IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No. 49003 of 2006

M.Venkatesan ...Petitioner

-Vs-

1. The Commissioner,
Salem Corporation,
Salem.

2. The Appointing Committee,
Appellate Authority,
Salem City Municipal Corpn,
Salem. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records to call for the records relating to the impugned order passed by the first respondent in No.C2/10622/2003 date 2.8.2004 and subsequent order in appeal No.C2/10622/2003 dated 16.3.2006 and quash the same.

For Petitioner : Mr.R.N.Amarnath
For R1 : Mr.G.Sankaran

O R D E R

The prayer in the writ petition is for a Certiorarified Mandamus calling for the records relating to the impugned order passed by the first respondent in No.C2/10622/2003 date 2.8.2004 and subsequent order in appeal No.C2/10622/2003 dated 16.3.2006 and quash the same.

2. The case of the petitioner as has been averred in the affidavit is that he was appointed as Record Clerk in the respondent corporation in the year 1990 and he joined the post on 04.12.1990. Thereafter, the petitioner was promoted to the

post of Junior Assistant on 02.01.1991. From the date of appointment, the petitioner had rendered unblemished service without any complaint whatsoever from any quarters. In the year 2001, the Division No.50 of the respondent corporation was bifurcated in to two segments as Division 50 and 50A for the purpose of administrative convenience and after the said bifurcation, Division 50 was allotted to the petitioner in the capacity as Revenue Assistant and segment 50-A was alloted to one Murugan, who was officiating as Revenue Assistant.

3. Thereafter, the petitioner was issued a charge memo dated 29.5.2003 on two counts that there was a delay in serving the special notices to two of the assessees with Assessment No.167861 and 167862 of Uthirappan Nagar under the respondent Municipality which squarely comes under the segment of 50-A.

4. The petitioner had submitted a detailed explanation to the said charge on 19.06.2003. However, the enquiry officer was appointed. Thereafter, an enquiry was conducted. The enquiry officer had submitted a report on 31.07.2003 holding that the charges were proved against the petitioner. Thereafter, the first respondent passed final order on 02.08.2004 inflicting the punishment on the petitioner for stoppage of increment with cumulative effect for five years. As against the said order of punishment, an appeal was filed before the respondents and the same also was dismissed on 16.3.2006 confirming the punishment given by the disciplinary authority. Challenging both orders ie., dated 02.08.2004 and 16.3.2006, the petitioner has come up with the present writ petition.

5. Heard both sides.

6. The learned counsel appearing for the petitioner submits that through the bifurcation order dated 12.7.2000 issued by the respondent corporation, the Division 50-A was bifurcated from 50 consisting of Block Nos. 1, 5 and 6 and the same were entrusted to the said Murugan and remaining portion in Division 50 consisting of Block Nos.2, 3 and 4 were alone entrusted to the petitioner and this arrangement was made as early as on 12.07.2000. Therefore, during the relevant period of 2000-2001, the assesseess with Assessment Nos.167861 and 167862, Uthirappan Nagar were assessed for tax to be collected only by the said Murugan as the said two assessees at Uthirappan Nagar falls under Block No.5 of Division 50-A.

7. Even though the charge framed against the petitioner shows that the Special Taxation note in respect of the property tax of the said two assessees were entrusted to the petitioner

and the same had not been submitted to the concerned persons and because of that there was a revenue loss to the respondent corporation, these statements given in the charge are denied by the petitioner as it has been submitted by the learned counsel for the petitioner that no such entrustment has been given to the petitioner. Therefore, he submits that the very charge framed against the petitioner, itself is baseless and the petitioner had no occasion to deal with the assessees come under the Block-5 of Division 50-A and therefore, the subsequent enquiry as well as the punishment culminated in the impugned orders are also untenable. Hence, he prays for allowing the writ petition.

