THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MS.JUSTICE N.MALA

W.P.NO.4379 OF 2018
&
W.M.P.NO.5375 OF 2018

The Union of India,
Rep. by its Secretary,
Ministry of Finance,
Department of Revenue,
Central Board of Direct Taxes,
North Block, New Delhi - 1. ... Petitioner

.Vs.

1. The Central Administrative Tribunal,
   Chennai Bench, rep. by its Registrar,
   City Civil Court Buildings,
   High Court Complex,
   Chennai – 104.

2. S.Ganapathy Iyer (Deceased)
3. Mrs.Kamala Ganapathy
4. Ms.Preethi Ganapathy Iyer

   (R3 & R4 impleaded vide order of Court dated 27.11.2018 in W.M.P.No.17031 of 2018 by MMSJ & KRJ) ... Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records of the 1st respondent in O.A.No.310/00741/2015 dated 08.02.2017 and quash the same.

For Petitioner : Mr.V.Vijayshankar

For Respondents : Mr.S.Sridharan
For R3 & R4

O R D E R

(Order of the Court was made by N. MALA,J.)

The Writ Petition is filed challenging the order dated 08.02.2017 passed in O.A.No.310/00741/2015 by the 1st respondent Tribunal.

2. O.A.No.310/00741/2015 was filed by the 2nd respondent herein (since deceased) challenging the order dated 27.11.2014 imposing the punishment of 20% cut in monthly pension for a period of 5 years on the basis of the enquiry conducted pursuant to the issuance of charge memo dated 23.02.2006.

3. The applicant in the O.A. joined as Inspector of Income Tax on 16.03.1971 and at the time of his retirement on 30.04.2007, he retired as Additional Commissioner of Income Tax. While so, he was issued with a charge memo dated 23.02.2006 under Rule 14 of CCS (CCS) Rules, 1965, with respect to the assessments conducted by him in certain cases. He gave an explanation for the charge memo, enquiry was conducted and a penalty of 20% cut in monthly pension for a period of five years was imposed. As stated above, challenging the order dated 27.11.2014 imposing the penalty of 20% cut in monthly pension for five years, O.A.No.310/00741/2015 was filed by the 2nd respondent herein (since deceased.)

4. The main issue in the O.A. was whether the charge memo issued without the prior approval of the competent authority, who in this case was the Cabinet Minister for Finance, was valid, eventhough an ex post facto approval was obtained subsequently on 08.10.2014.

5. The Tribunal, relying upon the judgment of the Honourable Supreme Court rendered in the case of Union of India & Ors V. Shri B.V. Gopinath & Ors reported in (2014) 1 SCC 351, held the charge memo and the enquiry that followed it were non-est in law and set aside the penalty imposed and allowed the O.A. Challenging the said order, the present writ petition is filed by Union of India.

6. Though a Division Bench of this Court in the case of J. Velayutham V. Union of India and others reported in 2018-1-Writ L.R.69 has held that ex-post facto approval was valid, the Honourable Supreme Court, in its latest judgment in Sunny Abraham V. Union of India and Another in Civil Appeal No. 7764 of 2021 dated 17.12.2021 has held that ex-post fact approval cannot revive a charge memo, which was initially issued without the approval of the competent authority.

7. In view of the judgment of the Honourable Apex Court, this writ appeal stands dismissed. No costs. Connected W.M.P. is closed.

8. Though the Tribunal had directed the petitioner to issue a charge memo afresh, we are told that the 2nd respondent died on 27.07.2017 and therefore, the said exercise cannot be undertaken.

9. In the above facts and circumstances, we direct the petitioner to settle the amount, which was recovered pursuant to the imposition of penalty of 20% cut in monthly pension for a period of 5 years, to respondents 3 and 4, within a period of four months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
The Union of India,
Ministry of Finance,
Department of Revenue,
Central Board of Direct Taxes,
North Block, New Delhi – 1.

2. The Registrar,
Central Administrative Tribunal,
City Civil Court Buildings,
High Court Complex,
Chennai – 104.

+2ccs to Mr.S.Sridharan, Advocate, S.R.No.29171

W.P.NO.4379 OF 2018

GSM(CO)
PBS/27/05/2022