

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2016

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.24167 and 24168 of 2015
and
M.P.Nos.1+1, 2+2 and 3+3 of 2015

V.S. Geetha Bai ...Petitioner in W.P.No.24167 of 2015
S. Ramaraju ...Petitioner in W.P.No.24168 of 2015

Vs

1.The State of Tamil Nadu
represented by the Secretary to Government
Commercial Tax Department
Secretariat, Chennai-9.

2.The Principal Secretary
Commissioner of Commercial Taxes
Chepauk, Chennai-5.

3.The Joint Commissioner (CT)
Enforcement, Coimbatore.Respondents in both the writ petitions

Prayer in W.P.No.24167 of 2008:- This Writ Petition has been filed to call for the records on the file of the second respondent in connection with order passed by the respondents in Proc.EE2/14510/2014-IV, dated 8.7.15 and quash the same and direct the respondents to award all the consequential benefits withheld because of the disciplinary proceedings and the consequential Order of punishment by issuing a Writ of Certiorarified Mandamus.

Prayer in W.P.No.24168 of 2008:- This Writ Petition has been filed to call for the records on the file of the second respondent in connection with order passed by the respondents in Proc.EE2/14510/2014-III, dated 8.7.15 and quash the same and direct the respondents to award all the consequential benefits withheld because of the disciplinary proceedings and the consequential Order of punishment by issuing a Writ of Certiorarified Mandamus.

For Petitioners
in both WPs : Mr.R. Singaravelan
for M/s.M.Srividhya

For Respondents : Mr.S. Manoharan Sundaram
in both WPS

COMMON ORDER

Challenging the orders, dated 8.7.2015 passed by the second respondent in Proc.EE2/14510/2014-IV and Proc.EE2/14510/2014-III, the above writ petitions have been filed by the petitioners.

2.The petitioner in W.P.No.24167 of 2015 was working as Deputy Commercial Tax Officer from 2011. On 2.5.2014, the petitioner was placed under suspension by the third respondent on the ground that an enquiry into grave charges against her was contemplated or pending.

3.A charge memo, dated 19.5.2014 was issued and she submitted a detailed explanation denying the charges categorically, as earlier as on 9.7.2014.

4.Thereafter, an enquiry officer was appointed to conduct an enquiry. The enquiry officer, without considering her explanation and without following the principles of natural justice, completed the enquiry and submitted his report on 24.10.2014 holding that the charges against the petitioner were proved.

5.On the basis of the findings of the enquiry officer, the second respondent passed an order on 8.7.2015 imposing a major punishment of reduction in rank from the post of Deputy Commercial Tax Officer to the post of Assistant. Hence, the present writ petition.

6.The petitioner in W.P.No.24168 of 2015 was also working as Deputy Commercial Tax Officer from 2013. While he was serving as Deputy Commercial Tax Officer, K.G. Chavadi, Coimbatore, on certain allegations, disciplinary action was initiated against him under Rule 17(b) of the Tamil Nadu Civil Services Disciplinary and Appeal Rules and a charge memo was issued by the third respondent on 19.5.2014 and he has submitted his explanation on 9.7.2014. Since his explanation was not satisfactory, an enquiry officer was appointed to conduct an enquiry.

7.The enquiry officer, without following the principles of natural justice, completed the enquiry and submitted his report on 24.10.2014 holding that the charges against the petitioner were proved.

8.On the basis of the findings of the enquiry officer, the second respondent passed an order on 8.7.2015 imposing a major punishment of reduction in rank from the post of Deputy Commercial Tax Officer to the post of Assistant. Hence, the present writ petition.

9.The respondents have also filed their counter denying the averments made in the writ petitions.

10.Heard both sides.

11.The learned counsel for the petitioners has contended that as per the Fundamental Rules and the procedure prescribed under the Tamil Nadu Civil Services (D&A) Rules, it is the duty of the second respondent to mention the period of reduction of rank in his order, but unfortunately, he has not mentioned the period of tenure of punishment and he has passed the order, dated 8.7.2015 as if the punishment is permanent till the end of the service of the petitioners and therefore, on this score alone the orders impugned have to be set aside.

12.The learned counsel for the petitioners has submitted that the charge memo was issued by the third respondent, which ought to have been issued by the second respondent himself as he is the disciplinary authority as per Rule 12 of the Tamil Nadu Civil Service D&A Rules. He has also submitted that there cannot be a charge memo by one authority and the punishment by another authority as the disciplinary authority may not be in a position to understand the enquiry proceedings.

13.The learned counsel for the petitioners has argued that the order of punishment should not be based on mere conjectures, suspicion and surmises and further, no evidence was taken into consideration and therefore, the impugned orders are liable to be set aside in view of the dictum laid down by the Hon'ble Apex Court in Roopsingh Nagy's case reported in 2009 (2) SCC 570.

14.The learned counsel for the petitioners has pointed out that it is the duty of the enquiry officer to follow the procedure strictly and fairness must be the concept of the enquiry, but unfortunately, the enquiry officer gave his findings without any basis and therefore, the impugned orders are liable to be set aside in view of the decisions of the Apex Court reported in AIR 1958 SC 300, 1970 (1) SCC 709, 1969 3 SCC 775, 2006 (4) SCC 713, 2009 4 SCC 299 at 307 para 11, 1986 (3) SCC 454 and 2009 (2) 570.

