IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2021

CORAM
THE HONOURABLE DR. JUSTICE ANITA SUMANTH
W.P. No. 6534 of 2009

S.Abdul Basheer ...Petitioner

Vs.

1. The State of Tamil Nadu,
   Rep. by its Secretary to Govt.
   Commercial Taxes and Registration Dept.
   Secretariat, Chennai-600009

2. The Principal Secretary/
   Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk
   Chennai-600005 ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified mandamus calling for the records pertaining to the order of the first respondent in G.O.(2D.No.54, Commercial Taxes and registration (E2) Dept.) dated 03.03.2009 quash the same and consequently direct the respondents to confer all consequential service and monetary benefits.

For Petitioner : Mr.N.R.Jasmine Padma

For Respondents : Mr.S.John J. Raja Singh
Government Advocate

ORDER

The petitioner was appointed as Assistant Commercial Taxes Officer (ACTO) in the State Commercial Taxes Department in August 1976 and promoted through the ranks. He held the post of Assistant Commissioner, renamed as Deputy Commissioner.

2. While in the assessment circle, the petitioner had had occasion to frame assessments in regard to Tvl. Larsen and Tubro Ltd. (assessee) under the provisions of the Tamil Nadu General Sale Tax Act, 1959 (Act). Inter alia, the petitioner had adopted the rate of 5% in regard to the turnover from sale of scaffolding material.

3. In doing so, the petitioner appears to have accepted unilaterally the submission of the assessee to the effect that, that was the applicable rate on scaffolding material and the

same was supported by a Government Order. The correct position appears to be that scaffolding material was not covered by a specific entry in the Schedules to the Act and, in such an event, what would have been applicable would be the rate of 8%, being the rate for residual items not covered by specific entries.

4. The incumbent officer, noticing the mistake committed by his predecessor, revised the assessment and called upon the assessee to remit the differential of 3%, which was done by the assessee. Seeing as the assessment was based only upon the accounts of the assessee itself and there have been no suppression by it, no penalty was levied.

5. In this case, what concerns us is the initiation of disciplinary proceedings as against the petitioner for alleged culpable negligence and carelessness in framing of assessment under the Act leading to revenue loss. Statement of charges framed as against him reads as follows:

> 'Charge No.1:
>
> That Thiru S.Abdul Basheer, Assistant Commissioner (CT), during his tenure as Assistant Commissioner (CT), Zone XI, Chennai from 25.01.2002 to 05.07.2004, has acted with culpabe negligence and recklessness in the discharge of his assessment responsibilities and has adopted incorrect rate of tax on hire charges of scaffolding materials in respcet of Tvl. Larsen and Toubro Limited for the assessment years 1994-95 and 1995-96 under TNGST Act 1959 and, thereby, caused a revenue loss of Rs.5,92,142-00 to the State Exchequer.
>
> Charges no.2
>
> That the said Thiru. A.Abdul Basheer, Assistant Commissioner (CT), by his aforesaid lapses of culpable negligence and recklessness in the discharge of assessment responsibilities and by causing the consequential huge revenue loss to the State Exchequer, has failed to discharged his duty with devotion and diligence and failed to safeguard the interest of Revenue, thereby, acting in a manner unbecoming of a Government Servant, violative of Rule 20(1) of the Tamil Nadu Government Servants Conduct Rule, 1973.

6. The petitioner was called upon to file a response to the charges and his explanation was that he had been holding additional charge of two seats leading to pressure of work and consequentially mistakes in the framing of the assessments. While he does not dispute the position that a mistake had been committed, his attempt was to show that there was no culpability that should lead to disciplinary action. He further adopted the stand that it was only to correct errors in law that statutory and revisionary tiers have been built into the scheme of the Act and thus such mistakes could well be corrected by the superior officers.

7. In this very case, the mistake had been identified and corrected even prior to the initiation of disciplinary proceedings. Thus, as far as revenue loss is concerned, that aspect does not survive in the light of the assessee having made good the differential of 3% arising from the erroneous assessment framed by the petitioner.

8. There is no dispute on this position and both learned counsel before me would confirm the position that there is no revenue loss that has been occasioned to the State by virtue of the erroneous assessment originally framed. I am thus to look into the aspect of whether the framing of the erroneous assessment itself should lead to the initiation of disciplinary proceedings.

9. The law on this issue has been settled by a series of judgments of the Hon'ble Supreme Court succinctly summarised by the Division Bench of this Court in the case of Union of India and others V. P.Parameswaran and another[1]. The first judgment is of a three Judge Bench in the case of Union of India and Others Vs. K.K.Dhawan[2]. The facts of that case are akin to the matter before me insofar as, even in that case, the delinquent officer had been employed in a Revenue Department, though under a Central enactment. Charges were framed in regard to alleged misconduct/misbehaviour that were challenged before the Administrative Tribunal.

10. The charges related to the finalisation of nine income tax assessments in an irregular manner, the respondents contending that the assessments had been completed in haste and with a view to conferring undue favours upon the assessee in that matter. The allegation against the delinquent was that he had failed to maintain integrity, failed to exhibit devotion to

1(W.P.No.11433 of 2001 dated 10.01.2008)

2 1993 AIR SC 1478

duty and had, in all, exhibited conduct that was unbecoming of a Government Servant.

