**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated : 17.02.2025**

**Coram:**

**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**W.P.No.436 of 2015**

S.Murali

...Petitioner

Versus

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

2.The Principal Commissioner and
Commissioner of Commercial Taxes,
Commercial Taxes Department,
Government of Tamil Nadu,
Ezhilagam,
Chepauk, Chennai – 600 009.

3.Joint Commissioner of Administration,
Commercial Taxes Department,
Ezhilagam,
Chennai – 600 009.

4.Deputy Commissioner,
PAPJAM Building,
Greams Road,
Chennai – 600 000.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records made in the impugned order on the file of the 3rd respondent vide R.C.11333/1997/A1 dated 31.10.2008 and quash the same and also, direct the respondents to reinstate the petitioner in service.

| | | |
|---|---|---|
| For Petitioner | : | Ms.R.Nirmala Devi |
| For Respondents | : | Ms.K.Vasanthamala,<br>Government Advocate |

**ORDER**

The relief sought in this Writ Petition is to quash the Order dated 31.10.2008 bearing R.C.11333/1997/A1 (hereinafter referred to as "Impugned Order") passed by the 3rd Respondent and direct the Respondents to reinstate the Petitioner in service.

2. The brief facts of the case are that the Petitioner was recruited as a "Typist" by the Tamil Nadu Public Service Commission on 16.07.1991 and was posted at the office of the Deputy Commissioner, Trichy Division. Thereafter, the Petitioner was transferred to the office of the Deputy Commissioner (Chennai South Division). On 07.01.1997, the Petitioner was promoted as "Assistant" and posted at the office of the Commercial Tax Officer, Guindy Assessment Circle.

3. While so, the Petitioner was placed under suspension with effect from 17.12.1997 by the Assistant Commissioner (CT) Zone – VII vide Proceedings bearing RC.A1/11333/97 dated 19.12.1997, for alleged misappropriation of Rs.4,00,000/- from the Government Exchequer on 07.12.1997 while he was working as an Assistant in the office of the Commercial Tax Officer, Guindy Assessment Circle.

4. Subsequently, the Special Commissioner & Commissioner of Commercial Taxes vide Proceedings dated 14.10.1998, ordered that the suspension of Petitioner be continued till the conclusion of the investigation contemplated against him or till the necessity ceases, whichever is earlier.

5. During the year 2001, criminal case in C.C.No.5266 of 2001 was filed against the Petitioner. The learned Chief Metropolitan Magistrate, Egmore, Chennai vide Judgment dated 30.10.2003, convicted the Petitioner and sentenced him to undergo Rigorous Imprisonment for 1 year each for the offences committed by him and imposed a fine of Rs.1000/- each for the offences committed by him. Aggrieved by the same, the Petitioner filed a

Criminal Appeal No.388 of 2003. The learned 7th Additional Sessions Judge, Chennai vide Judgment dated 13.12.2004, allowed C.A.No.388 of 2003 by setting aside the Judgment dated 30.10.2003 in C.C.No.5266 of 2001 and acquitted the Petitioner.

6. Pursuant to the Judgment dated 30.10.2003 in C.C.No.5266 of 2001, the Petitioner made Representations dated 18.02.2005, 20.08.2005, 28.11.2005, 27.01.2006, 20.03.2006 & 01.07.2007 to the Respondents, for reinstatement. However, the Petitioner's Representations were not considered by the Respondents.

7. In this background, the Petitioner was issued with a Charge Memo dated 21.09.2006. The three charges framed against the Petitioner in the Charge Memo dated 21.09.2006 are as follows:

> **Charge No.1:** That Thiru S.Murali formerly Assistant (now under Suspension) while working as Assistant in Guindy Assessment circle during the period from 20.06.1997 to 16.12.1997 had encashed Bankers Cheque for Rs.30,000/- on 16.12.1997 issued in the name of Commercial Tax Officer / Guindy Assessment Circle by tampering it in his favour which has resulted in loss of Revenue of Rs.30,000/- to the Government Exchequer.

**Charge No.2:** That Thiru S.Murali, while working as Assistant in Guindy Assessment Circle during the period from 20.06.1997 to 16.12.1997 had attempted to encash cheque for Rs.4,00,000/- issued in the name of Commercial Tax Officer / Guindy Assessment Circle by tampering it on 12.12.1997 in favour of his sister's name S.Gayathri, thereby resulting in loss of Revenue of Rs.4,00,000/- to the Government Exchequer.

**Charge No.3:** That the said Thiru.S.Murali, formerly Assistant Office of the Commercial Tax Officer / Guindy Assessment Circle (now under suspension) during the above said period had failed to maintain absolute integrity and devotion to his duty and there by violated Rule 20(1) of Tamil Nadu Government Service Conduct Rules 1973.

