IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16-02-2018

Pronounced on : 23.02.2018

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Contempt Petition No. 1555 of 2015

J. Muthazhagu .. Petitioner

Versus

K. Rajaraman
Principal Secretary/Commissioner of
Commercial Taxes
Ezhilagam, Chepauk
Chennai - 600 005 .. Respondents

Petition filed under Section 11 of The Contempt of Courts Act, praying to punish the respondent for having disobeyed the order dated 08.01.2014 passed in WP No. 460 of 2014 by this Court.

For Petitioner : Mr. Praveen Alexander

For Respondent : Mr. Master Ganesh
Government Advocate (Tax)

ORDER

The petitioner has come forward with this contempt petition complaining that the respondent has wilfully disobeyed the order dated 08.01.2014 passed by this Court in WP No. 460 of 2014 and it warrants initiation of contempt proceedings against him.

2. The petitioner has filed WP No. 460 of 2014 praying to issue a Writ of Mandamus directing the second respondent therein, who is arrayed as respondent in this contempt petition, to implement the order passed by the Government in G.O. (Ms) No.99, Commercial Taxes and Registration Department dated 11.07.2013 in its full and final and grant all the service and monetary benefits within a time frame in the light of the representation dated 12.06.2015 submitted by him.

3. In the affidavit filed in support of WP No. 460 of 2014, it was stated by the petitioner that he was appointed as Record Clerk on 31.07.2000 on compassionate grounds and he was posted in the Commercial Tax Department, Madurai Division. According to the petitioner, as per G.O. Ms. No.1499, Employment and Labour Department dated 03.08.1999, he ought to have been appointed to the post of Junior Assistant when he possess requisite qualification for being appointed to that post, instead of appointing him to the post of Record Clerk. The petitioner also cited a similar order passed in favour of one Mr. Abdul Rehman and S. Janardhanan, in whose favour the department has passed an order appointing them to the post of Junior Assistant from the date of their respective appointment even though they were originally appointed as Record Clerk. According to the petitioner, after repeated representations, the department accepted his request and ultimately the Government passed an order in G.O. Ms. No.99, Commercial Tax

and Registration Department dated 11.07.2013 ordering to absorb the petitioner in the cadre of Junior Assistant from the date of his appointment as Record Clerk, with notional pay fixation, without monetary benefits. Thus, the petitioner has been appointed as Junior Assistant from 31.07.2000 by virtue of the order dated 11.07.2013 passed by the Government.

4. It is the grievance of the petitioner that even though his service was regularised in the cadre of Junior Assistant from the date of his appointment on 31.07.2000, the respondents did not confer him consequential service benefits in his favour. According to the petitioner, by virtue of the order passed by the Government absorbing his service as Junior Assistant from 31.07.2000, he is entitled for promotion to the post of Assistant in the year 2006 by including his name in the Panel drawn for promotion to the post of Assistant in the year 2006 and in the subsequent panel for promotion to the post of Deputy Commercial Tax Officer. The petitioner also cited several writ petitions filed by similarly placed persons like him before this Court and the orders passed thereon to contend that he was discriminated and that the department did not implement the order dated 08.01.2014 passed by this Court to implement the order passed by the Government in G.O. Ms. No.99 dated 11.07.2013 in its letter and spirit. Therefore, the petitioner has filed the writ petition for the relief stated above.

5. When the writ petition No. 460 of 2014 was taken up for hearing, this Court, after hearing both sides, passed an order dated 08.01.2014 directing the second respondent therein to implement the order passed by the Government in G.O. Ms.No. 99, Commercial Tax and Registration Department based on the representation of the petitioner dated 12.08.2013. Complaining that the aforesaid order dated 08.01.2014 passed in WP No. 460 of 2014 has not been complied with by the respondent, the present contempt petition is filed.

6. The learned counsel for the petitioner would vehemently contend that the non-compliance of the order dated 08.01.2014 passed in WP No. 460 of 2014 by the respondent is wilful and deliberate and therefore, appropriate contempt proceedings has to be initiated against the respondent. According to the learned counsel for the petitioner, in compliance with the directions issued by this Court, so far, the respondent has not passed any order on the representation dated 12.08.2013 of the petitioner which itself would be in violation of the order passed by this Court. It is also the contention of the learned counsel for the petitioner that this Court directed the respondent herein to pass appropriate orders on the representation dated 12.08.2013 of the petitioner, but an order was passed by the Joint Commissioner by way of reply dated 09.10.2014 to the notice dated 08.10.2014 stating that as and when an order declaring the

