IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2025

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

WP Nos.16746 of 2023 and 6781 & 3777 of 2024
&
W.M.P.Nos. 16020 & 16022 of 2023 & 4086 and 4087 of 2024

A.Senthur Pandian
S/o.M.Ayeraramu .... Petitioner
in all WPs

-Vs-

1. The Commissioner for
Disciplinary Proceedings
Rep. By the Commissioner Chennai
3rd Floor Kuralagam
Chennai – 600 108

2. Inspector General of Registration
100, Santhome High Road
Chennai – 600 028

3. The Secretary to the Government
Commercial Taxes and Registration Department
St. George Fort
Secretariat
Chennai – 600 009 .... Respondents
in W.P.No.6781 of 2024

1. The Commissioner for
Disciplinary Proceedings

Chennai
3rd Floor, Kuralagam
Chennai – 600 108

2. The Secretary
(Deputy Collector)
The Commissioner for
Disciplinary Proceedings
(Tribunal for Disciplinary Proceedings)
3rd Floor Kuralagam
Chennai – 600 108

3. Inspector General of Registration
100, Santhome High Road
Chennai

4. The Secretary to the Government
Commercial Taxes and Registration Department
St. George Fort
Secretariat
Chennai – 600 009 …. Respondents in W.P.No.3777 of 2024

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 Tribunal for Disciplinary Proceedings
Rep. By The Commissioner
Kuralagam
Chennai – 600 108 ... Respondents in W.P.No.16746 of 2023

Prayer in W.P.No.6781 of 2024 :- Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records in Letter No.8833/A1/2022 dated 24.04.2023 of the second respondent sent to the third respondent, and quash the portion of the letter No.8833/A1/2022 dated 24.04.2023, which is at Serial No.28 of the list of District Registrars facing disciplinary proceedings and directing the second respondent to include the name of the writ petitioner in the panel for the promotion to the post of Assistant Inspector General of Registration for the year 2022 – 2023.

Prayer in W.P.No.3777 of 2024 :- Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of Charge Memo in TDP Case No.14/2022 dated 31.10.2023 on the file of the first respondent and the notice dated 05.02.2024 in TDP Case No.14 of 2022 on the file of the first respondent issued to the writ petitioner to appear on 27.02.2024 for perusal of the prosecution records, quash the same on the grounds of nonest, null and void, illegal, against law, arbitrary, unconstitutional and without jurisdiction.

Prayer in W.P.No.16746 of 2023 :- Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari by calling for the records on the file of the 1st respondent in connection with the Letter (2D) No.84 dated 21.10.2022 and Letter No.3728774/H1/2022-2 dated 18.05.2023 and quash the same.

For Petitioner : Ms.Dakshayani Reddy
Senior Advocate
for Mr.R.Naveen

For Respondents : Mr.B.Vijay
Additional Government Pleader

COMMON ORDER

In all the writ petitions, as the writ petitioner is one and the same and the issues are interlinked, three matters were taken up together and are being disposed of by this common order.

2. The facts which are admitted by the writ petitioner and the respondents in all the three writ petitions are as follows:

The petitioner was directly recruited and selected as Sub-Registrar Grade II on 01.09.2008 through TNPSC examination and on completion of probation on 01.09.2010, his serves were regularized and was posted at Manalurpettai, Villupuram District. Thereafter, he was transferred to Kundrathur Sub-Registrar Office where he was working from 14.07.2014 to 31.12.2017 and later on, he was sent on deputation to Chengalpattu District where he worked for 7 months. Again the petitioner was transferred to Marthandam Sub-Registration Office on 07.01.2019. When the petitioner was working at Chengalpattu in Joint II Sub-Registrar Office, a surprise check was conducted on 31.10.2018 by the District Inspection Cell Officer, Kanchipuram and the Directorate of Vigilance and Anti-Corruption Chennai City I Detachment and in the above said surprise check incriminating materials were seized by the officials and a First Information Report was registered on 23.04.2019 in Crime No.4/AC/2019/CC-1 for the offences under Sections 7, 13(2) read with Section 13(1)(a) of Prevention of Corruption (Amendment) Act, 2018 and Section 409 of IPC against the petitioner and 7 other individuals but according to the petitioner, there was no charge framed against him.

