IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2018

CORAM:

THE HONOURABLE Mr. JUSTICE SATRUGHANA PUJAHARI

W.P.No. 23879 of 2014
and
M.P.No.1 of 2014

V.Mahendran .. Petitioner

Vs.

1.The Secretary to Government,
Commercial Taxes and Registration Department,
Fort St. George, Chennai 600 009.

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

3.The Deputy Commissioner (CT),
Zone II, Coimbatore. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to to issue a Writ of Certiorari, to call for the records connected with the proceedings issued in Proc.No.CD1/32005/2012 dated 05.06.2014 passed by the 2nd Respondent and quash the same.

For Petitioner : Mr.V.Prakash,
Senior Counsel
for Mr.K.Krishnamoorthy

For Respondents: Mr.M.Hariharan,
Additional Government Pleader (CT)

O R D E R

This writ petition has been filed by the petitioner challenging the imposition of penalty in departmental proceedings under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, 1973 passed by the 2nd respondent Principal Secretary/Commissioner of Commercial Taxes, to be illegal or arbitrary and not in accordance with law.

2. As it appears, that the petitioner while working as Assistant Commissioner (CT), Palakkarai II Assessment Circle was issued with a notice to show cause for having committed some

lapses under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, 1973. The petitioner having not been allegedly responded to the same, inspite of sufficient opportunity given to him, the disciplinary authority imposed a major punishment under Rule 17(b) of the said Rules, which was stated to be a flawed one by Tamil Nadu Public Service Commission. However, the petitioner challenged the same before this Court in WP.No.24411/2012, which was withdrawn to approach the appellate forum. Accordingly, the petitioner preferred an appeal before the Government of Tamil Nadu, which was disposed of by the Principal Secretary to Government, setting aside the punishment by giving a direction to the disciplinary authority to proceed from the stage, where the defect was committed. After disposal of such appeal, the disciplinary authority, without giving any notice to showcause, since the petitioner had not availed the opportunity given, passed an order under Rule 17 (a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, imposing stoppage of increment for two years without cumulative effect. Since the Tamil Nadu Public Service Commission stated to conduct de novo enquiry, which was also the view of the appellate authority, while remanding the matter to the disciplinary authority, the disciplinary authority could not have passed an order without taking note of the same and as such, it is submitted that appellate authority having not followed the same impugned order of punishment is liable to be quashed and the matter is required to be remanded back to conduct de novo enquiry.

3. The same is countered by the disciplinary authority with the averments that since an appeal is provided against the aforesaid order and also the petitioner admittedly not availed of the opportunity and a punishment under Rule 17(a) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules, having already been imposed, the petitioner could not have any grievance against the same on the aforesaid ground and as such, this writ petition is devoid of merits.

4. The learned senior counsel appearing for the petitioner submits that in this case, when the appellate authority taking note of the opinion of the Tamil Nadu Public Service Commission had given a direction to proceed with de novo enquiry from the stage, it was flawed, the petitioner thereafter, in all fairness of things, should have been asked to file show cause within a specific period and then considering the same, an order should have been passed under Rule 17(a) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules. Since the same was not done, the impugned order cannot be sustained. The learned senior counsel appearing for the petitioner also submits that the existence of alternative remedy, nowhere prohibits this Court to interfere with the order in exercise of writ jurisdiction particularly when the authority has passed the

order contrary to the procedure prescribed. Therefore, he submits to quash the impugned order.

5. In response, the learned counsel appearing for respondents submits that there is no reproach that this Court is not prohibited from exercising writ jurisdiction under Article 226 and 227 of Constitution of India, even if there is existence of alternative remedy but as a matter of principle this Court is loath in excercising such writ jurisdiction when the remedy is speedy and efficacious. Here in this case, when appellate forum being available to the petitioner and the remedy is not only speedy but also efficacious and the petitioner has not availed of the same, hence this Court should not entertain this writ petition, challenging the impugned order. Otherwise also, the disciplinary proceeding of the petitioner for minor punishment having been disposed of giving him an opportunity of hearing to which the petitioner had not availed of, the petitioner could not have any grievance against such order on the ground of irregularity in the procedure and violation of the principles of natural justice, more particularly when the order on the appellate authority was to proceed from the stage the order was flawed de novo.

6. As it appears, in this case, the proceeding under section 17(a) Tamil Nadu Civil Service (Discipline & Appeal) Rules against the petitioner was initiated for alleged misconduct, proposing to impose a minor penalty and the petitioner was asked to showcause but the petitioner did not avail the opportunity of showcause. The authority, however thereafter imposed the punishment i.e a major penalty without adhering to the procedure as prescribed in Rule 17(b) Tamil Nadu Civil Service (Discipline & Appeal) Rules. The same was falwed by Tamil Nadu Public Service Commission when the file was submitted for their opinion and the Tamil Nadu public Service Commission advised to proceed de nova from the stage the proceediing was flawed. The appeal filed by the petitioner was also disposed of setting aside such punishment with the direction to proceed denova enquiry from the stage, it was flawed. Thereafter, a minor punishment was imposed. The petitioner after remand of the appeal though awaiting a notice to file show cause and was ready and willing to show cause but no opportunity was given. Hence, the impugned order is contrary to the rules as well as to the principles of natural justice in the submissions of the counsel for the petitioner. The same has been countered to be without any substance, as the petitioner had not availed of the opportunity given.

7. Considering the facts and and submissions, especially the fact that after remand of the matter though the petitioner was ready to file a show cause but the disciplinary proceedings has been disposed of without giving any opportunity to show

cause. Hence, it appears to this Court that the petitioner was not given an appropriate opportunity in the proceeding to ventilate his case against the proposed penalty and the penalty was passed. The impugned order, therefore, cannot be sustained. Thus, the writ petition is allowed. The impugned order of penalty passed by the Disciplinary Authority on 05.06.2014 stands quashed. The matter is remanded back to the Disciplinary Authority to pass a fresh order, giving a chance to the petitioner to file his explanation to the show cause notice by 30.01.2018, within four weeks, thereafter. Needless to say that if the petitioner does not file his showcause by the said date, no further chance be given to him in any circumstances and authority thereafter at liberty to pass order in the absence of any explanation of the petitioner on the question of proposed penalty.

8. With the above said directions, this Writ Petition stands disposed of. Consequently, the connected miscellaneous petition is also closed. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

Rka/kv

To

1.The Secretary to Government,
Commercial Taxes and Registration Department,
Fort St. George, Chennai 600 009.

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

3.The Deputy Commissioner (CT),
Zone II, Coimbatore.

+ 1 cc to Mr.K.Krishnamoorthy Advocate,SR.2639
+ 1 cc to The Special Govt.Pleader, SR.2625

W.P.No. 23879 of 2014

ssi(co)
nr 18/01/2018