BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2020

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A.(MD)No.866 of 2020

and

C.M.P(MD).No.4784 of 2020

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Commercial Taxes & Registration (A1) Department,
Secretariat, Chennai 600 009.

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

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

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

Vs.

M.Selvaraj ... Respondent/Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court made in W.P.(MD) No.3082 of 2015 dated 19.06.2019.

Prayer in WP(MD). 3082/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari and call for the 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 1st respondent in letter No.8427/A1/2013-2 dated 24.09.2014 and further direction issued by the 2nd respondent in the letter No.H3/31693/2014 dated 05.12.2014 to the 3rd respondent as well as order issued by the 4th respondent in his proceedings Na.Ka.No.A1/3155/14 dated 02.01.2015 and quash the same in respect of the petitioner .

For Appellants : Mrs.J.Padmavathi Devi, Special Government Pleader

For Respondent : Mr.T.Sakthikumaran for M/s.A.Thirumurthy

J U D G M E N T

(Judgment of the Court was delivered by **M.SATHYANARAYANAN, J.**)

By consent, Writ Appeal is taken up for disposal.

2. Mr.T.Sakthikumaran, for M/s.A.Thirumurthy, accepts notice on behalf of the respondent.

3. The official respondents in W.P(MD).No.3082 of 2015 are the appellants. The respondent/writ petitioner was initially sponsored by the District Employment Exchange, Tirunelveli, to the Commercial Tax Department, Sivakasi. The petitioner was appointed on daily wage basis on 21.01.1985, by the District Assistant Commissioner (Commercial Taxes), Tirunelveli and he immediately joined the service.

4. The respondent/writ petitioner continued in that capacity for about six years and thereafter, his case was considered by the concerned authorities and the order of regularisation came to be issued in his favour by the above cited official on 01.10.1993. Thus, the respondent/writ petitioner was regularised and was working in the cadre of Office Assistant with effect from 01.07.1991 and he has successfully completed his probation vide proceeding dated 04.10.1993 and also thereafter, brought into regular member of the service. The petitioner was also accorded with Selection Grade and Special Grade on completion of ten years and twenty years respectively and after attaining the age of superannuation, he was allowed to retire from service.

5. It appears that the concerned authorities had awoke from very deep slumber and became aware of the fact that the respondent/writ petitioner and another person, namely, G.Moorthy, came to be appointed irregularly as Office Assistant by relaxing the relevant Rules and therefore, thought fit to cancel the said appointment and consequently, all the attendant benefits.

6. The respondent/writ petitioner made the challenge to the said proceeding by filing the above said writ petition and it was entertained and counter affidavit had also been filed on behalf of the official respondents.

7. The learned Single Judge has taken note of the above cited development and it is relevant to extract paragraph No.5, as follows:-

> *"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."*

8. The learned Single Judge has also taken note of the fact that the Commissioner of Commercial Taxes also made a positive recommendation and the same has been considered improperly without assigning any reason and taking out of the fact that the petitioner came to be appointed on daily wage basis as early as on 21.01.1985, his regularisation, successful declaration of his probation, providing him Selection and Special Grade of pay and his retirement, has raised the conclusion that it is a fit case to interfere with the impugned proceeding.

9. In the considered opinion of the Court, the reasons assigned by the learned Single Judge in allowing the writ petition cannot be found fault with, for the reason, that the appellants/official respondents are themselves guilty of delay and laches and after a long lapse of time, they cannot allowed to take a stand as to the irregular appointment of the respondent/writ petitioner as Office Assistant on daily wage basis.

10. In the considered opinion of the Court, the law and equity is also operating in favour of the respondent/writ petitioner. This Court, having found no merits in this Writ Appeal, is not inclined to interfere with the impugned order of the learned Judge.

11. In the result, this **Writ Appeal is dismissed**, confirming the order dated 19.06.2019, passed in W.P(MD).No.3082 of 2015. No costs. Consequently, the connected miscellaneous petition is closed.

12. If at all the respondent/writ petitioner is not conferred with any of the retiral/pensionary benefits, for which, he may be eligible, shall be provided with the same within a period of ten weeks from the date of receipt of a copy of this order by the concerned official respondents and the communication in this regard shall also sent to him.

Sd/-

Assistant Registrar (A.E)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note: *In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

To

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   Commercial Taxes & Registration (A1) Department,
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