IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 29.11.2017
Coram

The Honourable Mr.Justice V.PARTHIBAN

W.P. No.28367 of 2010

B.Manivannan ... Petitioner

versus

1. The Secretary to Government,
Commercial Taxes & Registration
(A1) Department,
Secretariat, Chennai-600 009.

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

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the second respondent herein in his Procds.No.E1/67311/2004 dated 12.10.2007 imposing a punishment of stoppage of increment for three years with cumulative effect and the consequential order passed by the first respondent herein passed in G.O.(D) No.453, Commercial Taxes and Registration (A1) Department, dated 3.11.2010 and quash the same and consequently direct the respondents herein to repay the petitioner the monetary benefits withheld due to above punishment with all other service benefits.

For Petitioner : Mr.Ravishanmugam

For Respondents : Mr.K.Venkatesh, GA

ORDER

The present writ petition has been filed, seeking for the following relief:

> "To issue of Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the second respondent herein in his Procds.No.E1/67311/2004 dated 12.10.2007 imposing a punishment of stoppage of increment for three years with cumulative effect and the consequential order passed by the first respondent herein passed in G.O.(D) No.453, Commercial Taxes and Registration (A1)

Department, dated 3.11.2010 and quash the same and consequently direct the respondents herein to repay the petitioner the monetary benefits withheld due to above punishment with all other service benefits.

2. The petitioner joined the Commercial Taxes and Registration Department originally as a Record Clerk on 13.8.1974 and was promoted as Junior Assistant on 10.12.1984 and thereafter as Assistant on 4.1.1990 and as Assistant Commercial Tax Officer on 1.3.1996. The post of Assistant Commercial Tax Officer was subsequently re-designated as Deputy Commercial Tax Officer in G.O.Ms.No.265 dated 26.8.2010.

3. While working as Assistant Commercial Tax Officer, the petitioner was issued with a charge memorandum dated 6.2.2005 under Section 17(b) of the Tamil Nadu Civil Services (D&A) Rules (in short, TNCS Rules), wherein, five articles of charges came to be framed against the petitioner. The substance of the charges was that an amount of Rs.97000/- was found in office almirah at the Vehicle Check Post, Thiruvottiyur on 28.9.2004 and the petitioner was also found in possession of Rs.985/- and Rs.2000/- for which, he had no proper accounts during the time of inspection. In response to the charge memorandum, a detailed explanation was submitted by the petitioner, denying the same. However, an enquiry was conducted into the charges and the Enquiry Officer, on conclusion of the enquiry, held that the charges 2 and 3 were not proved, i.e. the petitioner having in possession of Rs.985/- and Rs.2000/-, while the charge Nos.1, 4 and 5 were proved. The Disciplinary Authority called for explanation of the petitioner in respect of the findings of the Enquiry Officer pertaining to charge Nos.1, 4 and 5 which were held proved. The petitioner submitted his elaborate explanation on 7.6.2006. However, the Disciplinary Authority, namely, the second respondent herein, vide proceedings dated 12.10.2007 passed order imposing punishment of stoppage of increment for a period of three years with cumulative effect. Along with the petitioner, two other co-delinquents, viz., Thiru N.Elangovan and Tmt.T.Saraswathi were also punished by the first respondent and punishment imposed on them, was cut in pension.

4. Against the order passed by the Disciplinary Authority, the petitioner preferred a statutory appeal on 5.12.2007. In the appeal, the petitioner had set out several infirmities in the conduct of the enquiry, namely, that the findings in respect of charge Nos.1, 4 and 5 were unsupported by any evidence and the order of the Disciplinary Authority punishing the petitioner was also a discriminatory since other two co-delinquents were let off with very minor penalty of cut in pension and more over, the order passed by the second respondent was in violation of

Rule 9(A) of the TNCS Rules as amended in G.O.Ms.No.223 Personnel and Administrative Reforms Department dated 26.6.1993. However, without consideration of various infirmities pointed out in the appeal, vide G.O.(D) No.453 Commercial Taxes & Registration (A1) Department, dated 3.11.2010, the first respondent rejected the appeal after a period of three years.

