IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.12.2020

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.7231 of 2014

J.Thangamani ..Petitioner

Vs

1. The Secretary to the Government of Tamilnadu
   Commercial Taxes and Registration Department,
   Secretariat, St. George Fort,
   Chennai - 600 009

2. The Commissioner of Commercial Taxes,
   Chepauk, Chennai - 600 006

3. The Joint Commissioner,
   Commercial Taxes - (C.T.), (F.A.C),
   Enforcement - 1, PAPJM Building,
   Greams Road, Chennai - 600 006

4. The Deputy Commissioner,
   Commercial Taxes - (C.T.),
   Enforcement (North),
   Chennai - 600 006 ..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records from the file of the 1st respondent with respect to the order bearing G.O.(D) No.606 dated 05.11.2013 and quash the same and forbearing the respondents herein from imposing the stoppage of increment for one year without cumulative effect on the petitioner and also direct the respondents to pay the arrears of two years increment which was stopped immediately on passing of the order by the Joint Commissioner in his proceedings No.R.C.4895/2010/AI-I dated 11.03.2011.

For Petitioner :Mr.VS.M.Arumugam

For Respondents :Mr.R.Swarnavel, Government Advocate

ORDER

The present Writ Petition has been filed seeking to call for records from the file of the 1st respondent with respect to the order bearing G.O.(D) No.606 dated 05.11.2013 and quash the same and forbearing the respondents herein from imposing the stoppage of increment for one year without cumulative effect on the petitioner and also direct the respondents to pay the arrears of two years increment which was stopped immediately on passing of the order by the Joint Commissioner in his proceedings No.R.C.4895/2010/AI-I dated 11.03.2011.

2. The case of the petitioner is that she has joined the duty as Commercial Tax Officer / Group-IV in the office of the 4th respondent herein on 03.09.2010 and her predecessor, namely, S.Kandhasamy, who was supposed to handover the charge, has not chosen to do the same, however, promised to handover the charge, as soon as he takes over the charge of new assignment. Further, the petitioner on her own volition inspected the files and found the audit file of Premier Engineering Company, which was duly audited for the period from 26.05.2010 to 24.07.2010 and two cheques, (i) for a sum of Rs.26,985/- and (ii) for a sum of Rs.42,780/-, [in total a sum of Rs.69,765/-] were found in the said file, which was collected from the said company for defects and the same were to be deposited before the Assistant Commissioner (C.T), Loansquare-I, Assessment Circle, but the same was mistakenly kept in the file by the petitioner's predecessor, Kandasamy, for which, the petitioner is held responsible. The same was brought to the knowledge of the 4th respondent and on his oral instructions, the cheques were deposited by the petitioner before the assessing officer and the same were realised on 02.12.2010 and the amount was credited to the concerned revenue account.

3. It is the further case of the petitioner that the 3rd respondent issued a show cause notice on 06.12.2010 without implicating the said Kandasamy stating that there was dereliction of duties and responsibilities, in violation of Rule 20(1) of the Tamilnadu Government Servants Conduct Rules, 1973, however, proposed to take action under Rule 17(a) of the Tamilnadu Civil Services (D&A) Rules by seeking explanation for the alleged charges. The petitioner submitted her explanation on 24.12.2020 narrating the facts, but the same was rejected on the ground that the cheques were not handed over on reporting duty, viz., 03.09.2010 in the office of the 4th respondent.

4. According to the petitioner, without any proper enquiry, the 3rd respondent awarded the punishment of 'Stoppage of Increment' for a period of two years without cumulative effect through his proceedings in RC.No.4895/2010/A1-I dated

11.03.2011. Thereafter, the petitioner preferred an appeal before the 2nd respondent / Commissioner of Commercial Taxes, Chepauk, Chennai on 29.04.2011 and the same was rejected as 'Devoid of Merits' by way of proceedings in Proc.No.EE2/15773/2011 dated 30.04.2012 on the ground that there was no material to interfere with the orders passed by the 3rd respondent. As against the same, the petitioner preferred an appeal before the 1st respondent / Secretary to Government, Commercial Taxes and Registration Department, Secretariat, Fort St.George, Chennai. The 1st respondent taking note of all the facts, had modified the punishment of 'Stoppage of increment for two years without cumulative effect' into that of 'Stoppage of increment for one year without cumulative effect' by way of proceedings in G.O.(D) No.606 dated 05.11.2013. Aggrieved against the same, the petitioner has preferred the present Writ Petition before this Court.

