IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.9193 OF 2014

S.Murugan ... Petitioner

Vs.

State of Tamil Nadu
Rep. by its Principal Secretary to Government
Home (Tr-II) Department
Fort St. George,
Chennai – 600 009. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the entire records relating to the order passed in G.O.(D) No.49, Home (Tr-II) Department, dated 23.01.2014 on the file of the respondent, quash the same and pass further suitable orders.

For Petitioner : Mr.P.Ganesan

For Respondent : Mr.C.Selvaraj
Government Advocate (Civil Side)

O R D E R

The petitioner while working as an Assistant at the Office of the Regional Transport Office, Sivagangai, was issued with a charge memo for dereliction of duty. The charge reads as under:

> “CHARGE:-
> Thisu S.Murugan, Assistant cum Accountant, Office of the Regional Transport Officer, Sivagangai, intentionally failed to collect the Life Time Tax arrears promptly from the owner of the LMV Ford Ikon No.TN 45 M 5290 at the time of effecting Transfer of Ownership on 13.08.2007.

Thus, he had failed to maintain absolute integrity and devotion to duty and violated rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973.”

2.An enquiry was conducted and the Enquiry Officer found that the intentional commission of the misconduct on the part of the petitioner was not proved. But, the Disciplinary Authority refused to agree with the finding of the Enquiry Officer and issued a show cause notice to the petitioner as to why they cannot disagree with the findings of the Enquiry Officer. The reason for disagreement was also given. The petitioner made a further representation and after considering the same, the punishment of stoppage of increment for a period of five years with cumulative effect was imposed. Challenging the same, the petitioner is before this Court.

3.The learned counsel for the petitioner would contend that the misconduct was committed at the Office of the Regional Transport Office, Sankaran Koil by the then Motor Vehicles Inspector. The said Motor Vehicle Inspector defying the order of the Transport Commissioner, the petitioner had collected successively annual tax for the year 2006-2007 and 2007-2008. It is noted that since the currency of annual tax was imposed and there were pressure to dispose of the files within a period of two days, as per the Government Order, the petitioner inadvertently transferred the ownership of the vehicle without collecting the lifetime tax. However, it is further submitted that lifetime tax was collected on 21.01.2008 itself and therefore, there is no loss caused to the Government.

4.The next contention is that the petitioner has prepared the papers and placed it before the superior authorities and it was approved by them. However, when it came to imposition of punishment, they were imposed with a lighter punishment, whereas, the petitioner was imposed with the major punishment. Therefore, according to him, as held by the Hon'ble Supreme Court in AKILESH KUMAR SINGH VS. STATE OF JHARKHAND AND OTHERS [2008 (2) SCC 74] when there is discrimination in imposing punishment, it can be interfered by the Court.

5.The other contention of the petitioner is that the mistake was committed by the Motor Vehicles Inspector, Sankaran Koil, where the vehicle was taxed. Since the tax was valid till 31.03.2008, there is no reason to collect further tax and if it is collected, it will amount to double taxation and therefore, it cannot be construed as a misconduct and the charges should be dropped.

6.I have considered the rival submissions.

7.The admitted fact remains that there were instructions to collect the lifetime tax in Government Letter Ms.No.1171, Home (Tr. I) Department, dated 07.12.2006. As specified in Part I, III Schedule of the Tamil Nadu Motor Vehicles Taxation (Amendment) Act, 1998, there are specific instructions to collect the lifetime tax after deducting the annual tax so far paid to complete the tax calculation process on or before 30.04.2007. This particular misconduct was committed on 13.08.2007 after issuance of these instructions. It is very clear that even in circumstances where the annual tax was collected for a vehicle inadvertently after deducting the annual tax collected, the remaining lifetime tax is expected to be collected by officers concerned.

8.In the instant case, the vehicle was presented for effecting transfer of ownership, before the petitioner. The prime criteria is that before effecting the transfer of ownership, it has to been seen as to whether tax was collected or not. When there are time bound instructions to collect the lifetime tax, it is the primordial duty of the petitioner to look into the aspect of collection of tax which is the revenue to exchequer. On the other hand, the petitioner had given excuses for not collecting taxes by blaming the previous Motor Vehicles Inspector of Sankaran Koil. From the reasons given for disagreement with the findings of the Enquiry Officer, the Government has specifically stated that recovery of the lifetime tax for the said vehicle on 21.01.2008 was not out of efforts of the delinquent as claimed by him. The Regional Transport Officer during the routine cross check had found that lifetime tax was not collected and he had taken steps to collect the taxes. Therefore, it is very clear that the petitioner had committed dereliction of duty in not collecting the tax. In so far as the dereliction is concerned, the charge as found by the Government is proved. I do not want to interfere with the findings of the Government.

9.However, it is required to be noted that the charge was framed for a misconduct that he intentionally failed to collect the tax. As found by the Enquiry Officer, there are no materials to prove that the petitioner had intentionally failed to collect the lifetime tax. When there are two views are possible, the view which is beneficial to the delinquent should be taken in his favour. Hence, when there are no materials to prove that the petitioner had intentionally omitted to do his duty and therefore, the punishment shall be imposed only for the dereliction of duty. It is correct to state that the charge warrants a severe punishment. But, in this case, mensrea is not proved and therefore, it shall be proportionate to the dereliction of duty committed by the official. The other officials who were also tried for the very same delinquency were let off with lesser punishment. The Hon'ble Supreme in DIRECTOR GENERAL OF POLICE VS. G.DASAYAN [1998 (2) SCC 407] interfered with the different punishment for identical charges. Considering the above aspect, this Court is also of the opinion that the petitioner shall also be imposed with lesser punishment. In that view of the matter, as contended by the learned counsel for the petitioner, stoppage of increment for a period of five years with cumulative effect, will cause serious consequences and will take away the entire pension of the petitioner. Therefore, I consider that a lesser punishment can be imposed proportionate to the misconduct committed by the petitioner.

10.Considering the misconduct as well as the materials placed before this Court, I am of the considered opinion that the stoppage of increment for a period of two years without cumulative effect will be proportionate to the misconduct.

11.Accordingly, I modify the punishment of stoppage of increment for a period of five years with cumulative effect imposed vide G.O.(D) No.49, Home (Tr-II) Department, dated 23.01.2014 into one of stoppage of increment for a period of two yeas, without cumulative effect. The respondent is directed to compute the terminal benefits corresponding to the modification made in this order and disburse the same within a period of four months from the date of receipt of a copy of this order. The writ petition is ordered accordingly. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

TK

To

The Principal Secretary to Government
Government of Tamil Nadu
Home (Tr-II) Department
Fort St. George,
Chennai - 600 009.

+1cc to the Government Pleader, S.R.No.36573

WP NO.9193 OF 2014

MG(CO)
RLP(02/09/2021)