IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27138 of 2016

K.Elangovan ... Petitioner

vs.

1. The Principal Secretary / Commissioner
   of Commercial Taxes,
   O/o the Commissioner of Commercial Taxes,
   Chepauk, Chennai – 600 005.

2. Deputy Commissioner of Commercial Taxes,
   Chennai (East) Division,
   3rd floor, P.A.P.J.Malligai,
   Greams Road,
   Chennai – 600 006.

3. Assistant Commissioner (CT)
   Washermenpet-II Assessment Circle,
   Chennai – 600 081. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorarified Mandamus calling for records relating to Charge Memo issued by the 2nd respondent in Rc 1744/2007/A3 dt.27-02-2007 and the subsequent two impugned proceedings of the 1st respondent issued in Proc.Nos.EE2/13745/2007-I & II even dt. 19-09-2015 and quash the same and consequentially further directing the respondents herein to pay all attendant benefits accrued by him and to settle pension to the petitioner within the time frame fixed by this Hon'ble Court.

For Petitioner : M/s.V.Venkatasamy

For Respondents: Mr.M.Hariharan.
Government Pleader (Taxes).

O R D E R

The lis on hand filed challenging the proceedings dated 27.02.2007 which is a charge memo and the subsequent proceedings of the first respondent issued in proceedings dated 19.09.2015 and for the direction to direct the respondents to pay all attendant benefits accrued to him and settle pension to the petitioner.

2. The petitioner was appointed as Junior Assistant in the Commercial Tax Department and promoted to the post of Assistant in the year 1993. The petitioner was further promoted as Assistant Commercial Tax Officer (ACTO). On account of certain allegations, a charge memo was framed against the writ petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules in proceedings dated 27.02.2007.

3. The Enquiry Officer was appointed and the writ petitioner had submitted his explanation to the charges. The Enquiry Officer proceeded with the enquiry, concluded the same and submitted his report holding that the charge Nos. 1 and 3 are proved against writ petitioner and charge No.2 proved partly. The enquiry report was forwarded to the first respondent for further action on 05.02.2008. The first respondent enclose the copy of the enquiry report and directed the writ petitioner to submit his explanations/objections on the enquiry report.

4. However, the first respondent has not passed any final order in the departmental proceedings before the date of retirement of the writ petitioner. The date of superannuation of the writ petitioner was 30.06.2008 and on the eve of the retirement, writ petitioner was placed under suspension. The learned counsel for the writ petitioner states that, the criminal case instituted against the writ petitioner ended with an order of acquittal on 30.03.2011. Till the criminal case is concluded, no actions were taken by the respondents against the writ petitioner.

5. After communication of the order of acquittal, the respondents have passed an order on 19.09.2015 revoking the order of suspension and allowing the writ petitioner to retire from service with effect from his actual date of superannuation (i.e.) 30.06.2008. The learned counsel for the writ petitioner is of an opinion that, when the writ petitioner was allowed to retire from his service, then there is no master servant relationship exists, and therefore no actions can be continued against the writ petitioner. Such a proposition mooted out cannot be accepted in view of the fact that, the writ petitioner was serving in a pensionary service and the Tamil Nadu Pension Rules contemplates that, even after the retirement, departmental disciplinary proceedings can be initiated against the Government Employees.

6. In the present case on hand, the disciplinary proceedings were initiated even before the retirement of the writ petitioner in the year 2007 itself. On the date of the retirement, the writ petitioner was placed under suspension. The departmental disciplinary proceedings were kept in abeyance on account of the pendency of the criminal case against the writ petitioner. Thus, there is no infirmity in respect of the action of the respondents in keeping the

departmental proceedings in abeyance till the disposal of the criminal case. The criminal case ended with an order of acquittal.

7. This Court is of an opinion that, even an order of acquittal will not be a bar for the disciplinary authority to proceed with the disciplinary proceedings on merits and conclude the same. The Criminal Court of Law requires a high standard of proofs for convicting a person. However, no such strict proof is required for the purpose of punishing the Government Employee under Discipline and Appeal Rules. Even a moral turpitude and preponderance of probabilities are sufficient to impose punishment on the Government Employee. Therefore, the proceedings to be conducted in a trial Court cannot be equated to a departmental proceedings to be conducted by the disciplinary authority under the Discipline and Appeal Rules. Both are distinct and disciplinary authority even in a case of acquittal is at liberty to continue the departmental proceedings based on the materials available on record.

