IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4443 OF 2015

Vinayak Ganesh Athalye
Aged 73, Retired Asst. Commnr. of Sales Tax,
residing at 6, City Arch, Manpada Road,
Dombivli (E), Thane 421 201. … Petitioner

Versus

1. State of Maharashtra
Through Secretary Finance
IIIrd Floor, Mantralaya, Mumbai-400032.

2. The Commissioner of Sales Tax
Vikrikar Bhavan, VIII th Floor,
Mazgaon, Mumbai-400010 … Respondents

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Mr. Vinayak Ganesh Athalye – Petitioner-in-person – present.
Mr. O.M. Kulkarni, AAGP for the Respondents-State.

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CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. KARNIK, J.

RESERVED ON : 15th DECEMBER, 2017.
PRONOUNCED ON: 21st DECEMBER, 2017.

<u>ORDER : [PER M. S. KARNIK, J.]</u>

1. Rule. Rule made returnable forthwith. Heard finally by consent.

2. The petitioner's challenge in this petition is to the order passed by the Maharashtra Administrative Tribunal (hereinafter referred to 'the Tribunal' for short) in Original Application No. 274 of 2011 filed by the petitioner, thereby dismissing the O.A.

3. The petitioner filed the Original Application and prayed for the following relief:

> "*Respondent No. 1 & 2 be ordered to issue "Gratuity" with interest and Revised Pension from 1.1.66 to the incumbent Petitioner immediately since September, 2010 alongwith interest.*"

4. The O.A. came to be amended on 13/04/2011, thereby seeking the following reliefs:

> "*(a) The Departmental Enquiry Order under M.C.S. (Pension) Rule 1982 – Rule 27 of even No: VKV/1004/Pr.Kr. 1989/04/V.P. No: 1 Dated 08.09.2010 passed by Government of Maharashtra be quashed abinitio i.e. from 08.09.2010. The order be set aside.*
>
> *(b) The Department Enquiry Order No: ACC-1096/GOP/Estt-2/374 dated 07.08.2000 be squashed against the Petitioner. The order be set aside.*
>
> *(c) The Petitioner states that the Appeal under Rule 18 of M.C.S. (Discipline and Appeal) Rules, 1979 in only before the same final authority i.e. Governor of Maharashtra who has consented the order of the State Government dated 08.09.2010 may not be treated as Appeal pending before the Authority.*
>
> *(d) The Respondents No: 1 & 2 be ordered to settle all pending claims and retirement benefits with revision of* ***pay/pension*** *alongwith Gratuity and commutation of pension with interest.*"

5. The petitioner has challenged the order of the Tribunal before this Court and has prayed for the following reliefs in this petition:

> "*a) It is humbly requested to issue orders to the Respondents No. 1 & No.2; to allow claims (1 to 13) to the petitioner as these are legitimate claims & legal once.*
>
> *b) All the claims be issued with 24% interest compounded monthly as the respondent could not show why the Disciplinary Action was taken on 7/8/2000 and prolonged for 15 years.*
>
> *c) As the claim were legitimate and denied without reason as the petitioners carrier was became ruthless, a compensation of Rs. 35 crores is demanded herewith which is demanded in O.A. No. 274/2011 before the Maharashtra Administrative Tribunal.*"

6. In view of the law laid down by the Apex Court in the case of **L. *Chandra Kumar Vs. Union of India and others, AIR 1997 SC 1125*** it is not possible for us to examine as many as 12 claims raised by the petitioner as a court of first instance in the exercise of our jurisdiction under Article 226 of the Constitution of India without the petitioner first approaching the Tribunal with these grievances.

7. We have therefore, examined the impugned order of the Tribunal only in the light of the plea raised by the petitioner in the O.A.