11. The Hon'ble Supreme Court made an important distinction between errors that arise from the conduct of an employee in the course of quasi-judicial duty and errors that arise from the interpretation and application of law. The conclusion was that while the latter might be condonable, seeing as multiple views are possible in the interpretation of a Statute, errors emanating from the conduct of quasi-judicial proceedings, particularly errors such as negligence in finalisation of assessments with a clear view to favouring one party or the other and recklessness in the discharge of duty, will attract disciplinary proceedings.

12. Thus and bearing in mind the above distinction, the Bench crystallized six illustrations of disciplinary proceedings that could be initiated as against officers in the exercise of quasi-judicial functions. While cautioning that the six instances were not exhaustive, the Bench clarified that mere technical violation or a legally wrong order may not attract disciplinary action.

13. The illustrative situations are :

> (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
>
> (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
>
> (iii) if he has acted in a manner which is unbecoming of government servant;
>
> (iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
>
> (v) if he had acted in order to unduly favour a party-,
>
> (vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago “though the bribe may be small, yet the fault is great”.

14. The second judgment is in the case of Zunjarro Bhikaji Nagarkar Vs. Union of India and Others[3]. The petitioner in that case was employed as a Collector/Commissioner of Central Excise and had been hauled up in regard to an order-in-original wherein he was alleged to have favoured a party by not imposing penalty upon him despite a finding that there had been clandestine manufacture and clearance of excisable goods. Thus, while customs duty had been imposed, officer had failed to impose penalty.

15. The Hon'ble Supreme Court held that a wrong interpretation of law could not be a ground for misconduct unless it had been proved that the misconduct had been deliberate and actuated by mala fides. Thus, negligence in quasi-judicial adjudication would be an offence of far less gravity, unless it is proved that the negligence was calculated and conscious, to derive a benefit. In the latter circumstance, it would amount to a culpable offence that would attract disciplinary proceedings.

16. In Union of India and Others Vs. Duli Chand[4], the view in the Zunjarro Bhikaji Nagarkar's case was held to be contrary to the view expressed in K.K.Dhawan's case and the judgment in K.K.Dhawan's having been rendered by a three Judge Bench, was preferred and followed.

17. In the case of the Government of Tamil Nadu Vs. K.N.Ramamurthy[5], the Hon'ble Supreme Court considered the plea of an officer who had been punished for the improper discharge of judicial functions. Following the ratio laid down in K.K.Dhawan's case, the Bench restored the punishment imposed, as it was of the view that misconduct and irregularity in the discharge of judicial functions had been established by the State before the Tribunal.

18. Then again in Ramesh Chander Singh Vs. High Court of Allahabad and Another[6], the Hon'ble Bench at para 12 reiterated the ratio in K.K.Dhawan's case stating that the practice of initiating disciplinary proceedings against officers of the subordinate judiciary, merely on the ground that their orders were erroneous in law, should cease. Appeallate and revisional authorities have been vested with the powers of intervention and correction of orders that are erroneous in law and disciplinary

3 (1997) 7 SCC 409

4 (2006) 5 SCC 680

5 (1997) 7 SCC 101

6 (2004) 4 SCC 247

action qua judicial orders, must thus be taken with great care, caution and circumspection. Reference was also made to Zunjarro Bhikaji Nagarkar's case in that judgment without any reference to Duli Chand's case.

19. In Inspector Prem Chand Vs. Governement of NCT of Delhi and others[7], following the ratio laid down in Zunjarro Bhikaji Nagarkar's case, disciplinary proceedings were set aside on the basis of a finding of fact of the Tribunal that the accused had not demanded a bribe from the complainant and thus, had not been culpably negligent. Reference made to the observation in Zunjarro Bhikaji Nagarkar's case to the effect that initiation of disciplinary proceedings as against an employee must not be based on information that was vague or indefinite and suspicion would have no role to play in such a matter. There must exist a reasonable basis for the disciplinary authority to proceed as against the delinquent officer. Duli Chand's case was not referred to.

20. A Division Bench of this Court in P.Parameswaran (supra) summarised the tests laid down, and applied the same cumulatively concluding that malafides should be attributed to the delinquent prior to fastening disciplinary proceedings upon him. Government Servants must not be punished for an erroneous interpretation of the law, simplicitor. The writ petition filed by the Union was dismissed holding that the Tribunal in that case had understood the scope of judicial review correctly.

21. Applying the above tests to the facts in this case, the error in law committed by the petitioner does not, in my view, justify the disciplinary proceedings initiated. The enquiry officer has taken note of the position that no culpability could be attributable to the petitioner though he was, admittedly, negligent in assessment. Even the charge memo does not attribute any malafides or allege unbecoming conduct on the part of the petitioner.

22. The issue at hand relates to the rate of tax to be imposed upon a particular item. The question of rate of tax is one that is subject to some amount of debate and discussion, and some margin for error is permissible, subject to the conclusion being bonafide even if erroneous.

23. Thus, and in the light of the factual matrix as noted above, I am of the view that the disciplinary proceedings initiated have no legs to stand.

7 (2007) 4 SCC 566

24. This writ petition is allowed and the impugned proceedings set aside. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Govt
   State of Tamil Nadu,
   Commercial Taxes and Registration Dept.
   Secretariat,
   Chennai-600 009

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

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.45246
+1cc to the Government Pleader, Sr.45534
+1cc to the Special Government Pleader, Sr.45982

W.P. No. 6534 of 2009

PNJ[co]
NSK 02/11/2021