IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Wednesday, the Twenty Fifth day of April Two Thousand Eighteen

PRESENT

THE HON`BLE MR JUSTICE SATRUGHANA PUJAHARI

WP.Nos.14968 & 14969 of 2017 and WMP.Nos.16209 & 16210 of 2017

WP.Nos.16451 & 16452 of 2017 and WMP.Nos.17806 & 17807 of 2017

N. SUBRAMANI
DEPUTY COMMERCIAL TAX OFFICER,
O/O.ASSISTANT COMMISSIONER,
SURAPPET ASSESSMENT CIRCLE,
CHENNAI (SOUTH) DIVISION
[PETITIONER IN WP.14968/17 AND WMP.16209/17]

P.VENKATESWARAN
DEPUTY COMMERCIAL TAX OFFICER,
O/O.ASSISTANT COMMISSIONER,
ANNA SALAI ASSESSMENT CIRCLE,
CHENNAI -6
[PETITIONER IN WP.14969/17 AND WMP.16210/17]

A.CELASTINE,
DEPUTY COMMERCIAL TAX OFFICER,
O/O. ASSISTANT COMMISSIONER,
PORUR ASSESSMENT CIRCLE,
CHENNAI - 125.
[PETITIONER IN WP.16451/17 AND WMP.17806/2017]

M.GANAPATHI SUBRAMANIAN,
DEPUTY COMMERCIAL TAX OFFICER,
O/O. ASSISTANT COMMISSIONER,
NANDAMPAKKAM ASSESSMENT CIRCLE
CHENNAI - 94.
[PETITIONER IN WP.16452/17 AND WMP.17807/2017]

Vs

1 THE STATE OF TAMIL NADU [RESPONDENTS IN ALL THE PETITIONS]
REP BY ITS SECRETARY, COMMERCIAL
TAXES AND REGISTRATION DEPARTMENT,
SECRETARIAT, FORT ST. GEORGE, CHENNAI 9

2 THE ADDITIONAL CHIEF
SECRETARY / COMMISSIONER OF COMMERCIAL TAXES,
OFFICE OF THE COMMISSIONER OF COMMERCIAL
TAXES, EZHILAGAM, CHEPAUK, CHENNAI 5

3 THE JOINT COMMISSIONER
(CT), ENFORCEMENT I, PAPJM BUILDING,
CHENNAI 6

Writ Petitions and writ miscellaneous petition filed under Article 226 of the Constitution of India praying that in these circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to

(i)issue orders, directions, writs, in particular a writ of certiorari, calling for the records in connection with the impugned charge memo No.1513/2013/ A1-IV dated 26.5.2017 issued by the 3rd respondent and quash the same, (in WP.No.14968/2018);

(ii)issue orders, directions, writs, in particular a writ of certiorari, calling for the records in connection with the impugned charge memo No. 1513/2013/ A1-II dated 26.5.2017 issued by the 3rd respondent and quash the same, (in WP.No.14969/2018);

(iii)issue orders, directions, writs, in particular a writ of certiorari, calling for the records in connection with the impugned charge memo No.1513/2013/A1-I dated 26.5.2017 issued by the 3rd respondent and quash the same (in WP.16451/2017);

(iv) issue orders, directions, writs, in particular a writ of certiorari, calling for the records in connection with the impugned charge memo No.1513/2013/A1-III dated 26.5.2017 issued by the 3rd respondent and quash the same (in WP.16452/2017);

(v)to issue an order of ad interim stay, staying the operation of impugned charge memo No. 1513/2013/ A1-IV dated 26.5.2017 issued by the 3rd respondent served on the petitioner on 6.6.2017 (in WMP.No.16209/2017);

(vi)issue an order of ad interim stay, staying the operation of impugned charge memo No. 1513/2013/ A1-II dated 26.5.2017 issued by the 3rd respondent served on the petitioner on 2.6.2017 (in WMP.No.16210/2017);

(i) issue an order of ad interim stay, staying the operation of impugned charge memo No.1513/2013/A1-I dated 26.5.2017 issued by the 3rd respondent served on the petitioner on 16.6.2017 (in WMP.17806/2017) and

(iv) issue an order of ad interim stay, staying the operation of impugned charge memo No.1513/2013/A1-III dated 26.5.2017 issued by the 3rd respondent served on the petitioner on 14.6.2017 (in WMP.17807/2017) pending WP Nos.16451 & 16452 of 2017 respectively.

Order : These petitions coming on this day for hearing upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of M/S.K.V.SUBRAMANIAN ASSOCIATES, for the petitioner in each the petitions, the Court made the following order:-

All the four writ petitions having arisen out of the same cause of action, i.e., issuance of charge memo by the same respondents to the petitioners in each of the writ petitions all were directed to be taken up together vide order passed in WP No.16451 and 16452 of 2017 on 30.06.2017.