8. The petitioner was posted as Assistant Commissioner (Administration) with the Sales Tax Department of the respondents. In respect of a particular assessee the petitioner took up a suo-motu revision for the assessment year from 01/04/1993 to 31/03/1994 and thereby passed an order under Section 57 of the Bombay Sales Tax Act, 1959 (hereinafter referred to as 'the said Act' for short). On the allegation that the petitioner has passed an order under Section 57 of the said Act on 14/12/1999 without issuing statutory notice in Form-40 which is mandatory thereby causing a permanent loss to the Government Treasury amounting to Rs. 3,21,696/- by his negligence, it was decided to proceed against the petitioner departmentally. The order dated 14/12/1999 was set aside by the Maharashtra Sales Tax Tribunal. The departmental enquiry against the petitioner was started. The Sales Tax audit pointed out that set off under the provisions of Rule 41 allowed at Rs. 1,98,578/- was irregular. The enquiry officer came to the conclusion that as a result of negligence on the

part of the petitioner there is loss of revenue to the tune of Rs.3,21,696/-, for which the petitioner is responsible. The disciplinary authority by order dated 08/09/2010 imposed the punishment forfeiting the petitioner's gratuity of Rs. 2,60,900/- permanently and a sum of Rs. 1,000/- per month be recovered from the pension payable to the petitioner for a period of five years.

9. The petitioner, thereafter filed an appeal before the State Government under the Maharashtra Civil Services Rules. The appellate authority heard the petitioner on 12/01/2013 and 24/07/2014. The appellate authority came to the conclusion that as a result of non issuance of the mandatory notice under Rule 40 while conducting the proceeding under Section 57 of the said Act, revenue loss of Rs. 3,21,696/- is caused to the Department. The appellate authority, however, took a sympathetic view and set aside the order of the disciplinary authority forfeiting the gratuity. The punishment of deduction of Rs. 1,000/- per month for a period of five years from the pension payable to the petitioner was however maintained.

10. The petitioner approached the Tribunal by filing Original Application. The averments in the O.A. makes it clear that the petitioner approached the Tribunal challenging the disciplinary proceedings initiated against him. The Tribunal after taking into consideration the materials on record, dismissed the O.A.

11. We have heard the petitioner-in-person at some length. As indicated earlier, we are not inclined to consider the claims raised by the petitioner for the first time before this Court without the petitioner having approached the Tribunal for adjudicating the same.

12. The petitioner was unable to point out any procedural defect in the conduct of the enquiry before the inquiring authority. We also do not find as there has been any breach of principles of natural justice either at the stage of holding of the enquiry before the inquiring authority or at the time of hearing of the departmental appeal before the State Government. The petitioner mainly assailed the findings of the disciplinary authority on the ground that the monetary loss caused to the respondents cannot be attributed to him. In his submission he had served the valid

notice on the assessee and conducted the proceedings in accordance with law. The petitioner contended that the disciplinary enquiry was initiated only with a view to victimise and harass him.

13. The scope of interference by the Tribunal or this Court in disciplinary proceedings is very limited. It is a settled law that the High Court is not constituted in proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant; it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence, may reasonably support the conclusion that the delinquent officer is guilty of the charges, it is not the function of the High Court in a petition for a writ under article 226 to review the evidence and to arrive at an independent finding on the evidence. This Court may undoubtedly interfere where the departmental authorities have held the proceedings

against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant consideration or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of fact and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before this Court in a proceedings for a writ under article 226 of the Constitution. It is a settled law that in proceedings under article 226 and 227 the High Court cannot sit in appeal over the findings recorded by a competent tribunal in departmental enquiry.

14. In this view of the matter, it is not possible for us to sit in appeal over the findings of the disciplinary authority. The

departmental enquiry against the petitioner was initiated on the ground that loss of revenue was caused to the respondents because of his negligence. Failure to issue the notice under Form 40 on the assessee as mandated by the said act was the cause for the respondents to proceed against the petitioner. As indicated earlier, the petitioner has not pointed out any procedural defect in the conduct of the enquiry which has caused prejudice to the petitioner. We find that the petitioner was given an opportunity to defend himself during the course of the enquiry. Upon going through the findings of the enquiry officer, we do not find that this is a case of no evidence before the disciplinary authority or that the conclusions arrived at by the disciplinary authorities is in any way arbitrary or capricious.

15. The appellate authority has in fact partly interfered with the punishment imposed by the disciplinary authority and has set aside the punishment forfeiting the gratuity. The punishment of recovery of pension of Rs. 1,000/- per month for a period of five years has been retained. We do not find the punishment imposed is shockingly disproportionate to the misconduct proved so as to warrant interference.

16. The present petition is therefore devoid of any merits and is accordingly dismissed with no order as to costs. Rule is discharged.

(M. S. KARNIK, J.) **(ACTING CHIEF JUSTICE)**