

\$~8

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of hearing and order: 16th April 2015

+ W.P.(C) 3850/2013 & CM No.7165/2013
GOVT. OF NCT OF DELHI & ORS

..... Petitioners

Through: Ms. Latika Choudhary & Mr.
Nitesh Kumar Singh, Advocates.

versus

BD GUPTA

..... Respondent

Through: Ms.Meenu Mainee, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S. MEHTA

ORDER

16.04.2015

%

KAILASH GAMBHIR, J. (ORAL)

1. By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioners seek to challenge the legality and correctness of the impugned order dated 20.12.2012 passed by the learned Tribunal.

2. Ms. Latika Choudhary, counsel appearing for the petitioners submits that the learned Tribunal has failed to appreciate that there was a clear violation of Section 18 of Delhi Sales Tax Act, 1975 on the part of

the respondent as the respondent failed to take any additional security from the company under assessment, at the time of issuing the ST forms. Counsel further argues that the learned Tribunal has failed to appreciate that the articles of the charge issued against the respondent was required to be read along with the imputation of misconduct wherein there was a specific mention of violation of Section 18 of the Delhi Sales Tax Act, 1975 on the part of the respondent. Counsel further argues that the learned Tribunal failed to appreciate the fact that the respondent had acted in a most negligent manner without good faith and in fact misconducted himself in the discharge of his duties by not taking recourse to Section 18 of the Delhi Sales Tax Act, 1975 so as to secure the interest of the Government revenue, when admittedly there were outstanding dues against the company under assessment. Counsel also argues that the learned Tribunal also failed to appreciate the fact that while exercising the power of judicial review, it cannot act as an Appellate Authority to meticulously examine the findings on fact and the evidence adduced on record and thus tried to exercise the jurisdiction of the Inquiry Authority/Disciplinary Authority. Counsel further argues that the Tribunal failed to appreciate the fact that the charges were duly

proved and established against the respondent and therefore, based on the findings of the Inquiry Officer, the Disciplinary Authority passed the order of penalty which commensurates with the charges proved against him. Based on these submissions, counsel for the petitioners submit that this Court may set aside the order passed by the learned Tribunal.

3. Ms.Meenu Mainee, counsel for the respondent submits that the order passed by the learned Tribunal is a well reasoned order and the petitioners have not raised any ground to effectively confront the reasoning given by the learned Tribunal in the impugned order. Counsel also submits that the respondent has followed the decision of the Division Bench dated 19th January, 2000 in W.P. No.3907/1998 wherein the Court took a view that the Assessing Officers will not withhold the issuance of any ST forms on the basis of Rule 8(4) (c) (ii) of the Delhi Sales Tax Rules. Counsel further submits that no motive or any kind of negligence can be attributed to the respondent who had followed the mandate of the said decision of this Court in taking a decision of not withholding the ST forms despite the fact that some dues were outstanding against the company under assessment. Counsel also submits that the learned Tribunal has also given the correct interpretation of Section 18 of the

Delhi Sales Tax Act, 1975 which was incorporated under Rule 8(4) (c) (ii) of the Delhi Sales Tax Rules and that the petitioners have not pointed out as to how the said reasoning given by the learned Tribunal can be held as illegal or perverse. Counsel also submits that it is an admitted case between the parties that under the article of charges no specific charge for violating Section 18 of the Delhi Sales Tax Act, 1975 was framed against the respondent and this view was also taken by the Appellate Authority. Counsel also submits that it is also an admitted case of the parties that the petitioners had failed to supply the copy of the advice given by the UPSC and therefore due to that also the inquiry proceedings were vitiated, in view of the settled legal position as held in the case of *Union of India & Ors. v. S.K. Kapoor, 2011 (3) SCALE 586*.

4. We have heard the learned counsel for the parties.

5. At the relevant time the respondent was working as Sales Tax Officer in Ward No.49. He was charged under Rule 3 of the CCS (Conduct) Rules 1964 for having violated the provisions of Rule 8 of the Delhi Sales Tax Rules 1975 in issuing 12 ST 1Forms, 20 ST 35 Forms and 9 'C' Forms to M/s. Tin Box Company, while huge arrears of sales tax were due. He was given the statement of articles of charges along

with the statement of misconduct, list of documents proposed to be used and the list of witnesses. An Inquiry Officer was appointed under Rule 14 (5) (A) of CCS (CCA) Rules. The Inquiry Officer, disregarding the averments made by the respondent submitted his report on 7.4.2003. Based on the inquiry report, the Disciplinary authority passed the punishment of withholding of 3 increments with cumulative effect. After receiving the punishment order the respondent filed a statutory appeal before the Appellate Authority and before the Appellate Authority took a decision, it consulted the UPSC and the UPSC had advised the Appellate Authority to reject his appeal. Thereafter, the Appellate Authority passed its order dated 30.1.2011, wherein the Appellate Authority while taking a view that the basic charge against the respondent was not proved, but yet confirmed the order of the Disciplinary Authority imposing the said punishment. To challenge the said order, the respondent preferred an O.A. being No. 4445/2011 before the learned Tribunal and vide order dated 20.12.2012 the learned Tribunal set aside the punishment order passed by the Appellate Authority. Feeling aggrieved by the aforesaid decision of the learned Tribunal, the petitioners have preferred the instant writ petition.

