Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3513 OF 2015

Shivaji Baburao Avhad .. Petitioner
Vs.
The Commissioner of Sales Tax
Maharashtra State and anr. .. Respondents

Mr.S.V.Sadavarte i/b Mr.Swapnil R. Patil, for the Petitioner.
Mr.O.M.Kulkarni, AAGP for Respondents.

CORAM : SMT. V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.

DATE : 22th JANUARY, 2018

ORDER (PER M.S.KARNIK, J.) :

1. The petitioner by this Petition filed under Article 226 of the Constitution of India challenges the order dated 12/12/2014 passed by the Maharashtra Administrative Tribunal in OA/89/14 to the extent of confirming the order passed by the respondents with regard to the treatment of suspension period. The petitioner has prayed that the period of suspension from 28/08/2001 to 31/05/2011 be treated as period of spent on

duty and for all consequential benefits.

2. In OA/89/2014 the petitioner prayed for declaring the order dated 17/01/2014 as illegal and bad in law. In the order dated 17/01/2014 it is mentioned that the period of suspension of the petitioner from 28/08/2001 to 30/05/2011 should be treated as suspension period for all purposes.

3. By order dated 28/08/2001 the petitioner who was working as a Clerk in Sales Tax office at the relevant time was suspended pursuant to his arrest and registration of criminal offence under section 7 of the Prevention of Corruption Act, 1988 by Anti Corruption Bureau. The departmental enquiry was also initiated against the petitioner. The petitioner has now retired.

4. The petitioner was acquitted in the criminal case on 10/01/2011. He was reinstated on 29/04/2011 on conclusion of the departmental enquiry. By order dated 22/02/2012

punishment of stoppage of one increment for period of one year with permanent effect was imposed on him. By order dated 04/05/2012 the period of suspension was treated as suspension period for all purposes. Departmental Appeal was filed and by order dated 08/08/2012 Appeal came to be rejected. OA/952/2012 was filed by the petitioner challenging the order dated 04/05/2012 treating the suspension period to be suspension period for all purposes except for the purpose of pension. The Tribunal disposed of OA/952/2012 on 08/05/2013. The petitioner also filed OA/953/2012 challenging the order dated 22/02/2012 imposing upon the petitioner punishment of stoppage of one increment for period of one year with permanent effect.

5. Insofar as OA/952/2012 is concerned, the Tribunal was pleased to pass the following order :

> "8. Under the facts and circumstances of the case as discussed above, I do not think that there is any need to interfere with the impugned order dated 4.5.2012. Original Application is dismissed. There will be no order as to costs."

6. Insofar as OA/953/2012 is concerned, the Tribunal was pleased to pass the following order.

> "6. The Original Application is disposed of with the direction to the Respondent No.2 to give full opportunity to the Applicant to effectively challenge the order dated 22.2.2012 passed against him in the DE by the Respondent No.1. All the issues raised by the applicant should be considered by the Appellate Authority and a reasoned order passed and communicated to the Applicant, who should be given personal hearing, if he so desired. This should be completed expeditiously, preferably within a period of three months from the date of receipt of this order. There will be no order as to costs."

7. Thus, the Tribunal dismissed the challenge of the petitioner in OA/952/2012 in which OA the petitioner prayed for treating the period of suspension as period spent on duty. The order dated 08/05/2013 passed by the Tribunal so far as this aspect is concerned attained finality as the petitioner chose not to challenge the order in OA/952/2012.

8. However, insofar as OA/953/2012 is concerned, the Tribunal was pleased to direct the respondents to give opportunity to the petitioner to effectively challenge the order dated 22/02/2012 passed against the petitioner imposing on

him punishment of stoppage of one increment for a period of one year with permanent effect. It appears that pursuant to the directions of the Tribunal in OA/953/2012 the respondents passed the order dated 17/01/2014. By the order dated 17/01/2014 apart from considering the challenge to the order dated 22/02/2012 imposing the punishment of stoppage of one increment, the respondent also mentioned that the period of suspension from 28/08/2001 to 30/05/2011 should be treated as period not spent on duty except pension. The position therefore is that the order passed by the respondents treating the period of suspension as period not spent on duty for all purposes except pension has attained finality as the order passed in OA/952/2012 was not challenged by the petitioner. In our opinion, mere mentioning about the aspect of suspension period in the order dated 17/01/2014 will not give the petitioner a fresh cause of action to challenge the order as this issue was already concluded in OA/952/2012.

9. We do not find any infirmity with the view taken by

the Tribunal that OA/89/2014 in its challenge to the order dated 17/01/2014 passed by the respondents so far as it relates to treating the period of suspension as period not spent on duty for all purposes except pension must fail. Consequently, we do not find any merit in this Petition. The Petition is dismissed. Rule is discharged with no order as to costs.

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