

HIGH COURT OF TRIPURA

AGARTALA

WP(C) No.726 of 2024

Sri Haripada Ray,

S/o Lt. Manoranjan Ray,

R/o Ramnagar Road No.9,

P.O.: Ramnagar, P.S.: West Agartala,

Dist: West Tripura, PIN: 799002, Aged about 51 years.

.....Petitioner(s)

Versus

1. The State of Tripura, represented by it's Secretary, Finance Department, Govt. of Tripura, P.O.: Secretariat, P.S.: New Capital Complex, Dist: West Tripura, PIN: 799010.

2. The Commissioner of Taxes, Govt. of Tripura, P.N. Complex, Gurkhabasti, P.O.: Kunjaban, P.S.: NCC, District: West Tripura, PIN:799006.

3. The Superintendent of Taxes, charge IV, P.O.: Agartala, P.S.: West Agartala, Dist: West Tripura, PIN: 799001.

----Respondent(s)

For Petitioner(s) : Mr. Arijit Bhaumik, Adv.
Ms. Ishpa Chakma, Adv.

For Respondent(s) : Mr. Saktimoy Chakraborty, Adv. General
Mr. Pradyumna Gautam, Sr. GA
Mrs. Pinki Chakraborty, Adv.

Date of hearing : 24.07.2025

Date of delivery of Judgment & Order : 06.08.2025

Whether fit for reporting : **YES**

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Heard Learned Counsel, Mr. Arijit Bhaumik appearing on behalf of the petitioner. Also heard Learned Advocate General, Mr. Saktimoy Chakraborty assisted by Learned Senior GA, Mr. Pradyumna

Gautam and Learned Counsel, Mrs. Pinki Chakraborty appearing on behalf of the respondents.

2. The crux question in the present writ petition is to decide whether this Court can exercise writ jurisdiction where disciplinary proceeding is contemplated by issuing show-cause notice?

3. Taking part in the hearing, Learned Counsel, Mr. Bhaumik appearing on behalf of the petitioner has first of all drawn the attention of this Court referring Annexure-13 to the writ petition i.e. the memo dated 07.09.2024 issued by the Secretary, Finance Department, Govt. of Tripura (Disciplinary Authority) wherein it was informed that the disciplinary authority intended to conduct an inquiry against the petitioner under Rule 14 of the CCS (CC&A) Rules, 1965 enclosing statement of articles of charge against the petitioner and submitted that on perusal of articles of charge it can be found that no separate articles of charge was formulated/framed by the disciplinary authority against the petitioner excepting a detailed canvass of the allegation set forth by the prosecution-State. In the articles of charge framed against the petitioner it is specifically mentioned that:

"whereas, the alleged distortion of public records by the Superintendent of Taxes, Charge-IV, Agartala by way of overwriting '36' on '31' in the assessment order dated 28.03.2015 for the year 2006-07 had taken place during processing of the refund application on 10.01.2023;"

3.1. It was further submitted that by order/memo dated 26.07.2024 (Annexure-12 to the writ petition) the petitioner was placed under suspension. Learned Counsel further submitted that on 22.08.2012 one assessment order was passed by Mr. P. Roy, the then Superintendent of Taxes Charge-IV, Agartala, against the dealer M/s M.P. Khaitan (contractor) quoting the provision of Section 31(4) of the TVAT Act, 2004 (*Annexure-4 to the writ petition*). Challenging the said

assessment order, the dealer M/s M.P. Khaitan preferred revision petition after filing statutory deposit before the Commissioner of Taxes. The Commissioner of Taxes being the revisional authority vide order dated 19.02.2014 in connection with revision case No.01 to 06/CH-IV/2013/1473-75(*Annexure-5 to the writ petition*) remanded the matter back to the Superintendent of Taxes, Charge-IV setting aside the assessment orders for the year 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 & 2011-12 dated 22.08.2012 with a further direction to complete the reassessment within 30.04.2014.