15.On the other hand, the learned Additional Government Pleader (Taxes) has submitted that it is settled law that the immediate superior officer can issue a charge memo and in the case on hand, the charge memo has been issued by the Joint Commissioner (CT) (Enf) Coimbatore, who is having the control over four ranges and the delinquent official is only a DCTO, and the final orders were passed by the disciplinary authority, viz., the Principal Secretary/Commissioner of Commercial Taxes, Chennai, who is the appointing authority, and therefore, there is nothing illegal and the impugned orders are sustainable in law.

16.The learned Additional Government Pleader has contended that based on the materials available on record, the case was thoroughly and independently examined by the disciplinary authority and found that the lethargic and negligent act of the delinquents resulted in the loss of revenue to the tune of Rs.10,10,01,591/- and therefore, the petitioners were awarded a punishment of reduction in Rank and therefore, the punishment awarded is just and fair.

17.The learned Additional Government Pleader has argued that since the appeals filed by the petitioners are pending disposal before the first respondent, these writ petitions are not maintainable and therefore, they are liable to be dismissed with a direction to exhaust the appeal remedy.

18.I have considered the aforesaid submissions and perused the materials available on record.

19.A perusal of the typed set of papers shows that the petitioners have filed appeals against the order of the second respondent before the first respondent, and the same are pending.

20.In Union of India and others vs. Major General Shri Kant Sharma and another ((2015) 6 Supreme Court 773), while speaking on behalf of the Division Bench of the Apex Court, the Hon'ble Mr.Justice Sudhansu Jyoti Mukhopadhaya, after referring the following decisions, has observed as under:

"28.In Kanaiyalal Lalchand and Sachdev and others vs. State of Maharashtra and others, (2011) 2 SCC 782, this Court considered the question of maintainability of the writ petition while an alternative remedy is available. This Court upheld the decision of the Bombay High Court dismissing the writ petition filed by the appellants therein on the ground of existence of an efficacious alternative remedy under Section 17 of SARFAESI Act and held:

"23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See Sadhana Lodh v. National Insurance Co. Ltd., Surya Dev Rai v. Ram Chander Rai and SBI v. Allied Chemical Laboratories7.)

24. In City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla this Court had observed that: (SCC p. 175, para 30)

"30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of the writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) the person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors."

29. In Nivedita Sharma vs. Cellular Operators Association of India and others, (2011)14 SCC 337, this Court noticed that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. The Court further noticed the previous decisions of this Court wherein the Court adverted to the rule of self-restraint that writ petition will not be entertained if an effective remedy is available to the aggrieved person as follows:

13. In Titaghur Paper Mills Co. Ltd. v. State of Orissa this Court observed: (SCC pp. 440-41, para 11)

"11. ... It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.

This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford in the following passage: (ER p. 495)

'... There are three classes of cases in which a liability may be established founded upon a statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.'

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.* and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd.* and *Secy. Of State v. Mask and Co.* It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine."

14. In *Mafatlal Industries Ltd. v. Union of India* B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

"77. ... So far as the jurisdiction of the High Court under Article 226—or for that matter, the jurisdiction of this Court under Article 32—is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment."

15. In the judgments relied upon by Shri Vaidyanathan, which, by and large, reiterate the proposition laid down in *Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad*, it has been held that an alternative remedy is not a bar to the entertaining of writ petition filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute is under challenge.

16. It can, thus, be said that this Court has recognised some exceptions to the rule of alternative remedy. However, the proposition laid down in *Thansingh Nathmal v. Supt. of Taxes* and other similar judgments that the High Court will not entertain a petition under Article 226 of

the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field."

21.It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person.

22.When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. This Court further noticed the previous decisions of the Apex Court and this Court, wherein the Courts adverted to the rule of self-restraint that writ petition will not be entertained if an effective remedy is available to the aggrieved person.

23.It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.

24.The High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field.

25.In view of the above, this Court is of the considered view that since the petitioners have already filed their appeals before the first respondent and the same are pending, it is better to give a direction to the first respondent to dispose of the appeals within a stipulated period.

26.Accordingly, the first respondent is directed to dispose of the appeals, after affording an opportunity of hearing to the petitioners, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. In view of the above direction to the first respondent to dispose of the appeals within a period of three months from the date of receipt of a copy of this order, the interim stay granted by this Court in these writ petitions will no longer exist and accordingly M.P.Nos.2 and 2 of 2015 in W.P.Nos.24167 and 24168 of 2015 stand closed. It is open to both the parties to file appropriate applications for stay before the Appellate Authority. If such applications are filed, the Appellate Authority is directed to consider the same and pass appropriate orders, on merits.

27.The writ petitions are disposed of with the above directions. No costs. Consequently, the rest of the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1.The Secretary to Government,
Government of Tamil Nadu,
Commercial Tax Department
Secretariat, Chennai-9.

2.The Principal Secretary
Commissioner of Commercial Taxes
Chepauk, Chennai-5.

3.The Joint Commissioner (CT)
Enforcement, Coimbatore.

1 cc to the Special Government Pleader (Taxes) SR. 1908, 1907

W.P.Nos.24167 and 24168 of 2015
and
M.P.Nos.1+1, 2+2 and 3+3 of 2015

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