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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2019

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THE HON'BLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.23363 of 2017
and
W.M.P.No.24457 of 2017

N.Gopalakrishnan ... Petitioner

Vs

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

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

3. The Joint Commissioner (Administration)
Commercial Taxes Department, Chepauk,
Chennai 600 005.

4. Additional Commissioner (Public Relations) Enquiry Officer
Office of the Commissioner of Commercial Taxes
Chepauk
Chennai 600 005. ... Respondents

PRAYER: Writ Petition filed under Article 226 of The Constitution of India praying to issue a writ or order or direction, particularly in the nature of writ of Certiorarified Mandamus to call for the records in Memo No.CD2/17926/2009 dated 05.07.2017 issued by the second respondent, quash the memo and to direct the first and second respondent to treat the period from 10.07.2003 to 06.04.2004 as petitioner's duty period and to sanction pension and other retirement benefits to the petitioner.

For Petitioner:Mr.A.Immanuel

For Respondents:Mr.V.Hari Babu
Additional Government Pleader (Taxes)

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ORDER

The petitioner has come forward to challenge the memo in No.CD2/17926/2009 dated 05.07.2017. The case of the petitioner is that the petitioner is a Ex-serviceman and joined Tamil Nadu Commercial Taxes Services as commercial Tax Officer. During the period of service, the petitioner was issued with various charges but the petitioner was in possession of pecuniary resources and properties in his name and that the same is found to be disproportionate to the own sources of income, apart from the fact that the petitioner was long absenting and that he did not report for work from 10.07.2003 to 06.04.2004. The petitioner was placed under suspension on the last date of retirement, namely 29.04.2004 which was subsequently revoked. He would further contend that all the charges against the petitioner have been dropped but unfortunately, the period between 10.07.2003 to 06.04.2004 have not been regularized which disentitled him from getting pension. Hence, he approached this Court challenging the memo dated 06.04.2004 and contented that the petitioner was not served with any posting orders for reporting duty on 10.07.2003 and keeping him away from performing his duty till 06.04.2004 and therefore, that period need to be treated as duty and the respondents has to pay the benefits by regularising the services and also the attendant benefits.

2. He would further submit that even though, there was a proceeding by the Director of Vigilance & Anti-Corruption, Chennai (DVAC), all the disciplinary proceeding of the DVAC have been dropped. He would further submit that the petitioner has been deprived of the benefits only on the ground that the records were not available and if the documents are available, his request would be considered.

3. The respondents had filed a counter affidavit stating that the petitioner was involved in a serious misconduct, for which he was placed under suspension and thereafter, the suspension was revoked and the fact that the petitioner did not report for work from 10.07.2003 to 06.04.2004 and it would dis-entitle him wages and he was under suspension for not doing any work. Since, he did not work during the period by joining the post, the petitioner would not be entitled to any benefits for the period from 10.7.2003 to 06.04.2004 as requested by him in his petition dated 12.04.2016 and the period cannot be considered as duty period. He further submitted that the period during which the petitioner seek regularisation was the period he was employed in the Trade Institute, Chennai and the records have been destroyed as early as in the year 2008 due to efflux of time and there are no documents available. The petitioner did not join in the new station as requested and that the petitioner

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is not entitled to any relief sought for by him. He further stated that the charge memo was issued on the petitioner for not reporting the Income received by him as a Broker in financial transaction and purchased the property in his name without obtaining permission from the Government. The suspension order as stated supra which was issued was revoked and the petitioner was permitted to retire from service on 30.04.2004.

4. In the absence of the records, the process of regularisation of suspension from 10.07.2003 to 06.04.2004 as duty period cannot be considered and the writ petition is liable to be dismissed.

5. Heard both sides.

6. It is not in dispute that the petitioner is an Ex-serviceman and joined the Tamil Nadu Commercial Taxes Services on 02.08.1985 as Commercial Tax Officer in Chennai South Division and the petitioner was foisted with various charges including the one of not reporting for duty from 10.07.2003 to 06.04.2004 and that the period was not considered as duty period.

7. A cursory glance at the documents would make it very clear that the petitioner was foisted with charges, including that of one of not reporting for duty on 10.07.2003 and refused to perform work till 06.04.2004, apart from the charge that he was in possession of wealth, disproportionate to his income. The charges have been disproved by the Enquiry Officer. The only issue, for which the writ petition is filed, is for regularisation of so-called suspension period from 10.07.2003 to 06.04.2004 and to treat it as duty period, as the allegations is that the petitioner did not report for work. The Enquiry Officer has categorically found that the order has not been served on the petitioner and hence the petitioner did not report for work. When the enquiry findings have become final, it is necessary that the period from 10.07.2003 to 06.04.2004 need to be treated as duty period. There is no iota of evidence to show that the petitioner was placed under suspension till 29.04.2014 and hence there cannot be any suspension during the period between 10.07.2003 and 06.04.2004. When there is a finding by the Enquiry Officer in favour of the petitioner, I am of the view that the period from 10.07.2003 to 06.04.2004 need to be considered as duty period and it should be regularised.

8. The contention of the petitioner that the records have been destroyed as early as in the year 2008 cannot be brushed aside. It may be true that the petitioner, after having slept over for 14 years, have approached this Court seeking the relief

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and the retention of records by the respondents forever, as expected by the petitioner is highly impossible. Though it is correct that the enquiry proceedings have been continued and that the petitioner had the benefit of Government Order holding that the period between 10.07.2003 to 06.04.2004 be treated as duty period, he should have knocked at the doors of the Court at the threshold and not belatedly. Waking up from the slumber at belated stage and seeking all the benefits is not permissible.

9. As the petitioner had the benefit of regularisation for the period from 10.07.2003 to 06.04.2004, this Court is of the view that as per the Government order, the period shall be treated as duty and the petitioner is entitled to all terminal and pensionary benefits. However as there is delay in approaching this Court, the petitioner would not be entitled to wages for the period from 10.07.2003 to 06.04.2004 on the ground of laches. Deprivement of wages for the said period cannot be construed that this Court has not regularised the period for terminal benefits. The benefits due to the petitioner shall be paid within a period of 45 days from the date of receipt of a copy of this order, failing which it will carry interest at 12% to be recovered from the personal fund of the concerned Officer responsible for disbursement of the amount.

10. The writ petition stands allowed with the above directions. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

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

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

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   Chepauk
   Chennai 600 005.

+1 cc to Mr.A.Immanuel, Advocate, **S.R.No.63568(05/11/2019)**

W.P.No.23363 of 2017

MR(CO)
SSM(28/08/2019)
SSM(05/11/2019)

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