BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.06.2020
CORAM:
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
W.P.(MD)No.1923 of 2013

B.Jones Alfred ... Petitioner

Vs.

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

2.The Commissioner of Commercial Taxes,
Office of the Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk, Chennai.

3.The Secretary,
Tamil Nadu Public Service Commission,
Omanthoorar Government Estate Anna Salai,
Chennai - 600 002,
Tamil Nadu, India. ... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings made in G.O(2D) No.8 Commercial Taxes and Registration (E1) Department dated 23.01.2012 passed by the first respondent and quash the same as illegal and arbitrary and direct the respondents to disburse the entire retirement benefits within the time stipulated by this Hon'ble Court.

For Petitioner	:	Mr.S.Karunakar
For RR 1 & 2	:	Mrs.J.Padmavathi Devi, Special Government Pleader.
For R - 3	:	Mr.K.K.Senthil

ORDER

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings made in G.O(2D) No.8, Commercial Taxes and Registration (E1) Department dated 23.01.2012 passed by the first respondent and to quash the same and further directing the respondents to disburse the entire retirement benefits within the time stipulated by this Court.

2.The case of the petitioner is that he joined as Junior Assistant on 24.10.1969 and while he was serving as Deputy Commercial Tax Officer, a charge-memo dated 30.03.2004 has been served on him on the date of his superannuation viz., 31.03.2004, containing five charges and he was suspended on the ground that the charges are pending against him.

3.The Assistant Commissioner (Commercial Taxes), Tuticorin was appointed as an Enquiry Officer and the petitioner appeared before him for enquiry and he placed his submissions as to the charges levelled against him. On 12.07.2004, the Enquiry Officer, after conducting detailed enquiry, had given the findings that charge Nos.1 and 2 levelled against the petitioner were not proved and charge Nos.3, 4 and 5 levelled against the petitioner were proved.

4.In the mean time, since the enquiry has been completed, the first respondent vide proceedings dated 02.02.2005 had passed an order of revocation of suspension and the petitioner was permitted to retire from service without prejudice to the disciplinary action pending against him. The first respondent had sent a communication dated 05.08.2005 to the petitioner to submit his representation. The petitioner has also submitted his representation on 24.10.2005. Since the same has not been considered and the petitioner was not awarded with the terminal benefits, he had sent several representations to the first respondent to pass final orders in his case. The first respondent had sent communications dated 07.04.2010 and 04.06.2010 to the petitioner stating that the proposed punishment of cut in pension at the rate of Rs.1,000/- per month for a period of five years and the recovery of 5% of the revenue loss of Rs.31,78,815/- ie., Rs.1,58,914/- from his Death-cum-Retirement gratuity can be imposed or not, for which, the petitioner has also sent his reply dated 20.05.2010 and 04.09.2010 stating his unwillingness to accept the proposal. Since no order has been passed, the petitioner sent a petition under the Right to Information Act questioning the stage of his case pending, for which, the first respondent vide letter dated 27.01.2011 informed that the Government had called for the view of the Tamil Nadu Public Service Commission under Regulation 18(1)(c) of the Tamil Nadu Public Service Commission Regulation 1954 and the same is still awaited. Since the respondent had not chosen to pass any final order, the petitioner filed a Writ Petition in W.P(MD)No.4808 of 2011 challenging the charge memo dated 30.03.2004 and this Court, by order dated 26.04.2011 directed the respondents to pass final orders within a period of two months. The first respondent passed the impugned order herein dated 23.01.2012 imposing recovery of a sum of Rs.1,58,941/- from the Death-cum-Retirement Gratuity of the petitioner and also imposed a punishment of cut in pension at the rate of Rs.1,000/- per month for a period of five years. Challenging the same, the petitioner has filed the present Writ Petition.

5.The learned counsel appearing for the petitioner vehemently argued that though there were five charges framed against the petitioner, charge Nos.1 and 2 were held in favour of the petitioner as not proved and only charge Nos.3 to 5 were proved against the petitioner. He has also further submitted that when charge Nos.3 to 5 has no relevancy, which could be held against the petitioner, as there was no financial loss to the Department when the petitioner was in service while discharging his duty as a Deputy Commercial Tax Officer.

6.The learned counsel appearing for the petitioner further submitted that when the enquiry officer while confirming the charge Nos.3 to 5 as against the petitioner had categorically given a finding that the Government revenue was in fact saved by the petitioner and even as per the report filed by the Enquiry Officer no loss of revenue has been found for the Government and in fact after the enquiry was completed, based on the findings given by the Enquiry Officer, the first respondent had also passed an order of revocation of suspension and the petitioner was allowed to retire without prejudice to the disciplinary action pending against the petitioner. He has also further contended that the Government of Tamil Nadu had agreed with the findings of the Enquiry Officer. That apart, the learned counsel also contended that despite the petitioner had sent his representation as early as on 24.10.2005 to the first respondent, the first respondent has not given any finality in this case, which forced the petitioner to file W.P(MD) No.4808 of 2011 which was disposed of as early as on 26.04.2011 with a direction to pass final orders within a period of two months. Though the Court has given a specific direction, the impugned order came to be passed only on 23.01.2012 belatedly by the first respondent.