3.2. Thereafter, another assessment order was passed on 28.03.2015 under Rule 21(3) of The Tripura Value Added Tax Rules (for short, TVAT Rules) by Mr. M. Sengupta, another Superintendent of Taxes, Charge-IV, Agartala in which assessment was made under Section 36 of the TVAT Act, 2004. In the said assessment order Section '36' was overwritten by ink(*Annexure-6 to the writ petition*) and at the time of passing assessment order under Section 36 of the TVAT Act, 2004, one Mr. Asish Saha (authorized person of the company) on behalf of M/s M.P. Khaitan appeared along with the books of accounts. So, referring Annexure-8, according to Learned Counsel for the petitioner there was no scope on the part of said M.P. Khaitan that he/his company was unheard at the time of passing order on that relevant day. It was also stated that in the second page of the assessment order "Section 36" was also overwritten by ink by the assessing officer stating that "*the assessment was taken up under Section 36 of the TVAT Act, 2004*".

3.3. Learned Counsel thereafter drawn the attention of this Court referring the provisions of Section 31 and 36 of TVAT Act, 2004

and submitted that although in both the provisions it is written that the Commissioner of Taxes has the power to assess but the said power is delegated to the Superintendent of Taxes although there is no dispute in this regard.

3.4. Further, referring Section 74(1) of the TVAT Act, 2004 Learned Counsel for the petitioner has drawn the attention of this Court that the assessing, appellate or revisional authority on the basis of an application or *suo moto* also, within 3(three) years from the date of any order passed can rectify any error apparent on the face of the record. Learned Counsel further submitted that as per Section 74(1) of the TVAT Act, 2004 if the liability of payment of tax or penalty or penal interest is increased only in that case personal hearing and reasonable opportunity of being heard be given to the person affected. Section 74(1) of the TVAT Act, 2004 is reproduced hereunder:

"74(1) An assessing, appellate or revisional authority including the Tribunal may, on an application or otherwise at any time within three years from the date of any order passed by it, rectify any error apparent on the face of the record;

Provided no such rectification which has the effect of enhancing the liability to pay tax or penalty or penal interest shall be made unless such authority has given notice to the person affected and has allowed him a reasonable opportunity of being heard."

3.5 It is further submitted that at the time of passing assessment order in pursuance of the direction of the revisional authority dated 19.02.2014, the Superintendent of Taxes being the assessing authority had the scope to rectify any error and *prima facie* it is on record that the figure '6' was overwritten by ink. The earlier assessment order dated 22.08.2012 was shown to have been passed under Section 31(4) of the TVAT Act. Learned Counsel thereafter submitted that when the assessment orders dated 22.08.2012 and

subsequent order dated 28.03.2015 were passed the petitioner was holding the post of Inspector of Taxes and as such, on that relevant point of time as a Superintendent of Taxes he had no authority or scope to pass any assessment order but surprisingly the department concerned tried to implicate him as the assessing officer in both the occasions which is nothing but a frivolous, vexatious allegation of the department just to damage his service career.

3.6. Learned Counsel for the petitioner then referred the order dated 18.03.2002 issued by the then Commissioner of Taxes by which the petitioner was appointed to the post of Inspector of Taxes (*Annexure-1 to the writ petition*) and the subsequent order dated 15.09.2017 by which he was promoted to the post of Superintendent of Taxes w.e.f. 02.02.2017 (*Annexure-2 to the writ petition*). Further, vide notification dated 20.06.2023 issued by the Under Secretary, Finance Department, Govt. of Tripura, the petitioner was appointed to the post of Asstt. Commissioner of Taxes on Ad-hoc promotion(*Annexure-3 to the writ petition*). Referring those documents Learned Counsel for the petitioner submitted that on the alleged date of passing the assessment orders when the petitioner was not holding the post of Superintendent of Taxes in that case how the department without any basis falsely implicated him in this departmental proceeding. It is submitted that the petitioner is suffering from mental agony and harassment for this reason. Learned Counsel further submitted that on bare perusal of both the assessment orders (*Annexures-4 and 6 to the writ petition*) it will be crystal clear that both the orders were passed by two different officers not by the present petitioner but with an ulterior motive and on the basis of a

