taxes, O/o the Commissioner
of Commercial Taxes,
Chepauk, Chennai-5. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent herein in Proceedings CD1/890/2013 dated 06.2.2020, quash the same and issue consequential directions to the respondents to grant all consequential service and monetary benefits within a stipulated time frame as deemed fit by this Court.

For Petitioner : Mr.A.Satheesh Murugan

For Respondents : Mr.C.Harsha Raj, AGP
assisted by
Mrs.Vasantha Mala, GA

ORDER

This writ petition has been filed by the petitioner challenging the proceedings of the second respondent dated 06.2.2020 and to issue a consequential direction to the respondents to grant all consequential service and monetary benefits.

2. The brief background of facts and the issues involved in this writ petition were captured by this Court in the earlier order passed on 28.8.2024, which is extracted as hereunder :

> *"This writ petition has been filed challenging the charge memo dated 06.02.2020 issued by the 2nd respondent and for a consequential direction to the respondents to grant all consequential service and monetary benefits.*
>
> *2. The case of the petitioner is that he was an Assistant Commissioner of Commercial Taxes and in exercise of powers conferred on him, the petitioner had ordered for refund of claims. This pertained to the refund claims dealt with from September 2013 to March 2014. A charge memo came to be issued on*

06.02.2020 on the ground that the petitioner has issued refunds without complying with the circular dated 20.10.2011. The same has become a subject matter of challenge in the present writ petition.

3. The learned counsel for the petitioner made the following submissions:

(a) The 2nd respondent is not a competent authority to issue a charge memo and it is only the 1st respondent who is the competent authority to issue charge memo. Therefore, the charge memo issued by the 2nd respondent lacks jurisdiction.

(b) The claims pertained to the period from September 2013 to March 2014 and whereas, the charge memo was given with an inordinate delay only on 06.02.2020. This inordinate delay in initiating departmental proceedings against the petitioner vitiates the charge memo.

(c) The refund that was made by the petitioner was in exercise of his quasi judicial power as per Rule 11 of the TNVAT Rules, 2007.

(d) There is no material to show that the refund made by the petitioner is fraudulent and this refund order has not been challenged by the department either by way of revision or by way of rectification.

(e) The circular instructions dated 20.10.2011 cannot outweigh the provisions of the Act and Rules and therefore, mere non-following of the instructions in the circular cannot result in initiation of departmental action against the petitioner, more particularly when the petitioner was performing a quasi judicial function.

4. Per contra, the learned Additional

Government Pleader for respondents submitted that the petitioner was an Assistant Commissioner during the relevant point of time. Under Section 48 of the TNVAT Act, 2006, the petitioner can perform only those functions within such local limits as the Government or any authority or officer empowered in this behalf, may assign to the concerned officer. The learned counsel submitted that this provision must be read along with the circular dated 20.10.2011. It was submitted that the circular specifically provides the manner in which the petitioner has to function in his capacity as the Assistant Commissioner and clause 17 talks about the various contingencies where the petitioner is expected to get the prior approval of the Deputy Commissioner/Joint Commissioner depending upon the amount involved in the refund claims. Therefore, it was submitted that the petitioner is bound by this circular which was issued in line with Section 48 of the Act.

5. The learned Additional Government Pleader further submitted that even if ultimately no materials are available to come to a conclusion that the refund claims were fraudulent, the act of the petitioner clearly amounts to in-subordination, since the petitioner made a refund without the sanction of the concerned authority.

6. The learned Additional Government Pleader by pointing out to Rule 11(2) of the TNVAT Rules, submitted that the act of the petitioner is a ministerial act and it is not a quasi judicial act as claimed by the petitioner. Therefore, it was contended that the petitioner is bound to comply with the instructions given in the circular. To add further, *the learned Additional Government Pleader also placed reliance upon Section 18 of the TNVAT Act, which speaks about zero rating. The learned counsel submitted that Section 18(2) makes it clear that the refund that was made by the petitioner was merely an administrative action which does not involve any quasi judicial function and determining the rights of anyone.*

7. The learned Additional Government Pleader shall give more clarity on the following issues:

(a) The refund claims was of the period September 2013 to March 2014. There is no plausible explanation as to why the disciplinary proceedings was initiated only on 06.02.2020 after more than 6 years. Unless this delay in initiation of disciplinary proceedings is explained, the delay by itself can be a ground for interfering with the charge memo.