3. In the meantime, first respondent called for names for promotion to the post of Assistant Inspector General of Registration which is the next promotional post. The petitioner, apprehending that his name may not be included in the panel, had filed a writ petition in W.P.No.31705 of 2022 with a prayer to direct the respondent therein i.e., the Secretary to the Government, Commercial Taxes and Registration Department, to include petitioner's name in the panel for promotion to the post of Assistant Inspector General for the year 2022 to 2023. This Court, by order dated 28.11.2022, directed the respondent therein to pass final orders on the petitioner's representation. In the meanwhile, the Directorate of Vigilance and Anti-corruption, after investigation, filed a report in

RC130/2019/REGN/CC-II dated 29.09.2021 recommending for dropping the three allegation arising out of the Joint Surprise Check held on 31.10.2018. The fourth respondent passed G.O (2D) No.85 dated 21.10.2022 dropping the three allegations as not substantiated. The third respondent had issued G.O (2D) No.84 requesting the Commissioner for Disciplinary proceedings Chennai, to conduct an enquiry into the seven allegations against the petitioner and other two accused Humayun (Record Clerk) and Ramamoorthi (Assistant). Thereafter, the petitioner had given a representation dated 10.12.2022 to the fourth respondent to withdraw the order in Letter (2D) No.84, Commercial Taxes and Registration (H1) Department, Chennai but there was no response at all from the respondents. Hence, the petitioner filed a writ petition in W.P.No.33814 of 2022 to quash Letter (2D) No.84 dated 21.10.2022 issued by the fourth respondent. This Court by order dated 20.12.2022, while disposing of the writ petition, directed the first respondent to pass a final order on merits and in accordance with law on the petitioner's representation dated 10.12.2022 and till the final order is passed, the Tribunal for Disciplinary Proceedings, Chennai was directed to not to act upon the Government Letter (2D) No.84, Commercial Taxes and Registration (H1) Department.

4. The fourth respondent, by an order dated 18.05.2023, rejected the representation dated 10.12.2022 and the petitioner filed a review petition dated 25.05.2023. Thereafter, the petitioner filed a writ petition in W.P.No.16746 of 2023 to quash the Letter (2D) No.84, Commercial Taxes and Registration (H1) Department and Letter No.3728774/H1/2022-2 dated 18.05.2023 and this Court by an interim order dated 07.06.2023, directed the fourth respondent therein to consider the petitioners representation dated 25.05.2023 on or before 14.07.2023. Thereafter, the fourth respondent had issued a charge memo dated 31.10.2023 with the list of witnesses and list of documents which was received by the petitioner on 12.12.2023 pursuant to which there seems to be a communication from the petitioner seeking supply for copies of statement of witnesses as mandated under Rule 8(1) of the Tamil Nadu Civil Services (Disciplinary proceedings Tribunal) Rules, 1955. Pending the same, the petitioner was served with a notice dated 05.02.2024 bearing reference Rc.No.A.1/661/2021 in TDP Case No.14 of 2022 from the first respondent directing the petitioner to appear on 27.02.2024. This notice dated 05.02.2024 Rc.No.A1/661/2021 in TDP

Case No.14 of 2022 is challenged in W.P.No.3777 of 2024.

5. In W.P.No.6781 of 2024, the writ petitioner seeks for quashing of the proceedings in Letter No.8833/A1/2022 dated 24.04.2023 and to include the name of the writ petitioner in the panel for promotion to the post of Assistant Inspector General of Registration for the panel year 2022-23.