8. This being the legal principles to be settled by the constitutional Courts across the Country, this Court is of an opinion that, the continuance of the departmental disciplinary proceedings even after the order of acquittal from the Criminal Court is permissible and there is no infirmity. The impugned order dated 19.09.2015, para 5 reads as under:-

9.

> "5) After examination of the inquiry report and other records, the Principal Secretary/Commissioner of Commercial Taxes has decided to revoke the suspension of Thiru.K.Elangovan, Assistant Commercial Tax Officer, in o/o Washermanpet-II Assessment Circle, and to permit him to retire from service on attaining the age of superannuation on 30.06.2008 afternoon and the disciplinary proceedings initiated in the reference 1st cited is ordered to be continued under Tamil Nadu Pension Rule 1978. Accordingly, in exercise of the powers conferred by sub-rule (e)(6) of Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the suspension of Thiru.K.Elangovan, Assistant Commercial Tax Officer, now re-designated as Deputy Commercial Tax Officer, in o/o Washerman-II Assessment Circle, is ordered to be revoked and he is allowed to retire as Assistant from service on attaining the age of superannuation on 30.06.2008 AN and the disciplinary proceeding initiated in the reference 1st cited is ordered to be continued under Tamil Nadu Pension Rule 1978."

9. It is clearly stated that, the writ petitioner was allowed to retire from service and the departmental proceedings initiated on 27.02.2007 by way of charge

memo will be continued under the Tamil Nadu Pension Rules, 1978. This apart, in respect of enqiry report, the authorities have issued further order on the same day dated 19.09.2015 which is also under challenge in this writ petition. The said proposed punishment states as follows:-

10.

"3) Now after careful and independent examination of the charges framed, your explanation, findings of the enquiry officer and your further representation on the findings of the enquiry officer along with connected records, accordingly it has been provisionally concluded to impose the punishment of cut in pension of Rs.1000/- (One thousand only) per month for a period of 3 (Three) years with the clear understanding that these order will affect your pension.

4) Your attention to Rule 9 of Tamil Nadu Pension Rule 1978 is invited and you are directed to state specifically as to whether you accept the proposed punishment of cut in pension or not within 15 days from the date of receipt of this letter. If no reply is received from you within the above stipulated time, it will be construed that you have no reply to offer on this letter and final orders will be passed in the disciplinary case initiated against you on merits of the case with the available records."

10. Therefore, in respect of the proved charges based on the enquiry report conducted by the departmental proceedings, a provisional punishment was proposed to be imposed to cut in pension of Rs.1000/- per month, for a period of three years. Thus, the writ petitioner has to submit his explanation in respect of the proposed punishment within a period of 15 days. The said order also under challenge.

11. The learned counsel for the writ petitioner states that, the petitioner had already submitted his explanation in respect of the show-cause-notice issued in proceedings dated 19.09.2015.IN respect of the said show-cause-notice, the same was issued based on the enquiry report submitted by the Enquiry Officer to the disciplinary authority. Thus there is no infirmity in respect of the actions taken by the respondents in this regard.

12. In view of the fact that, the writ petitioner had already submitted his explanations/objections on the proposed punishment, the respondents are at liberty to consider all the materials available on record and the explanations submitted by the writ petitioner and pass final orders without causing any undue delay, in view of the fact that, the writ petitioner had retired long back and he is unable to get his pensionary and terminal benefits.

13. In view of the facts and circumstances, the respondents are directed to take a decision on merits and in accordance with law and pass final orders and settle all the pensionary and terminal benefits to the writ petitioner within a period of 12 weeks from the date of receipt of a copy of this order.

14.Accordingly the writ petition stands disposed of. There shall be no order as to costs.

Pkn

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary / Commissioner
of Commercial Taxes,
O/o the Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

2. Deputy Commissioner of Commercial Taxes,
Chennai (East) Division,
3rd floor, P.A.P.J.Malligai,
Greams Road,
Chennai - 600 006.

3. Assistant Commissioner (CT)
Washermenpet-II Assessment Circle,
Chennai - 600 081.

+1cc to M/s.V.Venkatasamy, Advocate S.R.No.70040

KR/30/10/18

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