IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.08.2016
CORAM:
THE HON'BLE MR.JUSTICE B.RAJENDRAN
W.P. No. 2899 of 2012

B.Vimala,
Assistant Commissioner (VAT Cell)
O/o. The Commissioner of Commercial Taxes
Ezhilagam, Chepauk
Chennai - 600 005 ... Petitioner

Versus

1. The State of Tamil Nadu,
Rep. by the Secretary to Government,
Commercial Taxes Department,
Fort St. George,
Chennai - 600 009.

2. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, to call for the records in respect of Government Order G.O.(2D)No.125 Commercial Taxes and Registration (E1) Department dated 16.08.2011, quash the same.

For Petitioner : Mr.Karthikeyan
For Respondents: Mr.Kanmani Annamalai
Government Advocate

ORDER

The petitioner was directly recruited to the post of Commercial Tax Officer after she was declared pass in the written examination conducted by the Tamil Nadu Public Service Commission (TNPSC) Group I Examination conducted in the year 1999-2000. After completion of one year training, she was posted as Commercial Tax Officer, Vellore (North) Assessment Circle and then as Commercial Tax Officer, Vellore (Rural) Assessment Circle, Vellore. She joined the post on 26.07.2005.

2. According to the petitioner, the second respondent, by Proceedings No.CP2/29656/2004 dated 07.02.2007, transferred her from Vellore to Pudukkottai. Challenging the order of transfer, she filed a writ petition in W.P.No. 4929 of 2007 before this Court. This Court, by an order dated 12.02.2007 in M.P.No.2 of 2007 in W.P.No.4929 of 2007, granted interim stay. Thereafter, the said transfer order was cancelled and she was

given posting at Kancheepuram. While so, all of a sudden, the petitioner was issued with a charge memo dated 31.12.2007 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, containing five charges framed against her. The petitioner submitted her explanation on 11.01.2008 denying all charges. After appointment of an enquiry officer, enquiry was conducted and a report was filed by the Enquiry Officer on 18.09.2009 holding that charges 1 and 2 are proved, Charge Nos. 3 and 4 are not proved and charge 5 as partly proved. Thereafter, the petitioner was served with a copy of the enquiry report and she was asked to submit further representation. According to the petitioner, she sent a detailed reply to the report of the enquiry officer and denied the basis on which the enquiry officer arrived at a conclusion in so far as it relates to the proved charges. Being not satisfied with the explanation, the Government passed an order in G.O.Ms.No.125, dated 16.08.2011, imposing the punishment of stoppage of increment for a period of two years with cumulative effect. Aggrieved against the impugned order dated 16.08.2011, the petitioner has filed the present writ petition.

3. The learned counsel appearing for the petitioner submitted that the impugned order is a non-speaking order. The first respondent has merely reproduced the charges, explanations given by the petitioner and the findings of the enquiry officer. The first respondent has not assigned any reasons for imposing the punishment of stoppage of increment, which according to the petitioner would amount to a non-speaking order. The learned counsel for the petitioner further submitted that the impugned order is challenged only on the ground of procedural infirmity and not on illegality and irregularity. According to the learned counsel for the petitioner, the charge Nos. 1 and 2 are not proved against her inasmuch as the Act itself contemplates for issuing a rectification order by the respondent suo motu. The first respondent, instead of invoking such suo motu powers has found fault with the petitioner for having passed two assessment orders on the same day. It is a curable defect and it does not warrant initiation of departmental proceedings against the petitioner. The learned counsel for the petitioner therefore contends that the disciplinary authority/ first respondent herein has failed to consider these aspects while passing the impugned order of punishment. Therefore, the learned counsel for the petitioner prayed for setting aside the impugned order of the first respondent.

4. The learned Government Advocate appearing for the respondents would contend that before passing the impugned order, the second respondent gave opportunity to the petitioner to give a reply to the charge memo dated 31.12.2007 and after the enquiry, the enquiry report submitted by the Enquiry Officer was also furnished to the petitioner to give further

explanation. Thereafter only, the impugned order was passed. Therefore, the second respondent has followed all the formalities as per the Tamil Nadu Civil Services (Discipline and Appeal) Rules in the conduct of the enquiry. The enquiry officer has also submitted a detailed report dealing with each and every one of the charges framed against the petitioner and concluded that charge Nos. 1 and 2 are proved, charge Nos. 3 and 4 are not proved and the fifth charge as partially proved against the petitioner. The first respondent, as disciplinary authority, has examined the proved charges against the petitioner and imposed the punishment of stoppage of increment for a period of two years with cumulative effect, which is proportionate to the charges proved against the petitioner. In such view of the matter, the learned Government Advocate appearing for the respondents prayed for dismissal of the writ petition.

5. Heard the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondents. The petitioner was subjected to disciplinary proceedings for having committed certain lapses. There were five charges framed against the petitioner. Of the five charges, the enquiry officer held that the charge Nos. 1 and 2 alone are proved and charge No.5 was partly proved against the petitioner.

6. The petitioner challenges the impugned order mainly on the ground that the charges levelled against her relates to procedural infirmity and it is not an irregularity warranting imposition of punishment. Further, the Act itself contemplates for a rectification order, even suo motu and as stated in the impugned order. What was issued by the petitioner is not a refund order and it is a refund notice. Therefore, these aspects have not been considered by the authority and straight away an order has been passed. According to him, principles of natural justice has been followed because the very impugned order does not take into consideration the provision for a suo motu refund of the order. In fact, the order does not even discuss about such a power vested in the first respondent.

7. The first charge against the petitioner is that she has passed two different assessment orders on the same day against an assessee. The explanation offered by the petitioner is that the first order of assessment was erroneously passed by her and on coming to know the same, immediately, on the same day, she has passed the second order of assessment as a measure of rectification. It is further explained by her that since the mistake committed in passing the first order of assessment has come to light immediately, she has passed the consequent order of assessment to rectify the mistake committed in the first order of assessment specifically by cancelling the earlier order of assessment passed on the same day. The second charge is that

the petitioner acted recklessly and with negligence while issuing refund vouchers in contravention of the circular dated 03.06.2015. According to the petitioner, she has followed the procedures prescribed in the Departmental manuals while issuing the refund voucher in favour of the assessee. It is also stated that the petitioner has issued the refund vouchers after obtaining orders from the Deputy Commissioner. Therefore, according to the petitioner, the charge Nos. 1 and 2 were erroneously held to have been proved against her in such event, the first respondent ought to have considered the above aspects before imposing the order of punishment.

8. The learned counsel for the petitioner would mainly contend that the first respondent is empowered as per the Rule to take suo motu cognizance of the case. As per the Rule, the first respondent has got suo motu right to modify the impugned order with whom the power is vested. Unfortunately, these aspects have not been considered by the first respondent before passing the impugned order. In such view of the matter, the right of the party is affected when such right given under the Act has not been considered and the punishment imposed against the petitioner is severe as it affects the retirement benefits also. In such view of the matter, the impugned order is liable to be set aside. Accordingly, the impugned order is set aside. The writ petition is allowed. No costs. MP.No.1 of 2015 is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
1. The Secretary to Government,
Commercial Taxes Department,
Fort St. George,
Chennai - 600 009.
2. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.
+1 cc to Mr.Karthikeyan sekar Advocate sr 48953
+1 cc to the special government Pleader taxes sr 48933
W.P.No. 2899 of 2012

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