5. The learned counsel for the petitioner submits that the act of the respondents is against the principle of natural justice and arbitrary in nature, which will not sustain in the eye of law and in violation of Article 21 of the Constitution of India. The act of the 1st respondent in passing the government order for 'Stoppage of increment for one year without cumulative effect', without impleading the predecessor of the petitioner, cannot sustain in the eye of law. Further, the learned counsel for the petitioner pleaded to set aside the modified punishment order passed by the 1st respondent as well as the order passed by the 2nd and 3rd respondents and grant all the appropriate benefits as per law.

6. Contending contra, the learned Government Advocate appearing for the respondents by way of a counter affidavit has submitted that the petitioner has narrated the availability of the cheques in the audit file and she has sent the cheques to the assessing authority only on 22.11.2010, thus the delay in sending the cheques by the petitioner were admitted. Also, it is an admitted fact that the petitioner has joined duty on 03.09.2010 and when her predecessor has not handed over the charge, she ought to have taken self-charge within 30 days of her joining duty and reported the missing files / cheques to the higher officials. Furthermore, the charge against the petitioner is that she has not taken efforts from 03.09.2010 to 17.11.2010 to handover the cheques to the assessing authority, thereby resulted in belated deposit. Hence, it is crystal clear that the charges levelled against the petitioner is perfectly valid in the eye of law, he pleaded.

7. Apart from the above, the learned Government Advocate appearing for the respondents would contend that on appeal, the 1st respondent, after examining the records and considering the

representations of the petitioner, has reduced the punishment of stoppage of increment of two years into stoppage of increment to one year without cumulative effect. Such an order has been passed only after verification of records and hence there is no misuse of official power, as alleged by the petitioner and every action has been taken only after providing reasonable opportunity to the petitioner.

8. The learned Government Advocate appearing for the respondents would vehemently submit that the order passed by the 1st respondent is perfectly valid in the eye of law and requires no interference in the hands of this Court.

9. Heard Mr.M.Arumugam, learned counsel appearing for the petitioner and Mr.R.Swarnavel, learned Government Advocate appearing for the respondents and perused the documents available on record.

10. Admittedly, the petitioner joined the duty as Commercial Tax Officer / Group-IV in the office of the 4th respondent on 03.09.2010 and further, she took charge from her predecessor, namely, Kandasamy only on 10.11.2010. That apart, upon perusing the petition of the petitioner dated 18.11.2010, it reveals that the petitioner on her own culled out the file in the group and noted two cheques from Premier Engineering Company, bearing Nos.405013 and 405014 dated 24.07.2010 for Rs.26,985/- and Rs.42,780/- respectively and the same were brought to the knowledge of the concerned officer and upon the oral instructions of the 4th respondent, the cheques were deposited on 22.11.2010 by her.

11. Moreover, it is relevant to mention that the audit file in respect of M/s Premier Engineering Co., which was audited from 26.05.2010 to 24.07.2010, a sworn statement was obtained on 24.07.2010 and the cheques were dated 24.07.2010, whereas, the petitioner joined duty only on 03.09.2010 and took charge only on 10.11.2010 [the same is evident in the charge memo dated 11.03.2011, wherein it is stated that the petitioner has given a petition dated 18.11.2010, in which it has been stated that S.Kandasamy, formerly Commercial Tax Officer / Gr-IV had handed over the charge only on 10.11.2010]. However, the authorities failed to take action against the said Kandasamy and they issued a charge memo only against the petitioner and this crucial issue was not noticed by the authorities and the respondents have not uttered a single word about the same in the counter affidavit also, hence the charge memo itself is vague and is liable to be set aside.

12. For all the above reasons, the proceedings RC.4895/2010/A1-I of the 3rd respondent / the Joint Commissioner (CT) (FAC), Enforcement-I, Chennai dated 11.03.2011 and the Proceedings No. EE2/15773/2011 dated 30.04.2012 of the 2nd respondent / Commissioner of Commercial Taxes, Chepauk, Chennai as well as the modified order of punishment passed by the 1st respondent / Principal Secretary to Government, Secretariat, Fort St.George, Chennai in G.O.(D).No.606 dated 05.11.2013 are set aside and the Writ Petition stands allowed. It is needless for this Court to point out that since the punishment as well as modification of the said punishment are set aside, the petitioner is eligible to all the service benefits, for which she is entitled to and the respondents are directed to grant all the benefits and arrears, as per law, as expeditiously as possible, preferably within a period of four weeks from the date of a receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar

//True Copy//

ssd

Sub Assistant Registrar

To

1. The Secretary to the Government of Tamilnadu
   Commercial Taxes and Registration Department,
   Secretariat, St. George Fort,
   Chennai - 600 009

2. The Commissioner of Commercial Taxes,
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   Chennai - 600 006

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   Commercial Taxes - (C.T.),
   Enforcement (North),
   Chennai - 600 006

+1cc to Special Government Pleader, Advocate, S.R.No.40296

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rv(03/02/2021)