8. Pursuant to the issuance of Charge Memo, an Enquiry Officer was appointed to enquire into the charges framed against the Petitioner. Thereafter, an enquiry was conducted. Based on the Report of Enquiry Officer, the 3rd Respondent passed the Impugned Order dated 31.10.2008, stating that all the three charges framed against the Petitioner were proved beyond doubt and hence, the Petitioner is ordered to be dismissed from service. The Impugned Order was served to the Petitioner by affixture on 25.11.2008 since the Petitioner refused to receive the same.

9. Aggrieved by the Impugned Order, the Petitioner made Representations dated 24.02.2012 & 30.11.2012 to the Chief Minister Cell. In response to the same, the Petitioner received a Reply dated 19.09.2013 from the Chief Minister Cell stating that Petitioner's Representations will not be considered for the reason that he had misappropriated a sum of Rs.30,000/- which is the suspicious charge levelled against him.

10. After the receipt of aforesaid Reply dated 19.09.2013, the Petitioner made a Representation dated 20.08.2014 to the 2nd Respondent, requesting reinstatement on the ground that learned 7th Additional Sessions Judge, Chennai vide Judgment dated 13.12.2004 in C.A.No.388 of 2003, set aside the judgment of conviction and imprisonment passed against him and acquitted him from all the charges. However, there was no response for the said Representation of the Petitioner. Hence, left with no other alternative, the Petitioner has filed this Writ Petition.

11. The learned counsel for the Petitioner submitted that the Impugned Order passed by the 3rd Respondent is clearly without any basis

and the same is in gross violation of the Principles of Natural Justice. Therefore, it is submitted that the Impugned Order passed by the 3rd Respondent is liable to be quashed.

11.1. It is further submitted by the learned counsel for the Petitioner that during the enquiry, no witness was examined and prior to passing of the Impugned Order, the Petitioner was not served with a copy of the Enquiry Report. It is therefore submitted that on this account also, the Impugned Order is liable to be quashed.

12. On the other hand, defending the Impugned Order, the learned Government Advocate for the Respondents submitted that when the Department Officials attempted to serve the Petitioner with Charge Memo dated 21.09.2006, the Petitioner refused to receive the same and pretended to be some other person, other than S.Murali and hence, as per Rule 18(c) of the Tamil Nadu Civil Services (Disciplinary & Appeal) Rules, 1955, the Charge Memo was affixed in a conspicuous place of the Petitioner's last known address by the Department Staffs on 23.09.2006 and by the Revenue Officials on 07.02.2007.

12.1. Further, the learned Government Advocate for the Respondents submitted that the Tahsildar, Mylapore-Triplicane Taluk, Chennai – 600 028 had addressed a Letter No.Rc.43858/2008/A-1 dated 11.09.2008 to the Commercial Tax Officer, Guindy Assessment Circle, Chennai – 600 028, wherein, it has been stated as follows:

> *"In response to your letter cited, I am to state that this office Revenue Inspector was directed to serve the notice on the individual concerned. But, it is reported by the Revenue Inspector that the said Murali had refused to receive the notice from him posing himself as some other person and he had also prevented this office Revenue Inspector from affixing the said Notice in a conspicuous place at the last known address of the individual.*
>
> *The notice is returned herewith un served."*

12.2. That apart, it is submitted by the learned Government Advocate for the Respondents that the Deputy Commissioner (CT), Zone VII, Chennai-6 vide Memo dated 13.10.2008, invited the Petitioner to submit his further representation against the findings of the Enquiry Officer. However, the Petitioner refused to receive the said Memo and hence, the same was served by affixture.

12.3. The learned Government Advocate for the Respondents submitted that though the Enquiry Officer had held in his findings that all the three charges framed against the Petitioner were proved, the Department provided an opportunity to the Petitioner to make his representations on the findings of the Enquiry Officer, but, the Petitioner did not utilize the same. Hence, it is stated that the 3rd Respondent passed the Impugned Order on the basis of the findings of the Enquiry Officer.

12.4. It is also submitted by the learned Government Advocate for the Respondents that the Petitioner refused to receive the Impugned Order and the same was also served by affixture on 25.11.2008. Therefore, the learned Government Advocate prayed for dismissal of this Writ Petition.

13. Heard the learned counsel on either side and perused the materials available on record.

14. As far as this case is concerned, the Petitioner was issued with a Charge Memo dated 21.09.2006 under Rule 17(b) of Tamil Nadu Civil Services (D & A) Rules, 1955, but, the Petitioner refused to receive the Charge Memo and that the same was affixed in a conspicuous place of Petitioner's last known address by the Department Staffs on 23.09.2006 and

by the Revenue Officials on 07.02.2007.

