

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.4115 of 2011

and

M.P.No.1 of 2011

1.G.Punithavathy (Deceased)
2.C.Sundaram
3.C.S.Rakhavi
4.C.S.Archana ... Petitioners
(P2 to P4 are substituted as LR's of deceased
P1-G.Punithavathy, as per order dated
06.10.2016 by this Court in
WMP.No.16469 of 2016 in WP.No.4115 of 2011)

.Vs.

1. State of Tamil Nadu, rep. by its
Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai - 9.
2. The Principal Secretary and Commissioner
of Commercial Taxes,
Chepauk, Chennai - 5. Respondents

Prayer:- Writ Petition filed under Article 226 of the
Constitution of India, for issuance of writ of Certiorarified
Mandamus, calling for the records pertaining to the order
passed by the 2nd respondent in proceeding No.E1/45621/06-II
dated 15.07.2009 as confirmed by the 1st respondent in G.O.(D)
No.466 Commercial Taxes and Registration Department dated
15.11.2010, and quash the same and direct the respondents to
confer all the consequential benefits on the petitioner.

For Petitioners : Mr.C.Vediyappan
for M/s.C.S.Associates

For Respondents : Mr.Kanmani Annamalai
(for R1 and R2)
Special Government Pleader

ORDER

The Petitioner has filed the instant Writ Petition for
Certiorarified Mandamus to call for the records pertaining to
the order passed by 2nd respondent in proceeding

No.E1/45621/06-II dated 15.07.2009 as confirmed by the 1st respondent in G.O.(D)No.466 Commercial Taxes and Registration Department dated 15.11.2010 and quash the same.

2.The case of the petitioner is that she joined as Junior Assistant in the Department of Commercial Tax on 22.03.1982. While the petitioner was working as Assistant in the office of the Deputy Commercial Tax Office at Arni, a surprise inspection was held by the Vigilance and Anti Corruption Department on 29.03.2005 and they found in possession of Rs.720/- by the petitioner which according to the Vigilance Department was an unaccounted money since the petitioner failed to give proper explanation for the said amount. Thereafter on 23.11.2006 the petitioner was issued with charge memo under Rule 17(b) of the Tamilnadu Civil Services (Discipline and Appeal) Rules on the ground that the petitioner was possessed unaccounted money of Rs.720/-.

3.The petitioner gave explanation for the said charge memo stating that she is a chronic patient and she has to take treatment periodically. Further, she is a physically challenged woman and she used to come office by Auto Rickshaw and for that she has been keeping some amount always with her. However, without satisfying the explanation offered by the petitioner, an enquiry officer was appointed and the enquiry officer held that all the charges leveled against the petitioner were proved and submitted enquiry report on 4.11.2008. Thereafter, the 2nd show cause notice was issued on 12.01.2009 and for that the petitioner submitted her explanation on 27.02.2009. The 2nd respondent has not accepted the explanation of the petitioner, imposed punishment of stoppage of increment for five years with cumulative effect.

4.Because of the said punishment, the petitioner was denied promotion. As against the order of punishment of the 2nd respondent, the petitioner preferred an appeal before the first respondent, who erroneously rejected the appeal filed by the petitioner without considering any of the point raised by the petitioner. Against which the petitioner has come up with this writ petition.

5.Pending writ petition, the petitioner G.Punithavathy died on 02.12.2015 and her legal heirs were brought on record by substituting them in the place of the deceased petitioner vide W.M.P.No.16469 of 2016 dated 06.10.2016.

6.I heard Mr.C.Vediyappan, learned counsel appearing for the petitioners and Mr.Kanmani Annamalai, learned Special Government Pleader appearing for the respondents and perused the entire materials available on record.