fake communication submitted by one Sanjay Khaitan on behalf of M/s M.P. Khaitan to the Commissioner of Taxes on 09.04.2024(*Annexure-9* to the writ petitioner), the petitioner was given show-cause notice and later on he has been entangled with the departmental proceeding as stated above(*Annexures-10 and 13 to the writ petition*). Furthermore, referring Annexure-8 i.e the communication dated 21.03.2024, Learned Counsel drawn the attention of this Court that in para 3 of the said communication it is stated that they have not received any assessment order which was passed on 28.03.2015 but surprisingly at the time of passing assessment order the representative of the concerned dealer was present. So, how it can be agitated by them that no copy of order was served upon them or they had no knowledge. Learned Counsel has again drawn the attention of this Court referring the notice dated 13.03.2024(*Annexure-7 to the writ petition*) issued by Sri Suman Das, Superintendent of State Tax, Charge-IV, Agartala wherein it was specifically stated that the assessment order was passed under Section 36 of TVAT Act, 2004 and M/s M.P. Khaitan was asked to make payment of Rs.47,38,775/- as interest on delayed payment but by this time the interest has been paid by the dealer itself. Again, Learned Counsel for the petitioner referred the communication dated 11.04.2016 submitted by Mr. M. Sengupta, the then Superintendent of Taxes, Charge-IV, Agartala to the Joint Commissioner of Taxes, Govt. of Tripura regarding the inspection report on the receipt and expenditure accounts for the period from 10/2014 to 11/2015 wherein it was clearly stated that the fresh assessment order was passed under Section 36 of the TVAT Act, 2004 when the dealer submitted a prayer requesting adjustment of said

dues of Rs.30,67,168/- from the pre-requisite money of Rs.2,00,06,981/- which was statutorily deposited at the time of revision case. The same was duly adjusted by deducting from the pre-requisite money of Rs.2,00,06,981/- vide B.S. No.18 & 19 dated 26.10.2013 and 17.09.2013.

3.7. Learned Counsel has further drawn the attention of this Court referring another communication dated 02.06.2016 written by the then Joint Commissioner of Taxes to the Senior Audit Officer, O/o the Accountant General (Audit) wherein in para No.4 of the table representing the replies to the Inspection Report for the period from 10/2014 to 11/2015, it was clearly mentioned that "*The Superintendent of Taxes, Charge-IV, Agartala has informed that as per direction of the Revisional Authority vide order dated 07.02.2014 in Revision case No.01 to 06 Ch-IV/2013 a fresh assessment U/S 36 of the TVAT Act, 2004 was made vide assessment order dated 28.03.2015 raising demand Rs.30,67,168/- The dealer had deposited Rs.2,00,06,981/- at time of admission in the revision case vide B.S. no.18 & 19 dated, 26.10.2013 & 11.09.2013 and the demand Rs.30,67,168/- has been adjusted with the said pre-requisite payment of Rs.2,00,06,981/- and excess payment made by the dealer becomes Rs.1,69,39,813/- (20006981-3067168). Therefore there is no question for levy of interest as raised by the audit*".

3.8. Learned Counsel, Mr. Bhaumik further submitted that in the year 2022, said M/s M.P. Khaitan submitted refund application seeking relief for deduction and adjustment. Learned Counsel also submitted that by incorporation of Section 31 and 36 of the TVAT Act, 2004, liability of tax was not diminished and since the orders were

passed by two different officers on two different times so it is surprising as to how the present petitioner has been entangled in this case. It is further submitted by Learned Counsel for the petitioner that the dealer initially deposited Rs.2,00,06,981/- at the time of admission of revision case vide BS No.18 and 19 dated 26.10.2013 and 11.09.2013 and later on the demand of Rs.30,67,168/- has been adjusted with the said statutory deposited amount of Rs.2,00,06,981/- and excess payment made by the dealer becomes Rs.1,69,39,813/-. So, there was no question for levy of interest as raised by the audit. After that, Learned Counsel submitted that as per Sub-Rule 14(2) of the CCS(CC&A) Rules until and unless there is imputation of misconduct or misbehavior, there is no scope to initiate any departmental proceeding against a government servant. Learned Counsel also drawn the attention of this Court referring Sub-Rule 3 of Rule 14 of CCS(CC&A) Rules and submitted that in the articles of charge there is no imputation of misconduct or misbehavior. So, in absence of the charge of misbehavior and misconduct the present proceeding cannot be sustained against the petitioner and finally Learned Counsel urged for setting/quashing the order of suspension and also prayed for quashing the departmental proceeding contemplated against the petitioner. Learned Counsel further submitted that although there is very little scope on the part of this Court to look into the issues but since the errors are apparent on the face of record and the present petitioner was in no way involved with the passing of assessment orders on that relevant point of time so if this Court does not exercise writ jurisdiction then the petitioner shall

have to suffer mental harassment, trauma without any basis and default on his part for which the interference of this Court is required.