6. In W.P.No.16746 of 2023, the writ petitioner seeks for quashing of the proceedings of the first respondent in Letter (2D) No.84 dated 21.10.2022 and Letter No.3728774/H1/2022-2 dated 18.05.2023. This writ petition has become infructuous after the issue of charge memo dated 05.02.2024 which is challenged in W.P.No.3777 of 2024 and with regard to writ petition in W.P.No.6781 of 2024 is concerned it will become consequential when W.P.No.3777 of 2024 is allowed. Hence, this Court is inclined to decide W.P.No.3777 of 2024 first to arrive at a conclusion in above three writ petitions to reach a finality in this regard.

7. The Inspector General of Registration, the third respondent in W.P.No.3777 of 2024 and second respondent in W.P.No.6781 of 2024 Respondents had filed a detailed counter. In the said counter affidavit, it was stated that the charge memo was issued with the list of witnesses and

list of documents. Even assuming that the copies of the documents were not served on the petitioner, the same can be provided before the commencement of the enquiry by the respondents and therefore, there is no violation of Rule 8(a)(i) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 in issuing the charge memo and non-furnishing of documents cannot be taken advantage by the petitioner. According to the third respondent, this is only procedural irregularity which can be rectified and curable during the process of enquiry and prays for dismissal of writ petitions.

8. Heard learned counsel for petitioner and learned Additional Government Pleader appearing for the respondents and also perused the materials available on record.

9. The learned counsel for the petitioner would submit that when no specific charge is pending against the petitioner, issuing charge memo that too without the copies of the witnesses and documents and directing the petitioner to appear for inquiry on 27.02.2024 is completely illegal, unconstitutional and non-est in law and hence, the charge memo is required to be quashed.

10. The learned Government Pleader would submit that the writ petition filed for quashing the charge memo is not maintainable. Learned Government Pleader relied on a judgment of Hon'ble Supreme Court in the case of ***Union of India and Another Vs. Kunisetty Satyanaraya*** reported in ***(2006) 12 SCC 28*** wherein Hon'ble Supreme Court held that only in very rare and exceptional cases, the High Court can quash a charge memo. He would also submit that the charge against the petitioner is so serious that he was in possession of unaccounted money and series of misconduct is alleged against the petitioner.

11. Admittedly, it is the case of the petitioner that the list of documents and witnesses were not served along with the charge memo which results in violation of principles of natural justice and Rule 8(a)(i) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 and hence, the order passed by the first respondent dated 05.02.2024 in TDP Case No.14 of 2022 directing the petitioner to appear on 27.02.2024 has to be quashed. It is seen that the charge memo in TDP Case No.14 of 2022 was issued pursuant to the surprise check which took place on

31.10.2018 and an FIR was registered in Crime No.4/AC/2019/CC-1 of 2019 on 23.04.2019 belatedly i.e., after six months from the date of surprise check. It is also to be seen that the charge memo has been issued belatedly after a period of five long years from the date of surprise check. In this regard, this Court is relying upon a judgment of the Supreme Court in ***the State Of Madhya Pradesh vs Bani Singh And Another*** reported in 1***990 SCC(SUPP) 738.*** Relevant paragraphs are Paragraphs 3 and 8 and same read as follows:

> *'3. O.A. 102 of 1987 was filed by the same officer against initiation of departmental enquiry proceedings and issue of charge sheet on 22.4.1987 in respect of certain incidents that happened in 1975-76 when the said officer was posted as Commandant 14th Battalion, SAF Gwalior, By the order dated 16.12.1987 the Tribunal quashed the charge memo and the departmental enquiry on the ground of inordinate delay of over 12 years in the initiation of the departmental proceedings with reference to an incident that took place in 1975-76. In the order dated 25th January, 1988 the Tribunal allowed the prayer for quashing the adverse entries in the ACR for the year 1979-80 and granted the prayer for retrospective promotion to the selection grade from 1979 when the juniors of the respondent's batch were promoted. In regard to the third relief prayed for the Tribunal directed the Government to constitute*

special review committee to consider the promotion of the officer to the Super Time Scale post of DIG, with effect from the date his junior was promoted, on merits in accordance with the directions given in the judgment. These two appeals have been filed against those two orders as already stated.'