5. According to the petitioner, during the pendency of the appeal, he came within the zone of promotion as Commercial Tax Officer for the year 2005-06 and his case was not considered in view of the pendency of the disciplinary action, whereas, his juniors came to be promoted as Commercial Tax Officers. The orders passed by the Disciplinary Authority dated 12.10.2007 and the appellate authority in G.O.(D) No.453 dated 3.11.2010 are put to challenge in the present writ petition.

6. Mr.Ravishanmugham, learned counsel appearing for the petitioner, at the out set, would submit that the order of penalty stands vitiated for more than one reason, namely, that the impugned order passed by the Disciplinary Authority on 12.10.2007 is contrary to Rule 9(A) of the TNCS Rules.

7. Rule 9(A) of the TNCS Rules, relied upon the learned counsel for the petitioner, is extracted hereunder:

> " 9(A). In any case where more than one Government servant of the same Department are jointly involved or whose cases are interconnected, the authority competent to institute disciplinary proceedings shall be the immediate higher authority in that Department in respect of the Government servant who holds the highest post among such Government servants and the disciplinary proceedings against all of them shall be taken together. Where inquiry is to be conducted in terms of rule 17(b), the said authority may either himself conduct the inquiry or get the inquiry conducted by an Inquiring Officer appointed by the authority competent to impose major penalty in respect of the Government servant who holds the highest post among such Government servants. The said authority shall remit the case, at the appropriate stage, to the authority competent to impose any of the penalties specified in rule 8 in respect of the Government servant who holds the highest post among such Government servants in that Department for passing final orders."

8. According to the learned counsel, the other co-delinquents, namely, Thiru N.Elangovan and Tmt.T.Saraswathi, who were Deputy Commercial Tax Officers and whose Disciplinary

Authority was the first respondent and therefore, the order passed by the second respondent suffers from want of jurisdiction and therefore, the punishment is liable to interfered with.

9. Further, th learned counsel would also contend that even assuming that the second respondent was competent to pass orders, the findings by the Enquiry Officer were unsupported by any evidence and this was a clear case of no evidence. Therefore, imposition of penalty by the second respondent on the basis of evidence, cannot be countenanced both in law and on facts. In this regard, he would draw the attention of this Court to the enquiry findings which, in fact, will very much support the contention of the learned counsel for the petitioner.

10. It appears that the Enquiry Officer has not recorded satisfying reasons and there was no proper appreciation of evidence and merely went by the fact that Rs.97000/- was found in almirah and therefore, there was a presumption that the money was meant for the petitioner. Even with regard to charge No.4, it has to be seen that there was a proper explanation from the petitioner's side, which was not taken into account and the charge by itself was very vague and cannot be held to be established by whatever evidence let in during the enquiry. Moreover, the learned counsel for the petitioner would also contend that the appellate authority sat over the appeal for three long years before the final order came to be passed on 3.11.2010. However, the order passed by the appellate authority is also in violation of Rule 23 of the TNCS Rules. Rule 23 is extracted herein below:

> " 23. Power and procedure of the Appellate Authorities.
> (1) In the case of an appeal against an order imposing any penalty specified in rule 8 or 9, the appellate authority shall consider-
> (a) whether the facts on which the order was based have been established;
> (b) whether the facts established afford sufficient ground for taking action; and
> (c) whether the penalty is excessive, adequate or inadequate and pass orders:
> (i) confirming, enhancing, reducing, or setting aside the penalty; or
> (ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;
> Provided that -
> (i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v), (vi),

(vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has not already been held in the case, the appellate authority shall, subject to the provisions of sub-rule (c) of rule 17, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of sub-rule (b) of rule 17 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit;
(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v), (vi), (vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has already been held in the case, the appellate authority shall , after giving the appellant a reasonable opportunity of making representation against the penalty proposed on the basis of the evidence adduced during the enquiry, make such orders as it may deem fit; and
(iii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of sub-rule (a) of rule 17 of making representation against such enhanced penalty.