petitioner's probation is passed by the Government, the petitioner will be given all consequential benefits in the cadre of Junior Assistant from the date of his initial appointment. According to the petitioner, such an order passed by the Joint Commissioner of Commercial Taxes cannot be construed as the one which is in compliance with the directions issued by this Court. Even in the reply notice dated 09.10.2014, the order passed by this Court on 08.01.2014 in WP No. 460 of 2014 has not been referred to by the Joint Commissioner of Commercial Taxes. The learned counsel for the petitioner would further contend that pursuant to the order dated 08.01.2014 passed by this Court, the petitioner was conferred with promotion to the post of Assistant on 14.08.2015 and he was assigned Seniority in Serial No.1 of 2015. The learned counsel for the petitioner, by placing reliance on Fundamental Rules 27 (17) would contend that the seniority of the petitioner has been overlooked and his juniors have claimed the promotional ladder. In such circumstances, the learned counsel for the petitioner would contend that the order dated 08.01.2014 passed by this Court in WP No. 460 of 2014 has not been complied with by the respondent deliberately and therefore the respondent has to be subjected to appropriate contempt proceedings for having wilfully violating the order passed by this Court.

7. The learned counsel appearing for the respondent, by placing reliance on the reply notice dated 09.10.2014 sent by the Joint Commissioner of Commercial Taxes as well as the

counter affidavit filed by the respondent would contend that the petitioner was appointed as Record Clerk on compassionate grounds on 31.07.2000 and subsequently, as per the order passed by the Government in GO Ms. No. 99, Commercial Taxes and Registration Department dated 11.07.2013, he was ordered to be absorbed as Junior Assistant with effect from the date on which he joined as Record Clerk namely 31.07.2000. However, in the said Government Order it was clearly stated that the petitioner is not entitled for any monetary benefits as per Rule 27 (17). It is also stated by the learned counsel for the respondent that disciplinary proceedings were initiated against the petitioner vide Case No.1 of 2006 before the Tribunal for Disciplinary proceedings dated 06.06.2006, a charge memo dated 31.12.2007 was issued to the petitioner under Tamil Nadu Civil Services (Disciplinary and Appeal) Rules and on conclusion of the disciplinary proceedings, the petitioner was inflicted with punishment of 'stoppage of increment for a period of one year without cumulative effect'. According to the learned counsel for the respondent, for the reasons best known, the petitioner did not disclose the disciplinary proceedings initiated against him and he has filed the writ petition only for a Mandamus to consider his representation. When the petitioner was imposed with a punishment, he cannot claim promotion or seniority on par with other similarly placed persons. Even in the order dated 08.01.2014, this Court only directed this respondent to consider the representation of the petitioner dated 12.08.2013 in the light of the order passed by the Government in G.O. Ms. No.99 dated 11.07.2013. In the representation dated 12.08.2013, the petitioner has requested to place him in the seniority list above his junior R. Sridharan, who was promoted as Assistant on 03.11.2006 and is now working as Deputy Commercial Tax Officer since 2011. On the contrary, the service of the petitioner was recognised in the cadre of Junior Assistant only on 31.07.2000 by virtue of the order passed by the Government in G.O. Ms. No.99 dated 11.07.2013. In fact, even as admitted by the petitioner, he was given promotion to the post of Assistant on 14.08.2015 and he also joined the promoted post on 25.08.2015. In any event, in the affidavit filed in support of the writ petition No. 460 of 2014, the petitioner has suppressed the disciplinary proceedings initiated against him and the consequential order of punishment of stoppage of increment for a period of one year without cumulative effect imposed on him and therefore, this Honourable Court had no occasion to consider the effect of the punishment imposed on the petitioner while passing the order dated 08.01.2014. According to the learned counsel for the respondent, even the notional pay payable to the petitioner was fixed from 31.07.2000 and all the arrears due and payable to him was paid to him on 14.09.2012 vide proceedings dated 16.08.2013. These facts were suppressed by the petitioner in the affidavit filed in support of the writ petition No. 460 of 2014. The learned counsel for the respondent would further contend that the punishment imposed on the petitioner was in force till 30.06.2015 and in such circumstances, the petitioner cannot seek for promotion on par with his junior Mr. Sridharan, whose service was regularised in the cadre of Assistant even in the year 2006 and subsequently he was promoted as Deputy Commercial Tax Officer in the year 2011. The learned counsel for the respondent would further contend that after the order dated 08.01.2014 was passed by this Court, the petitioner was given promotion on 25.08.2015 itself and even that was not disclosed by the petitioner in the affidavit filed in support of the contempt petition. Thus, according to the learned counsel for the respondent, the respondent has duly complied with the order passed by this Court and therefore, he prayed for dismissal of this contempt petition.