'8. The learned counsel also contended that though Screening Committee met in 1979-80 the application under Section 19 of the Administrative Tribunals Act was filed only on 19.12.1986 and that therefore the application should have been dismissed on the ground of delay and laches. The Tribunal considered this question in detail and held that since the representation for the year 1980 was pending till 1986 and there is an allegation that the respondent had been making representation to the Government in this regard and in fact one such representation was accepted and it is on that basis in spite of the fact that the facts and situations remained the same in the 1982 the respondent was selected for selection grade with effect from 4.3.1982. In those circumstances the Tribunal said that they were not willing to dismiss the application on ground of the laches and it has to be decided on merits. In these circumstances we are also unable to interfere with the order of the Tribunal.'

12. Rule 4 of the Tamil Nadu Civil Service (Disciplinary Proceedings Tribunal) Rules, 1955, provides for the nature of cases that could be referred to the Tribunal. The said rule reads thus:

"4. (1) The Government shall, subject to the provisions of rule 5, refer the following cases to the Tribunal, namely:-

(a) Cases relating to Officers of the State Services in respect of matters involving corruption on the part of such Officers; and

(b) All appeals or petitions to the Government against orders passed on charges of corruption and all disciplinary cases in which the Government propose to revise original orders passed on such charges;

Provided that it shall not be necessary to consult the Tribunal-

(i) in any case in which the Tribunal has, at any previous stage, given advice in regard to the order to be passed and no fresh question has thereafter arisen for determination; or

(ii) where the Government propose to pass orders rejecting such appeal or petition.

(2) The Government may, subject to the provisions of rule 5, also refer to the Tribunal any other case of class of cases which they consider should be dealt with by the Tribunal and the Government, in exercising the power conferred by this sub-rule, shall have regard to the nature and gravity of the charge, the grade or rank of the officer charged and the organisational strength of the department concerned in handling cases involving interpretation of rules regulating conditions of service of Government Servants.

(3) Notwithstanding anything contained in sub-rule (1) or sub-rule(2), cases arising in the Judicial Department shall not be

referred to the Tribunal.

(4) The Executive authority of a local authority may, with the sanction of the Government and shall, if so required by the Government, refer to the Tribunal cases of servants of the local authority when they are involved in charges of corruption jointly with Government servants whose cases are referred to the Tribunal under this rule. The cases so referred shall be enquired into by the Tribunal in accordance with the rules relating to appointment and punishment of officers and servants of the local authority.

(5) The Tamil Nadu Public Service Commission may, without reference to the Government, directly refer to the Tribunal cases relating to the Secretary (except when he is a member of the Indian Administrative Service) or a Joint Secretary or a Deputy Secretary or an Under Secretary to that Commission or a member of the staff of that Commission in respect of matters involving corruption or corruption combined with other charges on the part of the officers aforesaid and members of the staff of the Commission and that Tribunal shall conduct the inquiry in accordance with rule 7 of Annexure-II or, as the case may be, rule 4A of Annexure-V to the Tamil Nadu Public Service Commission Regulations, 1954.

Thus, it is seen that as per Rule 4, cases that pertain only to matters involving corruption could be dealt with by the T.D.P. Rule 8(a) deals with the procedures to be adopted by the Tribunal and the rule expands the nature of cases to be dealt with by the Tribunal, to include cases of corruption combined with other charges. Rule 8(d) specifically provides that the procedures to be *adopted in cases other than those of corruption, whereby, the provisions of the Tamil Nadu Civil Service (Disciplinary Proceedings Tribunal) rules, have been made applicable."*