(b) When the refund was made by the petitioner, was there any material to show that the refund claims were fraudulent and whether any steps were taken to cancel the refund in a review or in a rectification proceedings and

(c) Whether the 2nd respondent was competent to issue the charge memo against the petitioner, since at the time when the charge memo was issued, the petitioner held the post of Deputy Commissioner and his appointing authority was only the 1st respondent. Therefore, this Court must be clarified regarding the jurisdiction of the 2nd respondent to issue the charge memo.

8. Post this case under the caption 'for passing final orders' on 03.09.2024."

3. Pursuant to the above order dated 28.8.2024, an additional counter affidavit has been filed by the respondents.

4. In so far as the first query that was raised by this Court regarding the delay in initiating the disciplinary proceedings is concerned, in the additional counter affidavit, by furnishing the list of dates and events, the respondents stated that the first charge memo was issued on 29.1.2014, that an inquiry was conducted and that the Government issued G.O.(2D) No.134 dated 17.11.2023 imposing the punishment of compulsory retirement against the petitioner.

5. Challenging the said Government Order, the petitioner filed W.P.(MD) No.29383 of 2023 before the Madurai Bench of this Court. A learned Single Judge of this Court, by order dated 05.4.2024, disposed of the said writ petition giving liberty to the petitioner to file a review petition before the appropriate authority by raising all the grounds.

6. In the meantime, the petitioner moved a writ petition in W.P.(MD) No.7135 of 2009 before the Madurai Bench of this Court challenging the charge memo issued by the second respondent dated 22.8.2008 and also sought for promotion to the post of Deputy Commissioner (CT) from the date of promotion of his junior with all

other monetary and attendant benefits. It is seen that W.P.(MD) No. 7135 of 2009 was allowed by a learned Single Judge of this Court by order dated dated 24.2.2017, pursuant to which, the petitioner was also promoted as the Deputy Commissioner on 16.7.2018.

7. During the interregnum period, considering the subsequent event that took place in Thudiyalur Assessment Circle, the Joint Commissioner (CT), Enforcement, Coimbatore-18 submitted a report dated 12.3.2014 to the second respondent and based on the same, by proceedings of the second respondent dated 13.4.2014, instructions were given to the Joint Commissioner (CT) concerned to frame additional charges. Thereafter, it was decided to issue a fresh charge memo to the petitioner and accordingly, the charge memo dated 06.2.2020 came to be issued to the petitioner. Challenging the said charge memo dated 06.2.2020, the petitioner is before this Court. Therefore, the respondents have taken a stand that the delay has been properly explained and that there is no reason to interfere with the impugned charge memo only on the ground of delay in initiating the disciplinary proceedings.

8. In so far as the second query that was raised by this Court is concerned, the respondents have taken a stand that the assessments,

in which, the refund was made by the petitioner, have been reopened in all the 47 cases and and the refund was recalled.

9. With regard to the third query that was raised by this Court, the respondents have placed reliance upon Rule 12(2) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules (for short, the Rules), which provides that all authorities directly higher to the members holding the posts may frame charges against such members, appoint an Enquiry Officer and thereafter remit the papers to the Competent Authority/Appointing Authority. In view of the same, the respondents have taken a stand that the impugned charge memo dated 06.2.2020 is well within the power and jurisdiction of the second respondent.

10. Heard the learned counsel for the petitioner and the learned Additional Government Pleader, assisted by the learned Government Advocate appearing for the respondents.

11. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record. This Court has also carefully perused the impugned charge memo.

12. A charge memo can be interfered by this Court only on very limited grounds. It can be interfered where there is a substantial unexplained delay in initiating the disciplinary proceedings. It can also be interfered in a case where such charge memo has been given without sufficient materials to substantiate the charges. The third ground, on which, it can be interfered is that the Authority, who issued the charge memo, lacks jurisdiction. The last ground, on which, it can be interfered is that it is attended with mala fides.

13. The first ground that has been raised by the learned counsel for the petitioner is that there is a delay of nearly six years in issuing the impugned charge memo and hence, the same is liable to be interfered with.

14. In the considered view of this Court, mere delay in the issuance of the charge memo is not a ground to interfere with the same. Such interference can take place only if the delay remains unexplained. In the instant case, the events that took place from 2014 to 2020 have been clearly explained by the respondents in the list of dates and events that was submitted before this Court. Therefore, there is no ground to interfere with the impugned charge memo on the ground of delay.

15. The next issue raised is with regard to the power and jurisdiction of the second respondent to issue the impugned charge memo.

