BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P(MD)Nos.3082 of 2015
and
M.P(MD)Nos.1 & 2 of 2015
and
W.M.P(MD)No.17251 of 2017

M.Selvaraj ... Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat,
Chennai-600 009.

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

3.The Joint Commissioner (Commercial Taxes),
Tirunelveli.

4.The Joint Commissioner (C.T.)(Enforcement),
Tirunelveli,
Tirunelveli District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for records relating to the G.O.(2D) No.140 Commercial Taxes and Registration (A1) Department dated 02.09.2011 and further order passed by the first respondent in letter No.8427/A1/2013-2 dated 24.09.2014 and further direction issued by the second respondent in the letter No.H3/31693/2014 dated 05.12.2014 to the third respondent as well as order issued by the fourth respondent in his proceedings Na.Ka.No.A1/3155/14 dated 02.01.2015 and quash the same in respect of the petitioner.

For Petitioner :Mr. A.Thirumurthy for
M/s.Victory Associates

For Respondents:Mr.D.Muruganantham,
Additional Government Pleader

ORDER

The order issued by the first respondent in G.O.(2D) No.140, Commercial Taxes and Registration (A1) Department, dated 02.09.2011 and further order passed by the first respondent in letter No.8427/A1/2013-2, dated 24.09.2014 and the direction issued by the second respondent in proceeding No.H3/31693/2014, dated 05.12.2014 to the third respondent as well as the order issued by the fourth respondent in his proceedings in Na.Ka.No.A1/3155/14, dated 02.01.2015 are sought to be quashed in respect of the writ petitioner.

2.The learned counsel appearing for the writ petitioner states that the writ petitioner's name was initially sponsored by the District Employment Office, Tirunelveli to the Commercial Tax Department, Sivakasi and accordingly, the petitioner was appointed on daily wage basis on 21.01.1985 by the District Assistant Commissioner (Commercial Taxes), Tirunelveli. The petitioner joined service immediately. The petitioner continued as daily wage employee for about 6 years and thereafter, the case of the petitioner was considered by the authorities and order of regularisation was issued by the District Assistant Commissioner (Commercial Taxes), Tirunelveli on 01.10.1993. The order of the authority shows that the writ petitioner was regularised and was working in the cadre of Office Assistant with effect from 01.07.1991. Accordingly, the petitioner was put under probation with reference to the rules in force. The probation was also declared in proceeding dated 04.10.1993. On completion of probation, the writ petitioner was brought as regular member of the service. Thereafter, Selection Grade on completion of 10 years and Special Grade on completion of 20 years were also granted in favour of the writ petitioner. The writ petitioner attained the age of superannuation and allowed to retire from service.

3. The learned Additional Government Pleader appearing on behalf of the respondents states that the Government Order granting relaxation was granted only during the year 2011 and therefore, the writ petitioner is not entitled to be regularised with effect from the year 1991. The appointment of the writ petitioner was irregular and not in accordance with the recruitment rules and therefore, the benefit of regularisation given by the Government with effect from 2011 alone is to be granted to the writ petitioner and in respect of the other orders, the same cannot be granted in favour of the writ petitioner. It is further contended that the mistakes committed by the Subordinate Officials cannot be a ground to allow the writ petition. The Government granted relaxation by invoking Rule 48 of the General Rules of the Tamil Nadu State and Subordinate Services only during the year 2011 and the benefit of the relaxation is granted only with reference to G.O.(2D) No.140,

dated 02.09.2011.

4.This Court is of the considered opinion that it is an admitted fact that the writ petitioner was appointed on daily wage basis by the District Assistant Commissioner (Commercial Taxes), Tirunelveli, dated 21.01.1985. Subsequently, he was regularly appointed as Office Assistant on 04.01.1991. The service of the writ petitioner was regularised by the District Assistant Commissioner (Commercial Taxes), Tirunelveli, dated 01.10.1993 with effect from 07.01.1991. Subsequently, probation was also declared by the competent authority with effect from 01.01.1992 in proceedings, dated 04.10.1993. The Selection Grade was also granted on completion of 10 years and Special Grade was also granted on completion of 20 years. The writ petitioner was allowed to retire from service. Under these circumstances, the relaxation of rule granted by the Government shall not have any consequences, in view of the fact that the authorities concerned regularised the services of the writ petitioner and declared probation and granted all other service benefits to the writ petitioner and he was permitted to retire from service. Under these circumstances, the Commercial Tax Department submitted a proposal to the Government on 20.06.2013 by stating that incorporating the name of the writ petitioner in G.O.(2D) No.140, dated 02.09.2011 is to be re-considered and the name of the writ petitioner should be deleted from the Government Order as the service of the writ petitioner was regularised long back and probation was also declared and he become the regular member of the service. The said proposal was rejected by the Government in the impugned proceeding dated 24.09.2014 stating that the name of the writ petitioner cannot be deleted.

5.The impugned order is a non-speaking order. No acceptable reason has been provided in the impugned order for the non deletion of his name from the G.O. The fact remains that the services of the writ petitioner was regularised long back and the probation was also declared and he was brought as regular member of the Government service. Thus, incorporation may not have any consequences and even if the case of the writ petitioner was erroneously considered during the year 1990, the same cannot be un-settled. If any such cancellation is made, the same will not only affect the service benefits of the writ petitioner, it will affect the livelihood itself of a servant, who put more than 30 years of service in the Government Department. An order of regularisation as well as the declaration of probation was granted long back, the Government cannot now un-settle the position on the ground that the authority, who regularised the service of the writ petitioner, committed some mistake. Even in case of such mistake the employee cannot be put to hardship, after a lapse of so many years and after putting so many years of service in the Department.

6.This Court is of the considered opinion that incorporating the name of the writ petitioner in G.O.(2D) No.140, dated 02.09.2011 may not be irrelevant. However, the impugned order in not considering the proposal submitted by the Commissioner is non-speaking and the reasons stated are neither candid nor convincing.

7.This being the factum, the writ petition deserves to the considered. Accordingly, the impugned order passed by the first respondent in letter No.8427/A1/2013-2, dated 24.09.2014 and further direction issued by the second respondent in letter No.H3/31693/2014 dated 05.12.2014 and the order issued by the fourth respondent in his proceedings in Na.Ka.No.A1/3155/14 dated 02.01.2015 are quashed insofar as the petitioner alone is concerned and the writ petition stands allowed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Principal Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat,
Chennai-600 009.

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

3.The Joint Commissioner (Commercial Taxes),
Tirunelveli.

4.The Joint Commissioner (C.T.)(Enforcement),
Tirunelveli,
Tirunelveli District.

+1 CC to M/s.A.THIRUMURTHY, Advocate (SR-69889[F] dated 19/06/2019)

+1 CC to M/s.SPL GP (SR-70297[F] dated 20/06/2019)

am

KM/(05.07.2019) 4P 7C