4. The State-respondents filed counter affidavit challenging the writ petition and Learned Advocate General appearing on behalf of the respondents has submitted that the present writ petition is not maintainable and this Court can only interfere when there is statutory violation but at this stage since the departmental proceeding has just initiated and is still pending for disposal, the present petitioner would have the liberty or scope to substantiate his contention before the inquiring authority as referred in this writ petition. Learned Advocate General submitted that by filing the present writ petition the petitioner cannot curtail the right of the statutory authority to proceed with the proceeding. It was further submitted that it is not the case of the petitioner that there was no scope given to the petitioner and it is also not the case of the petitioner that the departmental proceeding was initiated by an incompetent person. There was also no allegation on the part of the petitioner that the proceeding is contemplated by appointing an inquiring authority who is incompetent to proceed with the matter. According to Learned Advocate General since the order of suspension is an appealable order so without approaching to the appellate forum the petitioner has got no scope to approach this Court at this stage for interference. Finally, Learned Advocate General referring few citations drawn the attention of this Court that the present writ petition is not maintainable at this stage and there is no scope on the part of this Court to interfere with the same. Learned Advocate General finally urged for dismissal of this writ petition with costs.

5. To counter the submission of Learned Advocate General for the respondents, Learned Counsel for the petitioner relied upon one citation of the Hon'ble Supreme Court of India in **Union of India & Ors. vs. Upendra Singh** reported in **(1994) 3 SCC 357**, wherein in para No.6, Hon'ble the Apex Court observed as under:

"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, Karnal v. Gopi Nath & Sons* [1992 Supp (2) SCC 312]. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8)

"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 authorised 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."

Relying upon the same, Learned Counsel for the petitioner submitted that although at this stage there is very least scope on the part of this Court to interfere with the departmental proceeding contemplated against the petitioner. But, considering the facts and

circumstances of the present case since there is no allegation of misbehavior or misconduct by the petitioner so, in view of the principle of law laid down in the aforesaid judgment, this Court can exercise writ jurisdiction to address the grievances of the petitioner.

6. On the other hand, Learned Advocate General for the respondents relied upon one judgment of Hon'ble Allahabad High court in **Constable C.P. 117 Yad Ali & Ors. vs. Superintendent of Police, Chandauli & Anr.** reported in **2001 SCC OnLine All 20** wherein in para Nos. 27.19, the Hon'ble Allahabad High Court has observed as under:

"27.19. Even in those cases where preliminary enquiry has been ordered it would not necessarily mean that such an enquiry has been ordered with a view to collect prima facie material against the delinquent employee. In a case where the preliminary enquiry has been ordered, the order of suspension cannot be treated to have vitiated merely on the ground that the competent authority has not waited for the result of the preliminary enquiry. The preliminary enquiry may be ordered simultaneously with the order of suspension with a view to ascertain whether on the facts and in the circumstances and the nature of the allegations against a delinquent employee the procedure prescribed for inflicting the major punishment or the minor punishment is to be adopted."

Learned Advocate General further referred another citation of the Hon'ble Supreme Court of India in **V.P. Gidroniya vs. State of Madhya Pradesh** reported in **(1970) 1 SCC 362** wherein in para Nos.6 and 7 Hon'ble the Apex Court observed as under:

"6. Three kinds of suspension are known to law. A public servant may be suspended as a mode of punishment or he may be suspended during the pendency of an enquiry against him if the order appointing him or statutory provisions governing his service provide for such suspensions. Lastly he may merely be forbidden from discharging his duties during the pendency of an enquiry against him which act is also called suspension. The right to suspend as a measure of punishment as well as the right to suspend the contract of service during the pendency of an enquiry are both regulated by the contract of employment or the provisions regulating the conditions of service. But the last category of suspension referred

to earlier is the right of the master to forbid his servant from doing the work which he had to do under the terms of the contract of service or the provisions governing his conditions of service at the same time keeping in force the master's obligations under the contract. In other words the master may ask his servant to refrain from rendering his service but he must fulfil his part of the contract.

