IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

WP.No.222 of 2015
MP.No.1 of 2015

S.Manoharan
Petitioner

Vs

1.The Principal Secretary
to Government Commercial
Tax and Registration Department
Fort St.George, Chennai-9

2.The Inspector General of
O/o.the Registration Department,
Registration No.100, Santhome
High Court, Chennai-28
Respondents

Prayer:- This Writ Petition is filed to issue a Writ of Certiorari to call for the records of the 1st Respondent in order dated 27.6.2013 in GO(D)No.395 Commercial Tax and Registration (K) Department, dated 21.10.2014 confirming the punishment imposed by the 2nd Respondent in his proceedings No.63246/V1/2010 dated 16.4.2013 and to quash the same.

For Petitioner : Mr.D.Veerasekaran

For Respondent : Mr.S.Gunasekaran, Additional Government Pleader

ORDER

This Writ Petition is filed, challenging the order of punishment dated 16.4.2013 of the 2nd Respondent, which was confirmed in the order of the 1st Respondent order dated 27.6.2013 vide GO(D)No.395 Commercial Tax and Registration (K) Department, dated 21.10.2014.

2. The learned counsel for the Petitioner would mainly contend that on the alleged date of inspection, it is

stated that the alleged sums of Rs.780 and Rs.100 were found in the Office, but in the charge memo it is totally different as if it has been taken out in between the records and there is a total variation in mentioning the place of recovery of the money. He would further contend that on the very same day itself, the person who has paid Rs.100 towards the payment of encumbrance certificate, could not claim the said sum because of the inspection and subsequently, the same is claimed by him by a letter. Similarly, in so far as Rs.780/- is concerned, on the next day, a lady has given a complaint that the said amount kept in her hand bag was left in the office and these vital factors have not been considered. In fact, the original authority, namely, the enquiry officer has found both the grounds as not proved. But, the disciplinary authority has differed from the said findings of the enquiry officer and without giving a detailed order, straight away the disciplinary authority has stated that he is differing and issued the second show cause notice, for which a reply has also been given, but that was not considered and the impugned punishment was imposed. As against the same, the Petitioner preferred an appeal and the appellate authority also failed to give any reason and simply accepted the report and confirmed the punishment. Therefore, when there is no finding given by the appellate authority, then also the order per se is illegal.

3. In this connection, he would rely on the judgement of the Division Bench of this court dated 23.7.2015 made in WA.Nos.953 and 954 of 2015 for the preposition that when the money is not recovered either from any one of the writ petitioners therein or from the box or the bureau or table and when it was recovered only from the corner of the office and it has also been claimed by somebody, the recovery has not been established. Therefore, any punishment cannot be given on this basis, that too especially when in a case where the enquiry officer has not accepted the version of the Prosecution.

4. The learned Additional Government Pleader for the Respondents, by filing a counter, would contend that after giving a fair opportunity to the Petitioner, the enquiry was conducted and the Petitioner also participated in the enquiry and thereafter, even though the enquiry officer has given a finding of not guilty, the disciplinary authority has got every right to modify the same or deny the same and the appellate authority has also considered the same, in accordance with law.

5. This court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.

6. On consideration of the entire records, one striking factor is that the place of recovery is in dispute. The alleged amounts were found to be in excess in the office. The place originally stated as per the inspection report and the surprise inspection are totally different as that of the charge sheet. In the charge sheet, it is stated as if it has been recovered in between the records in the record room and the place and the exact location is also altered and how it is altered is also not known. This discrepancy has been pointed out by the enquiry officer and therefore, he refused to accept the theory. But, while disagreeing with the finding of the enquiry officer, the disciplinary authority has not given any reason for disagreeing with the findings of the enquiry officer. No doubt, an opportunity was given and second show cause notice was issued. Before asking for explanation would it not be correct on the part of the authority to first to say as to why he disagrees with the findings of the enquiry officer. Merely disagreeing is not enough and therefore, the order of the disciplinary authority is wrong coupled with the fact that the punishment has been confirmed without accepting the explanation. In so far as the very recovery of the money is concerned, the appellate authority also did not give any reason and hence, it is vitiated.

7. Reason is the heart beat of every conclusion and without the same, it becomes lifeless, as has been laid down by the Honourable Supreme Court in 2008-16-VST181-SC (SAIl Vs. Sales Tax Officer, Rourkela) and 2003 (11) SCC 519) Raj Kishore Jha v. State of Bihar.

8. In 2009 12 SCC 73 (Union of India and others Vs. Gyan Chand Chattar), it has been held as follows:-

> "21. Such a serious charge of corruption requires to be proved to the hilt as it brings civil and criminal consequences upon the employee concerned. He would be liable to be prosecuted and would also be liable to suffer severest penalty awardable in such cases. Therefore, such a grave charge of quasi criminal nature was required to be proved beyond any shadow of doubt and to the hilt. It cannot be proved on mere probabilities."

9. In the light of the discrepancies and contradictions in the evidence and in the absence of any discussion or explanation having been given by both the authorities for imposing the impugned punishment and in the light of the prepositions laid down in the decisions cited supra that the alleged offence should be proved beyond any

shadow of reasonable doubt, which the authorities failed to do so, the impugned orders can be said to be non speaking orders, which shows non application of mind on the part of the Respondents and accordingly, they are liable to be set aside.

11. In the result, this Writ Petition is allowed, setting aside the impugned orders. It is needless to say that the authority is not precluded from pursuing the matter further in accordance with law. No costs. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

Srcm

To:

1.The Principal Secretary to Government
Commercial Tax and Registration Department
Fort St.George, Chennai-9

2.The Inspector General of Registration
No.100, Santhome High Road, Chennai-28

+ 1 cc to M/s. D. Veerasekaran, Advocate SR.47195

WP.No.222 of 2015

RSK(CO)
EU 28.09.16