7.It is the contention of the learned counsel for the

too physically challenged lady used to come to the office by Auto Rickshaw daily and therefore she used to keep some money with her daily for medical treatment. Sometime during office hour the petitioner fell down due to her neuro problem and her colleague used to take her to the hospital. Therefore the possession of Rs.720/- by the petitioner on 29.03.2005 during the sudden inspection by the Vigilance and Anti Corruption Department personnel cannot be construed as unaccounted money. However, without accepting the explanation of the petitioner the Vigilance Department termed Rs.720/- seized from the petitioner as unaccounted money. Hence, the petitioner was issued with charge memo under Rule 17(b) of the Tamilnadu Civil Services (Discipline and Appeal) Rules. Without accepting the explanation submitted by the petitioner, the 2nd respondent appointed enquiry officer and the enquiry officer without following the principles of natural justice gave finding that the charges against the petitioner were held to be proved.

8. According to the learned counsel for the petitioner, even though the petitioner has substantiated her case by producing all the medical records to the enquiry officer, the enquiry officer erroneously held that there is no medical records to show that on 29.03.2005 the petitioner took treatment during the crucial time of inspection between 2.15 p.m to 9.00 p.m. The said finding shows the malafide intention of the enquiry officer. This Court has given anxious consideration to the arguments put forth by the learned counsel for the petitioner. This Court is of the considered opinion that the finding of the enquiry officer to the effect that the petitioner has not produced any medical records to show that she took treatment during the relevant time of inspection on 29.03.2005 is unsustainable in law, unconstitutional and highly arbitrary. Merely because the petitioner was found in possession of Rs.720/- during the sudden inspection by the Vigilance Department on 29.03.2005, it is not necessary that the petitioner should have taken treatment on that date and should produce medical records, since the petitioner being chronic patient. The enquiry officer should have considered the other medical records produced by the petitioner to support her case that she suffered with neuro problem. But the perusal of the records shows that the enquiry officer has not at all considered the said documents, however, gave finding that as if the petitioner has not produced any medical records in support of her case. Further, the fact remain that even though the petitioner has undergone the currency of punishment, was not given promotion, is of the considered view that the punishment is shockingly disproportionate to the delinquency on her part.

9. Further, this Court is of the opinion that mere possession of Rs.720/- by the petitioner at the time of surprise inspection by the Vigilance Department will not amounts to guilty of violation of conduct rules. Ordinarily

everyone will be in possession of some amount for their urgent necessity. In this case, the petitioner being the chronic patient physically challenged lady naturally would be in possession of some money. Apart from this, the Authority like this petitioner should not look with the law and rules only, but they also should have the humanitarian consideration like this petitioner, who is physically challenged lady. The explanation offered by the petitioner and the documents produced by her shall be acceptable one and the same cannot be ignored simply. Therefore, the original order of punishment of stoppage of increment for a period of five years with cumulative effect on the basis of the enquiry report by the 2nd respondent is not sustainable and the same is liable to be quashed.

10. Further, a perusal of the impugned order of the 1st respondent shows the non-application of mind. The first respondent has not at all considered any of the point raised on the side of the petitioner while rejecting the appeal filed by the petitioner. The first respondent has simply rejected the appeal filed by the petitioner without giving any independent finding. The impugned order of the first respondent shows its totally non-application of mind and so, it is liable to be set aside.

11. As stated above, the writ petitioner died, pending writ petition and her legal heirs, the petitioners 2 to 4 were substituted in her place. Since this Court holds that the impugned orders are to be quashed, the petitioners 2 to 4 are entitled to receive the service monetary benefits of the deceased 1st petitioner G. Punithavathy.

12. For the foregoing discussion, I am of the considered view that the order of punishment of stoppage of increment for a period of five years with cumulative effect is not sustainable under law and facts and the same deserves to be set aside. Accordingly the impugned orders are quashed.

13. In the result, this writ petition is allowed by setting aside in proceeding No.E1/45621/06-II dated 15.07.2009, passed by the 2nd respondent in G.O.(D)No.466 Commercial Taxes and Registration Department dated 15.11.2010. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat,
Chennai - 9.
2. The Principal Secretary and Commissioner
of Commercial Taxes,
Chepauk, Chennai - 5.

+1cc to M/s.C.S.Associates, Advocate, S.R.No.9607

W.P.No.4115 of 2011
and
M.P.No.1 of 2011

SV(CO)
CA(25/05/2017)



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