6. It is an undeniable fact that the respondent had issued the ST Forms in favour of the assesseees following the mandate of the decision of the Division Bench of this Court vide orders dated 19th January, 2000 in W.P. No.3907/1998, wherein this Court took a view that the forms of the assesseees will not be withheld on the basis of Rule 8(4) (c) (ii) of the Delhi Sales Tax Rules. The discussion of the learned Tribunal on this aspect can be traced in paras 12 and 13 of the impugned order. For better appreciation, the same are reproduced as under:-

“12. Having said that we ask ourselves have the disciplinary/ appellate authorities taken full cognizance of legal situation into account? The provision of Section 18 of the DST Act is incorporated under Rule 8 (4) (c) (ii) of the DST Rule. Section 18 of DSTC Act 1975 although not expressly struck down by the Hon'ble Delhi High Court is in the nature of a 'provision' which arises from the main clause. In the absence of the main clause, the provision becomes a lifeless adjunct.

13. Moreover the provision is not mandatory. The word used is 'may' withhold the issuing of form. An Officer, as in this case, who has been served with the orders of the High Court is at a quandary of interpretation. If he chooses to exercise the option available to him under the clause 'may' and seek additional security from an applicant/dealer, what is the course of action available to him to ensure that the same is provided? Obviously, the answer is that, he can only 'withheld' the sought for forms. This act of conditional with-holding is based on the outstanding

dues from the dealer. This in effect becomes the condition as stipulated in Rule 8 (4) (c) (ii) which was non-existent at the time of the alleged misconduct.”

7. We find ourselves in complete agreement with the said reasoning of the Ld.Tribunal.

8. Another illegality, which was committed by the petitioners, was in not supplying a copy of the UPSC’s advice to the respondent. The said advice was taken into consideration by the Appellate Authority before rejecting the appeal preferred by the respondent and therefore, it was incumbent upon the petitioners to have supplied the copy of the UPSC’s advice to the respondent. The legal position in this regard is well settled by the judgment of the Supreme Court in the case of ***Union of India v. R.P Singh, (2014) 7 SCC 340***, where the Apex Court concurring with the decision in ***S.K. Kapoor’s case (supra)*** held:

“We have referred to the aforesaid decision in extenso as we find that in the said case it has been opined by the Constitution Bench that non-supply of the enquiry report is a breach of the principle of natural justice. Advice from the UPSC, needless to say, when utilized as a material against the delinquent officer, it should be supplied in advance. As it seems to us, Rule 32 provides for supply of copy of advice to the government servant at the time of making an order. The said stage was in prevalence before the decision of the Constitution Bench. After the said decision, in our considered opinion, the authority should have clarified the Rule regarding development in the service jurisprudence. We have been apprised by Mr. Raghavan, learned counsel for the respondent, that after the decision in S.K. Kapoor's case, the Government of India, Ministry of Personnel, PG & Pensions,

Department of Personnel & Training vide Office Memorandum dated 06.01.2014 has issued the following directions:

"4. Accordingly, it has been decided that in all disciplinary cases where the Commission is to be consulted, the following procedure may be adopted:-

(i) On receipt of the Inquiry Report, the DA may examine the same and forward it to the Commission with his observations;

(ii) On receipt of the Commission's report, the DA will examine the same and forward the same to the Charged Officer along with the Inquiry Report and his tentative reasons for disagreement with the Inquiry Report and/or the advice of the UPSC;

(iii) The Charged Officer shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the Inquiry report/advice of UPSC is in his favour or not.

(iv) The Disciplinary Authority shall consider the representation of the Charged Officer and take further action as prescribed in sub-rules 2(A) to (4) of Rule 15 of CCS (CCA) Rules, 1965.

After the said Office Memorandum, a further Office Memorandum has been issued on 05.03.2014, which pertains to supply of copy of UPSC advice to the Charged Officer. We think it appropriate to reproduce the same:

"The undersigned is directed to refer to this Department's O.M. of even number dated 06.01.2014 and to say that it has been decided, in partial modification of the above O.M. that a copy of the inquiry report may be given to the Government servant as provided in Rule 15(2) of Central Secretariat Services (Classification, Control and Appeal) Rules, 1965. The inquiry report together with the representation, if any, of the Government servant may be forwarded to the Commission for advice. On receipt of the Commission's advice, a copy of the advice may be provided to the Government servant who may be allowed to submit his representation, if any, on the Commission's advice within fifteen days. The Disciplinary Authority will consider the inquiry

report, advice of the Commission and the representation(s) of the Government servant before arriving at a final decision.""

9. In view of the aforesaid discussion, we find no perversity in the said reasoning given by the learned Tribunal and we do not find any merit in the petition filed by the petitioners. Accordingly, the impugned order dated 20.12.2012 passed by learned Tribunal is upheld and the writ petition filed by the petitioners is hereby dismissed. With no order as to costs.

KAILASH GAMBHIR, J

I.S. MEHTA, J

APRIL 16, 2015
km/pkb