15. After the issuance of Charge Memo, an Enquiry Officer was appointed to enquire into the charges framed against the Petitioner. The Enquiry Officer had sent Personal Hearing Notices dated 16.07.2008, 10.08.2008, 20.08.2008 & 29.08.2008 to the Petitioner's last known address by way of RPAD as well as by way of Personal Service through Revenue Officials. However, the Personal Hearing Notices sent by way of RPAD were returned unserved with the postal endorsement, "No Such Person".

16. A Revenue Inspector who was directed by the office of the Tahsildar, Mylapore-Triplicane Taluk to serve notice to the Petitioner reported that the Petitioner refused to receive the Notice and pretended as some other person, other than S.Murali and also prevented the Revenue Inspector from affixing the Notice in a conspicuous place at his last known address. This is evident from the Letter dated 11.09.2008 of the Tahsildar, Mylapore-Triplicane Taluk, Chennai – 600 028 addressed to the Commercial Tax Officer, Guindy Assessment Circle, Chennai – 600 028.

17. Therefore, the Enquiry Officer had completed the enquiry on the basis of the available records and submitted the Enquiry Report. In the Enquiry Report, the Enquiry Officer had held that all the three charges framed against the Petitioner were proved. After the receipt of Enquiry Report, the Deputy Commissioner (CT), Zone VII, Chennai – 6 vide Memo dated 13.10.2008, afforded an opportunity to the Petitioner to make his representation on the findings of the Enquiry Officer. However, the Petitioner did not come forward to make any representation on the findings of the Enquiry Officer. Therefore, based on the findings of the Enquiry Officer, the 3rd Respondent passed the Impugned Order dated 31.10.2008.

18. At this juncture, it is pertinent to state that Rule 18(c) of the Tamil Nadu Civil Services (Disciplinary & Appeal) Rules, 1955 contemplates the mode of service of orders, notices and other processes related to disciplinary proceedings. It is relevant to extract Rule 18(c) of the Tamil Nadu Civil Services (Disciplinary & Appeal) Rules, 1955 hereunder:

> *"18(c). Every order, notice and other process made or issued under these rules shall be served in person on the Government servant concerned or sent to him by registered post acknowledgment due or if such person is not found by leaving it at his last known place of residence*

*or by giving or tendering it to an adult member of his family or if none of the means aforesaid is available by affixing it in some conspicuous part of his last known place of residence."*

19. A reading of the above Rule makes it clear that one of the modes of service of orders, notices and other process made or issued under the Tamil Nadu Civil Services (Disciplinary & Appeal) Rules, 1955 on the Government Servant is by affixing it in some conspicuous part of his/her last known place of residence.

20. In the present case, the Petitioner attempted to evade the receipt of Notice. The Petitioner would have been aware that the charges framed against him would result in his dismissal from service. Hence, the Petitioner made Representations to the Respondents for reinstatement on the ground that the learned 7th Additional Sessions Judge, Chennai vide Judgment dated 13.12.2004 in C.A.No.388 of 2003, acquitted the Petitioner from criminal proceedings.

21. The issuance of Charge Memo dated 21.09.2006 to the Petitioner subsequent to his acquittal from the criminal proceedings is in line with the procedure to be adopted where the delinquent is also criminally prosecuted.

22. However, the fact remains that though the Charge Memo was served to the Petitioner by affixture, the Personal Hearing Notices were not served to the Petitioner even by affixture. Therefore, it has to be held that the Petitioner was not served with Personal Hearing Notices as per Rule 18(c) of the Tamil Nadu Civil Services (Disciplinary & Appeal) Rules, 1955.

23. The Impugned Order passed by the 3rd Respondent is in violation of the Principles of Natural Justice since prior to the passing of Impugned Order, the Petitioner was not heard by the 3rd Respondent.

24. Considering the above facts and circumstances of the case and to balance the interest of the parties, this Court is inclined to quash the Impugned Order and remand the case back to the 3rd Respondent for fresh consideration.

25. Accordingly, the Impugned Order dated 31.10.2008 passed by the 3rd Respondent is quashed and the case is remanded back to the 3rd

Respondent to reconsider the case of Petitioner and pass fresh orders, within a period of six months from the date of receipt of a copy of this order, after affording an opportunity of personal hearing to the Petitioner.

26. It is needless to state that the Petitioner shall co-operate with the Respondents since all the records are available with the Petitioner. If the Petitioner fails to co-operate with the Respondents, it is open to the Respondents to re-confirm the Impugned Order dated 31.10.2008.

27. This Writ Petition is disposed of with the above observation. No costs.

**17.02.2025**

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Index : Yes/No

Speaking Order (or) Non-Speaking Order

To

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

2.The Principal Commissioner and
Commissioner of Commercial Taxes,
Commercial Taxes Department,
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**C.SARAVANAN, J.**

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