8. Per contra, the learned counsel appearing for the respondent corporation submitted that though a bifurcation was made of Division 50 and 50-A in the year 2000 and the collection of tax for 50-A wa given to the said Murugan which consisting of Block Nos.1, 5 and 6 and only the remaining blocks of 2, 3 and 4 of Division 50 alone was entrusted to the petitioner, the overall supervision of the both Divisions was entrusted to the petitioner and therefore in that capacity, the petitioner had to serve the Special Taxation Note in respect of the said two assessees in Uthirappan Nagar area. Since the petitioner failed to do that, a charge was framed and a proper enquiry was also conducted with the co-operation of the petitioner and based on the enquiry officer's report, the respondent inflicted the said punishment on the petitioner. Therefore, he submits that there is no infirmity in the impugned order and hence, he prays for dismissal of the writ petition.

9. This Court has considered the rival submissions made by the respective counsels as well as the documents available before the Court.

10. During the hearing, the proceedings issued by the respondents dated 12.7.2000 was produced where by the Division 50 was bifurcated into 50 and 50 A and three Blocks namely, 2, 3 and 4 were form part of Division 50 and block Nos. 1, 5 and 6 were form part of 50 A. The said order dated 02.07.2000 further stated that the tax collection job was entrusted to one Mr. S.Murugan in respect of Block Nos.1, 5 and 6 come under the Division of 50 A. The further communication between Assistant Commissioner of respondent municipality and the Commissioner of respondent municipality dated 26.10.2016, a copy of which also has been produced by the learned counsel appearing for the respondent, would further disclose that the two Assessment Numbers i.e, 167861 and 167862 of Uthirappan Nagar belong to Block No.5 only.

11. Since the two assessees with the said assessment numbers are coming under Block No.5 of Division 50 A, certainly the work of tax collection ought to have been done only by the said Murugan and not by the petitioner. The further case of the respondent is that a special taxation note was entrusted to the said Venkatesan i.e., the petitioner for the purpose of delivering the same to the assessee is a mere statement and inorder to substantiate that there is no document filed by the respondent specifically, entrusting these jobs to the petitioner. Normally, if the job of tax collection is entrusted to a particular officer, the non collection of tax and any communication to that effect also has to be looked into or to be undertaken only by that employee or officer concerned. When specifically, these areas were entrusted to one Mr. Murugan in respect of the two assessees of that area had to be looked into only by the said Murugan alone, and not by the petitioner. Therefore, such an alleged failure on the part of the petitioner would amount to the violation as stated in charge No.I, cannot be accepted by this Court.

12. Insofar as the second charge is concerned, it is an offshoot of the first charge to state that the non delivery of the said communication or taxation special note to the assessees from August 2000 to January 2002 for 18 months created an embarrassment to the Corporation and therefore, the second charge was framed against the petitioner. Once the first charge itself has no legs to stand, the second charge being an offshoot of the first charge cannot also have a sustainable force.

13. Moreover, during the hearing, when a specific query was made, the learned counsel appearing for the respondents submitted that there is no financial loss to the Corporation in respect of the said two assessees as subsequently, the tax, was collected from them. Since there is no financial loss to the respondent corporation and the charges also as has been discussed above, were framed without a basis and there is no document to show that the charges can be a sustainable one, this Court has no hesitation to hold that the very charges framed against the petitioner are not worthy to be probed into even by way of departmental enquiry.

14. When the very basis of the charges go, all further proceedings culminated into punishment by way of impugned order are also cannot be considered to be a sustainable one.

15. In the result, the writ petition is allowed. The impugned orders are quashed and in view of the same, the service benefits if any of the petitioner shall not be withheld by the respondents. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
1. The Commissioner,
Salem Corporation,
Salem.

2. The Appointing Committee,
Appellate Authority,
Salem City Municipal Corpn,
Salem.

+1cc to Mr.G. Sankaran, Advocate, S.R.No.61655
+1cc to Mr.R.N. Amarnath, Advocate, S.R.No.61657

pk (CO)
md (11/11/2016)

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