8. I heard the counsel for both sides and perused the materials placed on record. In the order dated 08.01.2014 passed by this Court in WP No. 460 of 2014, this Court, taking note of the fact that the representation dated 12.08.2013 submitted by the petitioner was pending without any orders being passed thereon, a direction was given to the respondent herein to implement G.O. Ms. No. 99, Commercial Taxes and Registration Department dated 11.07.2013 in the light of the representation dated 12.08.2013 of the petitioner. In the representation dated 12.08.2013, the petitioner requested the Joint Commissioner of Commercial Taxes Department, Madurai to place him above his junior R. Sridharan, who was promoted as

Assistant on 03.11.2006. It is stated that the said R. Sridharan, whom the petitioner referred to in his representation dated 12.08.2013, was subsequently conferred with promotion to the post of Deputy Commercial Tax Officer during the year 2011. As rightly pointed out by the learned counsel for the respondent, by virtue of G.O. Ms. No.99, Commercial Tax Department dated 11.07.2013, the service of the petitioner, who was hitherto working as Record Clerk, was ordered to be absorbed in the cadre of Junior Assistant with effect from the date of his initial appointment on 31.07.2000. Therefore, only in the year 2013, the service of the petitioner was converted into or ordered to be absorbed as Junior Assistant by virtue of the order passed by the Government on 11.07.2013. On the contrary, Tr. Sridharan, whom the petitioner refers to, was promoted to the post of Junior Assistant on 03.11.2006 and subsequently promoted in the year 2011 as Deputy Commercial Tax Officer, much before the order passed by the Government in G.O. Ms. No.99, Commercial Tax Department dated 11.07.2013, by which the service of the petitioner was ordered to be absorbed in the cadre of Junior Assistant with effect from the date of his initial appointment on 31.07.2000. Furthermore, there was a disciplinary proceedings initiated against the petitioner even on 06.06.2006 and it was concluded on 14.02.2011 and ultimately an order dated 04.02.2014 was passed by which the petitioner was imposed with punishment of stoppage of increment for a period of one year without cumulative effect.

Thus, the currency of punishment was in operation as against the petitioner until 30.06.2015. It is brought to the notice of this Court by the counsel for the respondent that as against the order of punishment dated 04.02.2014, the petitioner has filed WP (MD) No. 7477 of 2014 before the Madurai Bench of this Court and it is pending, While so, this Court is of the view that the petitioner ought to have disclosed the order imposing punishment to him in the affidavit filed in support of the writ petition No. 460 of 2014. However, the petitioner, in his affidavit filed in support of the writ petition No. 460 of 2014 has clandestinely suppressed the disciplinary proceedings initiated against him and the consequential order of punishment imposed on him by the department. Had it been disclosed by the petitioner, this Court would not have disposed of the writ petition No. 460 of 2014 directing the respondent to consider the representation dated 12.08.2013. The petitioner, in the opinion of this Court, is guilty of suppression of material particulars and on this ground alone, the contempt petition has to be dismissed. Further, after the order dated 08.01.2014 was passed by this Court in WP No. 460 of 2014, the petitioner was conferred with promotion to the post of Assistant on 14.08.2015 and he also joined the promoted post on 25.08.2015. During the course of argument in this contempt petition, the learned counsel for the petitioner also did not bring to the notice of this Court about the promotion conferred to the petitioner in the cadre of Assistant. However, the learned counsel for the petitioner only harped upon by contending that the junior of the petitioner was conferred with promotion but the petitioner was discriminated. As mentioned above, Tr.Sridharan, whom the petitioner refers to, was given promotion as Assistant even on 03.11.2006 and was subsequently promoted as Deputy Commercial Tax Officer in the year 2011, but the petitioner's service was converted and/or absorbed from the cadre of Record Clerk into one of Junior Assistant only by virtue of an order passed by the Government in the year 2013, of course, with retrospective effect from the date of his initial appointment. At this stage, it has to be pointed out that even in the year 2006, when disciplinary proceedings were initiated against the petitioner and it culminated in passing of an order of punishment on 04.02.2014, the currency of punishment was operating against the petitioner until 30.06.2015. Therefore, the petitioner who was inflicted with punishment cannot be heard to compare his so-called junior, who was free from any such punishment. In any event, in the contempt petition, this Court has to examine as to whether the respondent has wilfully or deliberately violated the direction issued by this Court. On examination of the records, this Court is of the opinion that after the order dated 08.01.2014 was passed by this Court in WP No. 460 of 2014, the petitioner was given promotion to the post of Assistant 14.08.2015 and the petitioner also joined the promoted post on 25.08.2015. In such view of the matter, I am of the firm opinion that the direction issued by this Court on 08.01.2014 in WP No. 460 of 2014 has been complied with by the respondent and consequently, the contempt petition deserves only to be dismissed.

9. In the light of the above, I do not find any disobedience, much less wilful disobedience on the part of the respondent in complying with the order dated 08.01.2014 passed by this Court in WP No. 460 of 2014. The Contempt Petition is therefore dismissed. No costs.

SD/
ASSISTANT REGISTRAR(O.S. I)

rsh

//Certified to be true copy//

Dated at Madras this the day of 2018.

COURT OFFICER(O.S.)

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CO/25/06/2018.

One CC to Special Government Pleader, SR.3160.

To.

The Principal Secretary/
Commissioner of Commercial Taxes
Ezhilagam, Chepauk,
Chennai -600 005.