13. It can be seen from the above said Rules that only cases filed under the Prevention of Corruption Act 1988 can be tried by the Tribunal. Insofar as the case on hand is concerned, though the FIR has been launched as early as in the year 2019, it took almost 3 long years to give the recommendation dated 21.10.2022 recommending to drop three charges out of 10 charges. Once DVAC under the Prevention of Corruption Act, 1988 had recommended dropping of charges under Section 13, the Tribunal would not have jurisdiction to try TDP Case No.14 of 2022 as it would come under Section 14 (1)(a) of the Tribunal Rules. These facts were not at all considered while issuing the charge memo. Even if the charge memo is taken on its face value, it would not amount to corruption as defined under Section 13 of Prevention of Corruption Act and seizure of money from general public without demand, acceptance or receipts would not attract an offence under Section 13. That is the reason why the DVAC has recommended dropping of major charges against the petitioner and two

others and the same was also accepted by the Government and issued G.O (2D) No.85, Commercial Taxes and Registration (H1) Department dated 21.10.2022 and it is imperative to state that the first respondent, after accepting the recommendations of the DVAC, dropped the major charges as against the petitioner. It is not appropriate for the Tribunal to conduct an enquiry on the very same set of facts involving same set of witnesses.

14. It is to be seen that the alleged charge against the petitioner was about the seizure of unaccounted money amounting to Rs.2, 98, 490/- during the surprise check held on 31.10.2018. However in G.O 2(D) No. 85 dated 21.10.2022, the Government of Tamil Nadu dropped the criminal investigation after the investigating agency failed to substantiate the seizure of Rs.1,88,500/- out of the alleged Rs.2,98,490/-. However on the same date without referring to the said GO, the Secretary to Government initiated proceedings for the entire seizure of Rs.2,98,490/- vide G.O (2D) No. 84 Commercial Tax and Registration H1 Department dated 21.10.2022, and the charge memo was issued for the entire sum. This contradictory stand taken i.e., charges dropped and disciplinary proceedings initiated on the same day

reflects clear abuse of process of law and non-application of mind, therefore warrants interference from this Court. The facts and law stated would show that continuance of charge memo is an abuse of process and G.O (2D) No. 84, Commercial Tax and Registration H1 Department, dated 21.10.2022 and charge memo in TDP Case No.14 of 2022 dated 31.10.2023 are wholly illegal and deserve to be quashed at the threshold.

15. Under these circumstances, this Court comes to the conclusion that the framing of charges and issuing of charge memo belatedly after five years from the date of surprise inspection that took place on 31.10.2018 is abuse of process and the same deserves to be quashed.

16. Accordingly, W.P.No.3777 of 2024 is allowed and the charge memo issued by the first respondent in TDP Case No.14 of 2022 dated 31.10.2023 is quashed. Consequently, W.P.No.6781 of 2021 is allowed directing the second respondent i.e., to include the name of the petitioner in the panel for promotion to the post of Assistant Inspector General of Registration for the year 2022-23. As already stated supra, W.P.No.16746

of 2023 has become infructuous after the issue of charge memo dated 05.02.2024 which is challenged in W.P.No.3777 of 2024.

31.01.2025

Index : Yes/No
Internet : Yes/No
gpa

To

1. The Commissioner for
   Disciplinary Proceedings
   Rep. By the Commissioner Chennai
   3rd Floor Kuralagam
   Chennai – 600 108

2. Inspector General of Registration
   100, Santhome High Road
   Chennai – 600 028

3. The Secretary to the Government
   Commercial Taxes and Registration Department
   St. George Fort
   Secretariat
   Chennai – 600 009

4. The Secretary
   (Deputy Collector)
   The Commissioner for
   Disciplinary Proceedings
   (Tribunal for Disciplinary Proceedings)
   3rd Floor Kuralagam
   Chennai – 600 108

V.BHAVANI SUBBAROYAN.,J

gpa

WP Nos.16746 of 2023 and 6781 & 3777 of 2024

31.01.2025