IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.8753 of 2017

K.Saroja .. Petitioner

-vs-

The Additional Chief Secretary/Commissioner
Commercial Taxes
Chepauk
Chennai 600 005 .. Respondent

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the respondent in connection with the impugned order passed by him in Proc.No.EE2/10652/2014 dated 20.07.2016 and quash the same and further direct the respondent to treat the stay period as duty with all service and monetary benefits.

For Petitioner:: Mr.S.Sivakumar

For Respondent:: Mr.S.Kanmani Annamalai
Addl. Government Pleader (Taxes)

ORDER

This writ petition challenging the correctness of the impugned order imposing a punishment of stoppage of increment for one year without cumulative effect on the petitioner, straightaway deserves to be allowed, for the sole reason that when the very same impugned orders dated 20.7.2016 inflicting the very same punishment against Mr.G.Arunachalam, Mr.A.Anbu Ganesan, Mr.N.Balu and Mr.T.Ravichandran were questioned by them before this Court in W.P.Nos.31516 to 31519 of 2016, by a common order dated 4.1.2017, the learned Judge, holding that the findings of the disciplinary authority recorded in the orders impugned are based upon no evidence and as such they warrant interference, set aside the orders impugned. It was also held that the disciplinary authority, on receipt of the findings of the enquiry officer in favour of the delinquents, before differing from the report of the enquiry officer, should have issued notice citing the reason for his deviation from the report of the enquiry officer, which had not been done, as per the dictum laid down by the Apex Court in Lav Nigam v. Chairman & MD, ITI Ltd., and another, (2006) 9 SCC 440. Thirdly, it was also observed that the disciplinary authority had placed reliance upon certain records, the details of which have not been disclosed in the order impugned and that the reasons assigned in the order impugned are also based upon surmises and conjectures. It is therefore necessary to extract paragraphs 12 to 15 of the order passed in W.P.Nos.31516 to 31519 of 2016 dated 4.1.2017, wherein the learned Judge has quashed the very same impugned order passed against Mr.G.Arunachalam, Mr.A.Anbu Ganesan, Mr.N.Balu and Mr.T.Ravichandran, holding as follows:-

> "12. In Lav Nigam v. Chairman & MD, ITI Ltd. and another [(2006) 9 SCC 440], it has been held that in case the Disciplinary Authority differs with the view taken by the Inquiry Officer, he is bound to give a notice setting out his tentative conclusions to the delinquent and only after hearing the delinquent, the Disciplinary Authority shall arrive at a final finding of guilt and thereafter, the employee/delinquent would again have to be served with a notice relating to the punishment proposed. Admittedly, the said procedure has been given a complete go-by by the respondent/Disciplinary Authority.
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> 13. It is brought to the knowledge of this Court by the learned counsel appearing for the petitioners that three of the Office Assistants have also been proceeded with on the same set of allegations and though the Enquiry Officer has also reached the conclusion that the charges framed against them are not proved, the Disciplinary Authority has also chosen to accept the said finding and did not proceed further. In the considered opinion of the Court, the procedure adopted by the Disciplinary Authority is contrary to the dictum laid down by the Hon'ble Supreme Court in Lav Nigam v. Chairman & MD, ITI Ltd. and another [(2006) 9 SCC 440]. That apart, the Disciplinary Authority has placed reliance upon certain records, the details of which have not been disclosed in the impugned order and the reasons assigned in the impugned order are also based upon surmises and conjectures.

> 14. It is pertinent to point out at this juncture that though the Disciplinary Authority has recorded the finding that the officials have colluded with the tax evaders, the details of the tax evaders and the action taken against him have not been disclosed. In the considered opinion of the Court, the findings recorded by the Disciplinary Authority in the impugned orders are based upon no evidence and as such, the impugned orders warrants interference.
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> 15. In the result, these Writ Petitions are allowed and the impugned orders of the respondent in Proc.No.EE2/10652/2014 dated 20.07.2016 are set aside and the respondent is directed to treat the period in which interim orders of stay passed in W.P.Nos.11121 to 11125 of 2014, are in force, as duty period with all service and monetary benefits and pass appropriate orders in accordance with law within a period of six weeks from the date of receipt of a copy of this order. No costs.”

2. Heard Mr.S.Sivakumar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent.

3. The petitioner was directly recruited as Typist through the Tamil Nadu Public Service Commission and promoted as Assistant in the year 1999. Subsequently, she was promoted as Deputy Commercial Tax Officer and she claims that her service is meritorious. The petitioner, on completion of nine months training, was posted as Deputy Commercial Tax Officer (DCTO) at Kottakuppam checkpost and she served there for a period of three months from November, 2013 to February, 2014 and thereafter, again reported to the parent unit. The petitioner would state that to her shock and surprise, the respondent has passed an order dated 07.04.2014 transferring her from Vellore Division to Trichy Division and challenging the order of transfer, the petitioner has filed W.P.No.11125 of 2014 and the order of transfer was stayed by this Court and in the meanwhile, the petitioner was also issued with a charge memo dated 30.04.2014 alleging that while she was serving as DCTO at Kottakuppam check-post has accepted the transit passes surrendered by the persons in-charge of vehicles related to movement of oil to Puducherry State without actual movement of vehicle with goods and the said act has been done with the connivance of dealers and thereby caused revenue loss to the Government to the tune of

Rs.13,21,001/-. The writ petition filed by the petitioner challenging the order of transfer was disposed of with certain directions and she has also joined in the transferred post and thereafter, submitted her explanation to the charge memo. The Assistant Commissioner (CT), Enforcement, Vellore was appointed as the enquiry officer and after enquiry, it was found that the charges framed against the petitioner are not proved and the enquiry report was placed before the Disciplinary Authority, namely the respondent. The disciplinary authority has recorded reasons for disagreeing with the findings of the enquiry officer by taking into consideration, verification of the vehicular movement recorded at Anumanthai Toll Plaza at the East Coast Road and other materials and held that the charges framed against the petitioner had been proved and imposed the punishment of stoppage of increment for a period of one year without cumulative effect, vide impugned order dated 20.07.2016. The petitioner, challenging the legality of the same, has filed this writ petition.

4. When the very same impugned order dated 20.7.2016 passed by the Additional Chief Secretary/Commissioner of Commercial Taxes, Chennai has been quashed by this Court vide order dated 4.1.2017 in W.P.Nos.31516 to 31519 of 2016 filed at the instance of four persons as mentioned above, I have no other option except to follow the very same order. Therefore, the writ petition stands allowed and the impugned order passed against the petitioner stands set aside, for the reasons already mentioned above, with a direction to the respondent to treat the period in which interim orders of stay passed in W.P.Nos.11121 to 11125 of 2014, are in force, as duty period with all service and monetary benefits and pass appropriate orders in accordance with law within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ss

To

1. The Additional Chief Secretary/Commissioner
   Commercial Taxes
   Chepauk
   Chennai 600 005

+1cc to Mr.Siva kumar, Advocate, S.R.No.22057
+1cc to the Government Pleader, S.R.No.22353

W.P.No.8753 of 2017

GJII(CO)
RS(05/05/2017)