16. The second respondent in this case is the direct higher authority to the petitioner. Rule 12(2) of the Rules provides for issuance of such charge memo under Rule 17(b) or Rule 17(a) of the Rules. The second respondent is also empowered to appoint an Enquiry Officer. Thereafter, the second respondent has to send the papers to the Competent Authority. In view of the same, this Court is of the considered view that the second respondent does not lack power and jurisdiction to issue the impugned charge memo.

17. The third issue raised is that the petitioner was performing a quasi judicial function while ordering the refund under the relevant enactment and that the same will not become a subject matter of disciplinary proceedings.

18. It is true that normally, the disciplinary proceedings cannot be initiated for the decisions taken by a Quasi Judicial Authority. The threshold for initiating the disciplinary proceedings against such Quasi

Judicial Authority is higher than the test applied for an officer, who performs regular administrative functions.

19. In order to decide as to whether the petitioner was actually involved in a quasi judicial function, this Court carefully went through the work that was assigned to the petitioner qua the relevant Enactment and the Rules framed thereunder. The petitioner was working as the Assistant Commissioner during the relevant point of time. Section 48 of the Tamil Nadu Value Added Tax Act, 2006 (for brevity, the TNVAT Act) specifically provides that the Assistant Commissioner can perform only those functions within such local limits as the Government or any Authority or Officer empowered in this behalf may assign to the concerned officer.

20. A circular dated 20.10.2011 was also issued, which specifically provides for the manner, in which, the petitioner has to function in his capacity as the Assistant Commissioner. The petitioner, in his capacity as the Assistant Commissioner, was also expected to get prior approval of the Deputy Commissioner/Joint Commissioner while dealing with the refund claims depending upon the amount that is involved.

21. A close reading of Rule 11(2) of the Tamil Nadu Value Added Tax Rules, 2007 (for short, the TNVAT Rules) makes it clear that the petitioner was only performing a ministerial act and stricto sensu, the petitioner was not actually performing any quasi judicial act. Section 18(2) of the TNVAT Act also gives more clarity in this regard. In short, the petitioner was not involved in determining the rights of any person and he was only involved in scrutinizing the documents for the purpose of refund claims made by exporters. That is the reason as to why the petitioner was expected to get prior approval from the Deputy Commissioner/Joint Commissioner when the refund claims made are beyond certain limits.

22. As per the impugned charge memo, the petitioner issued refunds in 47 cases without following the provisions of law and the executive instructions of the second respondent and thereby caused revenue loss to the tune of Rs.1.36 Crores. It is also brought to the notice of this Court that steps were taken to recall all those refunds. Hence, considering the seriousness of the allegation and also considering the fact that the petitioner was not actually involved in a quasi judicial function, this Court holds that the petitioner has to necessarily attend the inquiry and defend the charges. The petitioner has already given his reply for the impugned charge memo in the year

2020 itself and an Enquiry Officer was also appointed even in 2020. It is only thereafter the petitioner decided to approach this Court by filing this writ petition in the year 2023.

23. The last ground that was raised by the petitioner is that there is no material to show that the refund claims were fraudulent.

24. The fact that nearly 47 refunds have been recalled would show that the respondents found that the refund made is not in accordance with the TNVAT Act and the TNVAT Rules.

25. The conduct of the petitioner is also not overboard. It is seen that earlier, the disciplinary proceedings were initiated against the petitioner in the year 2008, 2009 and 2017. Therefore, it is not as if a charge memo came to be issued against the petitioner for the first time in his entire service.

26. In the light of the above discussions, this Court is not inclined to interfere with the impugned proceedings dated 06.2.2020. It is also a matter of record that the punishment of compulsory retirement has already been imposed, against which, the petitioner filed a review petition, which is pending before the concerned Authority. Under these circumstances, this Court does not find any

merits in this writ petition.

27. Accordingly, the writ petition is dismissed. There shall be a direction to the respondents to complete the disciplinary proceedings and pass final orders within a period of three months from the date of receipt of a copy of this order after affording sufficient opportunity to the petitioner. No costs. Consequently, the connected WMP is also dismissed.

12.9.2024

To
1.The Secretary to Government of
Tamil Nadu, Commercial Taxes
& Registration Department,
Chennai-9.

2.The Principal Secretary &
Commissioner of Commercial
Taxes, O/o the Commissioner
of Commercial Taxes,
Chepauk, Chennai-5.

RS

N.ANAND VENKATESH,J

RS

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