7. The legal position as regards a master's right to place his servants under suspension is now well settled by the decisions of this Court. In **Management of Hotel Imperial, New Delhi v. Hotel Workers' Union [(1960) 1 SCR 476]** the question whether a master could suspend his servant during the pendency of an enquiry came up for consideration by this Court. Therein this Court observed that it was well settled that under the ordinary law of master and servant the power to suspend the servant without pay could not be implied as a term in an ordinary contract of service between the master and the servant but must arise either from an express term in the contract itself or a statutory provision governing such contract. It was further observed therein that ordinarily in the absence of such a power either in express terms in the contract or under the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work he will have to pay the wages during the so-called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relationship of master and the servant with the consequence that the servant is not bound to render service and the master is not bound to pay."

Again, Learned Advocate General referred another citation of Hon'ble Supreme Court of India in **R.P. Kapur vs. Union of India & Anr.** reported in **1963 SCC OnLine SC 47** wherein in para Nos.4, 6 and 11 Hon'ble the Apex Court observed as under:

"4. The appellant filed a writ petition in the Punjab High Court on February 16, 1962 challenging this order of suspension. His contention was that he was entitled to the guarantee contained in Article 314 of the Constitution and the order of suspension passed against him violated that guarantee and was therefore ineffective and invalid. He relied for this purpose on Rule 49 of the Appeal Rules, which provided for suspension as a penalty. He contended that the Appeal Rules which governed him and which must be held to have continued to govern him in view of the guarantee contained in Article 314 provided for suspension as a penalty only and that there was no provision anywhere in any rule or statute immediately before January 26, 1950 on which date the Constitution came into force, providing for suspension otherwise than as a penalty. Therefore it was not open to the Governor to suspend

him in the manner in which he did so in the present case, though it was not denied that he could be suspended pending criminal proceedings provided the suspension was as a penalty under Rule 49 of the Appeal Rules; on the other hand mere suspension pending a criminal case not inflicted as a penalty was not provided at all by the Rules or the statute governing the appellant immediately before January 26, 1950. Therefore when the Governor proceeded to suspend him under Rule 7(3) of the Discipline Rules, he violated the guarantee contained in Article 314. The appellant also contends that as it was not open to any authority to suspend him except as a punishment immediately before January 26, 1950, Rule 7 of the Discipline Rules which provides for suspension during disciplinary proceedings or during the pendency of a criminal charge insofar as it applies to him was ultra vires Article 314 of the Constitution. He also attacked Rules 3 and 10 of the Discipline Rules as violative of Article 314 of the Constitution, Rule 3 being concerned with penalties to be imposed on members of the Indian Administrative Service and Rule 10 with the right of appeal. The contention in this connection was that Rule 3 omitted the penalty of suspension which was to be found in Rule 49 of the Appeal Rules with the result that suspension under Rule 7 was not open to appeal under Rule 10 which provided for appeals against penalties mentioned in Rule 3. Therefore the guarantee under Article 314 was violated inasmuch as previously whenever the penalty of suspension was inflicted on a member of the Secretary of State's Services it was open to him to appeal under Rule 56 of the Appeal Rules. Therefore the scheme of the Discipline Rules was such as to take away the protection to a member of the Secretary of State's Service which was available to him immediately before the Constitution came into force and in consequence Rules 3 and 10 also violated the guarantee contained in Article 314 and were ultra vires. The appellant therefore prayed for an appropriate writ, order or direction in the nature of mandamus striking down Rules 3, 7 and 10 of the Discipline Rules being violative of Article 314 of the Constitution and also for an order striking down the order of the Governor dated July 18, 1959 by which he suspended the appellant and such other appropriate relief as was just and proper.