2. All the writ petitioners who are the employees of the Commercial Taxes and Registration Department of the Government of Tamil Nadu were posted in Pethikuppam Check Post, Puzhal on 14.03.2014. On that day, a lorry of one Deepak Transport was checked and on such check, it was found that he was carrying 56 invoices for transportation of goods in the lorry, out of which 32 were bogus and as such, the lorry with the goods were detained, as the transporter did not pay the tax demanded of Rs.98,440/-. The said fact was also intimated to the third respondent, a file was also opened in this regard, inasmuch as, the transporter did not turn up to pay the tax demanded. However, subsequently, from the files the aforesaid invoices were found to be missing, which were subsequently traced later by some of the employees and the vehicle with the goods was also released in pursuant to the direction of this Court in WP No.9186 of 2014. However, the petitioners were thereafter issued with show cause under Rule 17(b) of Tamil Nadu Civil Service (Disciplinary and Appeal) Rules (hereinafter referred to as "the TNCS (D & A) Rules, and accordingly, they submitted their explanation, but no order was passed on the same. Thereafter, on 26.05.2017, the respondent decided to proceed against the petitioner under Section 17(b) of the TNCS (D & A) Rules and accordingly, charge memos were issued to them, which the petitioners have challenged in this case to be illegal and arbitrary being tained with mala fide and as such, made a prayer for quashment of the same.

3. During the pendency of the writ petition, the Authority now going to prepare the panel for promotion for the year 2015 for promotion to the post of Commercial Tax Officer, a Miscellaneous petition vide Writ miscellaneous petition No.7729 of 2017 in WP No.14969 of 2017 has been filed seeking direction to direct the respondent to promote the petitioner to the post of Commercial Tax Officer, notwithstanding the pendency of the Charge Memo which has been stayed. In the other writ petitions, no specific such interim prayer has been made and I am told that in the meanwhile, the writ petition No.14968 of 2017 has already been superannuated.

4. However, the learned counsel appearing for the writ petitioner in WP No.14969 of 2017 made the aforesaid prayer with the submission that since no chage was pending against the petitioner on the crucial date for promotion to the aforesaid, there is no impediment in law to consider his case for promotion to the post of Commercial Tax Officer, moreso, when Rule 39(d) of the Tamil Nadu State and Subordinate Service Rules permits to grant such permission temporary as well as regular notwithstanding, the pendency of a Disciplinary Proceeding in

the exigency of public work by the employer / Authority.

5. Hence, necessary interim direction be issued to the respondents to consider the case of the petitioner for empanelment for the empanel year 2015 for promotion to the post of Commercial Tax Officer.

6. The learned counsel for the respondent however, made objection to the same inasmuch as, the petitioner in view of the charge memo issued under Section 17(b) of the TNCS (D & A) Rules has incurred a disqualification for being considered for promotion and Rule 39(d) of the Tamil Nadu State and Subordinate Service Rules, is the discretion of the authority to accord promotion to an employee notwithstanding his indictment in a disciplinary proceeding, in the exigency of public work and cannot be pressed into service by a delinquent public servant as a matter of right.

7. Be that as it may, considering the fact that no charge memo was pending against the petitioners on the crucial date for preparation of panel for promotion against the petitioner, this Court directs the respondent to consider the case of the petitioner in WP No.14969 of 2017 for empanelment for promotion to the post of Commercial Tax Officer for the relevant panel year. However, no promotion shall be accorded to the petitioner without the leave of this Court. Needless to say that if some other persons, who are Junior to the petitioner were otherwise suitable for empanelment, but for empanelment of the petitioner, they canot be empannelled their case also be considered along with the case of the petitioner.

8. Sofar as the writ petitioners in WP No.14968 of 2017 and WP No.16451 & 16452 of 2017 are concerned even though, they have not filed any specific Writ Miscellaneous petitions seeking aforesaid specific prayer but thier counsel submits that the charge memo having been stayed and they are also been similarly situated with the writ petitioner in WP No.14969 of 2017. Considering the same, it is also ordered that the case of the aforesaid writ petitioner be also considered for promotion in the light of the aforesaid order passed in respect of the writ petitioner in WP No.14969 of 2017. So far as the WP No.14968 of 2017 is concerned, he having been reached the age of superannuation, no order is passed in this regard. Matter be called on 14.06.2018.

-sd/-
25/04/2018

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE SECRETARY,
GOVERNMENT OF TAMIL NADU, COMMERCIAL TAXES
AND REGISTRATION DEPARTMENT, SECRETARIAT,
FORT ST. GEORGE, CHENNAI 9

2 THE ADDITIONAL CHIEF
SECRETARY / COMMISSIONER OF COMMERCIAL TAXES,
OFFICE OF THE COMMISSIONER OF COMMERCIAL
TAXES, EZHILAGAM, CHEPAUK, CHENNAI 5

3 THE JOINT COMMISSIONER
(CT), ENFORCEMENT I, PAPJM BUILDING,
CHENNAI 6

C.C. to M/S.K.V.SUBRAMANIAN ASSOCIATES on payment of necessary charges

Order

in

WP.Nos.14968 & 14969 of 2017 and WMP.Nos.16209 & 16210 of 2017

WP.Nos.16451 & 16452 of 2017 and WMP.Nos.17806 & 17807 of 2017

Date :25/04/2018