(2) Any error or defect in the procedure followed in imposing a penalty may be disregarded by the appellate authority if such authority considers, for reasons to be recorded in writing, that error or defect was not material and has neither cause injustice to the person concerned nor affected the decision of the case."

11. According to the learned counsel, the appellate authority extracted the grounds of appeal and passed a cryptic order without delving the issues raised in the appeal in a proper perspective. This Court finds that there is some force in the contention put forth by the learned counsel for the petitioner that the appellate authority was merely guided by the advice tendered by the Tamil Nadu Public Service Commission in that regard and he seemed to have abdicated his statutory responsibility to deal with the appeal in detail. Therefore, the learned counsel would conclude that for more than one reason, the penalty imposed on the petitioner, has to go lock, stock and barrel.

12. On the other hand, a detailed counter affidavit has been filed by the learned counsel for the respondent and that he would contend that after due enquiry, the punishment was imposed

and the punishment which was imposed was a minor one considering the gravity of misconduct alleged against the petitioner. The learned counsel would also submit that the petitioner having participated in the enquiry and having been given an opportunity, cannot assail the enquiry proceedings. According to the learned counsel, even in the same enquiry, the petitioner was exonerated of charge Nos.2 and 3 which meant that the enquiry was impartially conducted.

13. This Court considered the contentions put forth by the learned counsel appearing for the parties on the basis of available materials and legal position.

14. As rightly contended by the learned counsel for the petitioner, firstly the order passed by the second respondent is invalid for the reason that the same was passed in violation of Section 9(A) of TNCS Rules as extracted above. The co-delinquents who happened to be the higher officials and whose disciplinary authority was the first respondent and in terms of the above said Rule, the first respondent was the competent authority to issue orders. In this case, in violation of the said Rule, the order has been passed. Therefore, on this ground alone, the impugned penalty has to be set aside.

15. Be that as it may, the findings of the enquiry officer, as rightly contended by the learned counsel for the petitioner, is not supported by any clinching piece of evidence as regards the allegation against the petitioner that the money which was kept in almirah was meant for the petitioner. In regard to fourth charge, as pleaded, it was very vague and does not spell out any misconduct as such. Even otherwise, there was an explanation given by the petitioner for this charge which was not taken into consideration by the Enquiry Officer while concluding against the petitioner. Secondly, it has also to be seen that the appellate authority has not discharged his responsibility in terms of Rule 23 of TNCS Rules. He was merely guided by the advice tendered by the Tamil Nadu Public Service Commission as the order does not disclose any independent application of mind on his part. Therefore, on this ground also, the impugned orders are liable to be interfered with.

16. As concluded above, in all fours, the impugned orders cannot be sustained in law, first one was for want jurisdiction, second one was, it is a case of no evidence, third one was, the appellate authority's order is not in terms of statutory regulation.

17. In the light of the above, this Court has no hesitation to set aside the impugned orders. Accordingly, the order of the second respondent in Proceedings No.E1/67311/2004 dated 12.10.2007, imposing a punishment of stoppage of increment for three years with cumulative effect and the consequential order

passed by the first respondent passed in G.O.(D) No.453, Commercial Taxes and Registration (A1) Department, dated 03.11.2010, are set aside. There shall be a consequential direction to restore the pay of the petitioner as it was before imposition of penalty with all consequential attendant benefits. Since the punishment imposed on the petitioner, has been set aside, he is entitled to be considered for promotion to the post of Commercial Tax Officer from the date when his juniors came to be promoted. Such promotion shall be given to the petitioner if he is otherwise fit and grant all other benefits as admissible. It is informed that the petitioner had retired from service on attaining the age of superannuation, it is needless to say that on implementation of the present direction, the petitioner is entitled all pensionary benefits thereto.

18.With the above observation and directions, the Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Commercial Taxes & Registration
(A1) Department,
Secretariat, Chennai-600 009.

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

+1cc to Mr.Ravi Shanmugam, Advocate, S.R.No.85040

+2cc to the Spl.Government Pleader, S.R.No.84919,85050

W.P.No.28367 of 2010

GMR(CO)
RRK(22/01/2018)