6. The High Court dismissed the petition. It was of the view that it was inconceivable that under the old rules prevailing before January 26, 1950, a civil servant could never be suspended while an enquiry into his conduct was pending. It was further of the view that suspension during the pendency of an enquiry was a power inherent in an employer like the Government and the power to suspend was always implied in the authority making the appointment. The High Court therefore rejected the contention of the appellant that under the old rules no member of the Secretary of State's Services could have been suspended except by way of punishment. The High Court further held that even if the contention of the appellant be accepted that a member of the Secretary of State's Services had a right of appeal even where he was suspended during a departmental enquiry there was a provision in the Discipline Rules for a memorial to the President (see Rule 20) and that in the opinion of the High Court gave a right as similar to

the right existing before January 26, 1950 as the changed circumstances permitted. The High Court therefore dismissed the petition. The appellant then applied for a certificate which was granted; and, that is how the matter has come up before us.

11. The general principle therefore is that an employer can suspend an employee pending an enquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of Government, the employer in the case of government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. This general principle is illustrated by the provision in Section 16 of the General Clauses Act, 10 of 1897, which lays down that where any Central Act or Regulation gives power of appointment that includes the power to suspend or dismiss unless a different intention appears. Though this provision does not directly apply in the present case, it is in consonance with the general law of master and servant. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. This suspension must be distinguished from suspension as punishment which is a different matter altogether depending upon the rules in that behalf. On general principles therefore the government, like any other employer, would have a right to suspend a public servant in one of two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings; this may be called interim suspension. Or the government may proceed to hold a departmental enquiry and after his being found guilty order suspension as a punishment if the rules so permit. This will be suspension as a penalty. These general principles will apply to all public servants but they will naturally be subject to the provisions of Article 314 and this brings us to an investigation of what was the right of a member of the former Secretary of State's Services in the matter of suspension, whether as a penalty or otherwise."

Referring the same, Learned Advocate General again submitted that at this stage there is no scope to entertain the writ petition filed by the petitioner. It was submitted that since the departmental proceeding is still pending for adjudication before the inquiring authority so, the grounds referred by Learned Counsel for the petitioner may be well placed to the respective inquiring authority and if thereafter, the petitioner feels to be aggrieved/dissatisfied with the order of the inquiring authority in that case scope shall be there to the petitioner to approach this Court.

- 7.** Heard both the sides at length.
- 8.** As already stated, to resist the writ petition, the respondents have filed their counter affidavit to which the petitioner again filed rejoinder.
- 9.** There is no dispute on record that the petitioner is placed under suspension and the suspension order still exists. There is also no dispute on record that the authority of the department has issued memo dated 07.09.2024 by which the petitioner was informed that authority has decided to conduct inquiry against him with articles of charge which is under challenge before this Court. It is not the case of the writ petitioner that by issuing memo dated 07.09.2024(Annexure-13 to the writ petition) no scope is given to the petitioner to submit his written statement of defense. It is also not the case of the petitioner that articles of charge is not supplied to him to substantiate his defense. Probably the evidence part has not yet been started.
- 10.** I have gone through the documents annexed with the writ petition filed by the writ petitioner.

11. On bare perusal of the articles of charge *prima facie* it appears that the main allegation of the State-respondents against the petitioner is that he has distorted public records by way of overwriting "Section 36" over "Section 31" in the assessment order dated 28.03.2015 (*Annexure-6* to the writ petition) for the year 2006-07 in course of processing of refund application on 10.01.2023. However, on perusal of assessment order dated 22.08.2012(*Annexure-4* to the writ petition) and subsequent assessment order dated 28.03.2015 (*Annexure-6* to the writ petition) it is crystal clear that both the orders were passed by two different persons. One was passed by Mr. P. Roy, Superintendent of Taxes, Charge-IV (*Annexure-4*) and Annexure-6 i.e. subsequent assessment order dated 28.03.2015 was issued/passed by one Mr. M Sengupta, Superintendent of Taxes, Charge-IV, Agartala. Further, on perusal of order dated 18.03.2002 (*Annexure-1* to the writ petition) it appears that by that order the petitioner was appointed as Inspector of Taxes and on perusal of order dated 15.09.2017 issued by Commissioner of Taxes (*Annexure-2* to the writ petition) it appears that he was promoted to the post of Superintendent of Taxes w.e.f. 02.02.2017. So, when assessment order dated 22.08.2012 was issued that time the present petitioner was not Superintendent of Taxes of the respective charge and when the subsequent assessment order dated 28.03.2015 was passed by Mr. M. Sengupta, another Superintendent of Taxes, Charge-IV (*Annexure-6* to the writ petition) that time the present petitioner was also holding the post of Inspector of Taxes. So, it is very much surprising as to how the respondents have issued memo dated 07.09.2024 (*Annexure-13* to the writ

petition) to the present petitioner when the petitioner was in no way attached to the respective charge as alleged by the State-respondents.