7.The learned Special Government Pleader, who had filed the additional counter-affidavit on behalf of the respondents 1 and 2, would contend that the Enquiry Officer has clearly stated that the dealers Tvl. Uco Agency had done business in paper, when the petitioner was serving as an officer and the dealers had filed the annual return in Form- I on 25.03.2004 declaring a total turnover of Rs.2,17,28,195/- and nil respectively for the year 2000-01 under Central Sales Tax Act, 1956 and claimed exemption under the Central Sales Tax Act, 1956, which was disallowed by the petitioner's successor. Apart from that it was the petitioner's successor who had saved the Government revenue and it was not the petitioner who had saved, but he helped Tvl. Euo Agency to escape from the assessment.

8.The learned Special Government Pleader further submitted that deducting 5% of the total revenue loss of Rs.31,78,815/- ie., Rs.1,58,914/- from the Death-cum-retirement Gratuity from the petitioner's retirement benefit is only the leniency showed on the petitioner and 5% of entire loss is very meagre and the first respondent ought to have recovered the entire loss of Rs.31,78,815/-

from the petitioner's account. Considering the petitioner's case, lesser punishment has been awarded to the petitioner for causing heavy loss to the Government revenue and there is no illegality in the order passed by the first respondent.

9.Heard the learned counsel appearing for the petitioner, the learned Special Government Pleader appearing for the respondents 1 & 2 and the learned counsel appearing for the third respondent and perused the materials available on record.

10.On perusal of the records, it is clear that charge Nos.3 to 5 seems to be in grave magnitude and the enquiry officer has held against the petitioner as the same were proved. As far as charge No.3 is concerned, the petitioner seems to have finalized the Assessment of Tvl. Uco Agency as '0' case on 05.03.2003 after obtaining a letter from the dealer to the effect that there has been no purchase or sales during the year 2000-01, without verifying, whether corresponding taxable sales / transit sales have been effected by Tvl. Uco Agency and also not kept the Form VIII extract containing the details of Form 'C' issued by the dealer in the Tamil Nadu General Sales Tax Assessment file, whereas, during the enquiry it was found that Tvl. Uco Agency had actually issued Form 'C' to the two dealers at Sivakasi to the tune of Rs.1,50,06,565/-. Further, based on the evidence and enquiries it is revealed that the dealer had done business in paper and resin and accordingly the accounts of the dealer that were summoned for scrutinizing and the dealer had filed annual return in Form-I on 25.03.2004 declaring a total and taxable turnover of Rs.2,17,28,465/- and Rs.nil respectively for the year 2000-01 and claimed exemption. However, the petitioner's successor disallowed the claim of exemption which was under the cover of transit sales under the Central Sales Tax Act and assessed the turnover of Rs.23,48,933/- under the Tamil Nadu General Sales Tax Act, 1959, vide proceedings dated 20.10.2004, treating the sales as local sales with tax effect of Rs.1,87,915/- and penalty of Rs.2,81,872/- and thus the Government revenue has been saved by the petitioner's successor.

11.The above fact makes it clear that the petitioner while serving as a Commercial Tax Officer has failed to verify the effect of corresponding taxable sales / transit sales of the dealers Tvl Uco Agency, merely because under Charge No.3, there was no loss for the Government, it is paramount duty of the petitioner, while he was serving as a Commercial Tax Officer, who ought to have verified by holding detailed enquiry about the turnover of a particular company, but the act of the petitioner who failed to verify such effects and corresponding sales / transit sales was only to aid and help the particular agency which is not warranted from the petitioner, who was working as a Commercial Tax Officer.

12.Our Country is run only by the tax paid by the assesses made by one individual or from the companies. The duty is cast upon the tax officers, who execute their duties diligently, however, the petitioner's attitude, while he was serving as a Commercial Tax Officer, is not acceptable. Likewise, charge Nos.4 and 5 are also serious as charge No.3 when the petitioner while finalizing the assessment of the particular agency failed to mention in the assessment order how the purchase worth of Rs.1,50,06,565/- made by issuing Form 'C' have been sold by the particular agency. As the explanation given by the petitioner was not satisfactory, the enquiry officer has held the charges proved as against the petitioner, based on the detailed enquiry, by which the turnover could have escaped from the assessment and the petitioner as an officer has failed in his duty and not verified the same and holding him liable for the charges against him.

13.On perusing the impugned order passed by the first respondent, this Court does not find any reason to interfere with the order, because there is no loss, as alleged by the petitioner, to the Government. Furthermore, the petitioner who ought to have been vigilant against all agencies has derelicted himself from the duty cast upon him to aid a particular agency, escaping from making the assessment. Therefore, the order passed by the first respondent, based on the findings of the enquiry officer, cannot be interfered with.

14.In the above stated facts and circumstances, this Court is not inclined to consider the case of the petitioner. The Writ Petition is devoid of merits and the same is dismissed. No costs.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

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To

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Commercial Taxes and Registration Department,
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Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
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Ezhilagam,
Chepauk, Chennai.

3.The Secretary,
Tamil Nadu Public Service Commission,
Omanthoorar Government Estate Anna Salai,
Chennai - 600 002,
Tamil Nadu, India.

+1.CC. To SPL.G.P., in SR No.13082

Order made in
W.P.(MD)No.1923 of 2013
Dated: 03.06.2020

MK (10.06.2020) 6P 5C