IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

W.P.NO. 21714 of 2012

S.Kothandaraman ... Petitioner

Vs.

1. Government of Tamilnadu
   Commercial Tax & Religious
   Endowment Department,
   Fort St. George,
   Chennai - 600 009.

2. Special Commissioner &
   Commissioner of Commercial
   Taxes, Chepauk, Madras-5.

3. The Tribunal for Disciplinary
   Proceedings, Chennai. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, seeking the issue of a writ of certiorarified Mandamus to call for the records pertaining to the Order in O.A.No.1497 of 1991 dated 03.12.2002 on the file of Tamilnadu Administrative Tribunal, Chennai and quash the same and to direct the Respondent to reinstate the petitioner in service with all attendant benefits.

For Petitioner .. Mr.C.K.Chandrasekar for
Mr.A.Sasidharan.

For Respondents .. Mrs.S.Kanmani Annamalai, AGP (Tax)
1 and 2

R3 .. Tribunal

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O R D E R

(Order of the Court was made by Justice V.Ramasubramanian)

The petitioner who was dismissed from service while working as Assistant Commercial Tax Officer in a Check Post, pursuant to a disciplinary proceedings on the allegations of demand and acceptance of illegal gratification, has come up with the above writ petition, challenging the rejection of his application by the Tamil Nadu Administrative Tribunal, questioning the order of dismissal from service.

2. Heard Mr.C.K.Chandrasekar, learned counsel appearing on behalf of Mr.A.Sasidharan, for the petitioner and Mrs.S.Kanmani Annamalai, learned Additional Government Pleader (Commercial Taxes), for the Respondents.

3. The petitioner while working as Assistant Commercial Tax Officer in a Check Post, allegedly demanded illegal gratification from an assessee, on 6.11.1983, to allow him to take electrical goods without imposing any tax or penalty. A trap was laid and in pursuance of the same, the matter was referred to the Tribunal for disciplinary proceedings. The Tribunal framed charges and proceeded with an enquiry in D.E.No.19/1984 dated 25.10.1984.

4. By a report dated 10.5.1988, the Tribunal held the charges proved.

5. Based upon the findings recorded by the Tribunal, the Commissioner of Commercial Taxes imposed a penalty of dismissal from service upon the petitioner by an order dated 21.4.1989. Challenging the said order, the petitioner filed an application in O.A.No.1497 of 1991 on the file of the Tamil Nadu Administrative Tribunal. The Tribunal dismissed the said application by a considered order dated 3.12.2002.

6. Contending that the order of the Tribunal was not communicated to him and that he was not aware of the dismissal of his application, the petitioner has come up with the above writ petition, after 10 years of the order of dismissal.

7. The main ground of attack to the findings recorded by the Tribunal for disciplinary proceedings is that when the phenolphthalein test, actually failed, the Tribunal could not have relied upon other evidence to hold the charge of demand and acceptance of illegal gratification proved.

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8. Though it is true that the bottles marked as 2 and 3, were held in the disciplinary proceedings to be not containing the phenolphthalein, the Tribunal held that the test of phenolphthalein is only an additional evidence to be taken in to consideration and that by itself, it was not to be relied upon as the sole evidence.

9. Moreover, the Tribunal found that admittedly the tainted money was recovered from the shirt pocket of the petitioner. In his own defence, the petitioner contended that an outside agency had actually meddled with his shirt when he had hanged the shirt. The relevant portion of the finding of the Tribunal can be useful extracted as follows:-

> "Taking advantage of the findings that bottles marked as '2' and '3' have been proved to be not containing phenolphthalein the defence contends that the A.O. could not have touched the currency notes at all and argues that "This being conclusively established, it stands to reason that the A.O. could not have put the smeared currency notes in his shirt pocket and probability definitely tends to point to an outside agency meddling with A.O's shirt and obviously, therefore, meddling with the shirt could have been only when A.O. was not wearing the shirt but only when the shirt was hanging either on a nail on the wall or on a coat hanger and that anybody had access to the shirt and with the sold object of maligning the A.O. had touched the shirt pocket with hands smeared with phenolphthalein powder. On this aspect the Prosecution agree that it is the evidence of P.W.2 and corroborated by P.W.18 that the A.O. produced the currency notes from the shirt pocket he was wearing and questions "Is it believable to accept the theory that somebody planted currency notes in the pocket of the shirt of the A.O. when he was wearing the same and points out that the entire theory of the defence look very artificial since the time of the trap is very much important and more so one could not expect the A.O. to be present in the Check post without wearing a shirt."

10. It must be remembered that we are not dealing with a conviction by a Criminal Court, to give the benefit of doubt to the petitioner on the ground that the phenolphthalein test did not prove positive. The case arises out of disciplinary proceedings and hence, preponderance of probability is the only test. In any case the petitioner is guilty of huge delay and laches. The petitioner was dismissed from service way back on 21.4.1989. As against the order of

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dismissal, the petitioner filed statutory appeal to the Government and the same was dismissed by the Government by G.O.Ms.No.26, Commercial Taxes and Religious Endowment Department, dated 10.1.1991. The application filed by the petitioner in O.A.No.1497 of 1991, challenging the above said order, was dismissed by the Tribunal on 3.12.2002. The petitioner has come up with the above writ petition only in the year 2012. The only reason stated by the petitioner, in para 6 of his affidavit in support of the writ petition is that he did not receive any communication from the Tribunal.

11. But the petitioner was represented by the counsel before the Tribunal. Therefore, the plea raised in para 6 for coming to Court after 10 years cannot be accepted. The petitioner is now about 70 years old. The dismissal order itself about 26 years old. The order passed by the Tribunal was about 12 years ago. Therefore, we do not see any reason to interfere with the order of the Tribunal. Hence, the writ petition is dismissed. There will be no order as to costs.

Sd/-
Assistant Registrar

/ True copy /

Sub Assistant Registrar

gr.

To

1. Government of Tamilnadu Commercial Tax & Religious
   Endowment Department, Fort St. George,
   Chennai - 600 009.
2. Special Commissioner & Commissioner of Commercial
   Taxes, Chepauk, Madras-5.
3. The Tribunal for Disciplinary Proceedings, Chennai.

+ one cc to Special Government Pleader (Taxes), High Court,
Madras S.R.6740/2015.

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