12. At the time of hearing some more other points were referred by Learned Counsel for the petitioner but since the petitioner himself were not attached to any of the aforesaid charges on that relevant point of time so, *prima facie* it appears that the memo dated 07.09.2024 issued by the respondents authority was misconceived and not supported by any cogent materials on record. As already stated since the State-respondents by their counter affidavit could not dispute anything regarding the documents submitted by the petitioner as annexures, so, *prima facie* it appears that there was error apparent on the face of record.

13. Furthermore, although it is the settled position of law that there is very least scope on the part of a Writ Court to entertain such issues like departmental proceedings in absence of any procedural irregularities/lapses but, here in the case at hand the proceeding is not yet been commenced fully, only the memo and articles of charge have been supplied to the petitioner and probably the inquiring authority is contemplating to record the evidence of the witnesses within a short span of time. Furthermore, on bare perusal of Annexure-9 i.e. the communication of one Sanjay Khaitan being the representative of M/s M.P. Khaitan it appears that there is no specific allegation against the petitioner that he distorted the public records. However, based on that communication internal inquiry was conducted by the authority concerned against the petitioner.

14. On bare perusal of all the annexed documents, this Court at this stage does not find any materials against the petitioner to allow

the respondent authority to continue the departmental proceeding against him furthermore.

14.1. In this regard, Hon'ble the Supreme court of India in **Union of India & Anr. vs. Kunisetty Satyanarayana** reported in **(2006) 12 SCC 28** in para No.16 observed as under:

"16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

Further, in **Union of India & Anr. vs. Vicco Laboratories** reported in **(2007) 13 SCC 270**, Hon'ble the Apex Court in para No.31 observed as under:

"31. Normally, the writ court should not interfere at the stage of issuance of show-cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show-cause notices have been issued. Abstinence from interference at the stage of issuance of show-cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show-cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show-cause notice. The interference at the show-cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be *prima facie* established to be so. Where factual adjudication would be necessary, interference is ruled out."

Again, in **Union of India & Ors. vs. Coastal Container Transporters Association & Ors.** reported in **(2019) 20 SCC 446**, Hon'ble the Apex Court in para No.30 observed as under:

"30. On the other hand, we find force in the contention of the learned Senior Counsel, Shri Radhakrishnan, appearing for the appellants that the High Court has committed error in entertaining the writ petition under Article 226 of the Constitution of India at the stage of show-cause notices. Though there is no bar as such for entertaining the writ petitions at the stage of show-cause notice, but it is settled by a number of decisions of this Court, where writ petitions can be entertained at

the show-cause notice stage. Neither it is a case of lack of jurisdiction nor any violation of principles of natural justice is alleged so as to entertain the writ petition at the stage of notice. The High Court ought not to have entertained the writ petition, more so, when against the final orders appeal lies to this Court."

14.2. I have perused the said citations of the Hon'ble Apex Court. There is no dispute on record that excepting very rare and exceptional cases there is no scope to interfere with the departmental proceeding. The citations referred by Learned Advocate General at the time of hearing are no doubt very much relevant but those citations cannot be applied in this case at this stage since the departmental proceeding has not yet been commenced fully save and except issuing of show cause notice and delivery of articles of charge. Learned Advocate General also submitted that there is no scope to exercise the writ jurisdiction at this stage but it appears to this Court that Learned Advocate General could not place any satisfactory argument/defense to refute the submission made by Learned Counsel for the petitioner and it appears to this Court that this is a very exceptional case where this Court can exercise the power of writ jurisdiction to grant relief to the petitioner.

15. In view of the above, the writ petition filed by the petitioner is allowed and thus, disposed of.

The order of suspension dated 26.07.2024 and the subsequent order dated 23.10.2024 are accordingly stands revoked. The consequential memo dated 07.09.2024 issued by the respondent authority also stands set aside and quashed.

JUDGE