IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-06-2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.18058 of 2014
And
MP Nos.1 and 2 of 2014

N.Elangovan .. Petitioner

vs.

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

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

3. Tribunal for Disciplinary Proceedings,
   Coimbatore Represented by
   Commissioner for Disciplary Proceedings.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent bearing G.O.(3D) No.17 dated 27.06.2014 and G.O.(D) No.262 dated 30.06.2014 - both served on the petitioner at 2 PM on 01.07.2014 by the second respondent subsequent to his retirement on 30.06.2014 - as arbitrary, illegal and opposed to Fundamental Rules 56(1)(a) and 56(1)(c) in substantive compliance, unfair and unreasonable and to quash the same with consequential direction to the first and second respondents to settle the terminal and other pensionary benefits to the petitioner with liberty to proceed in accordance with law.

For Petitioner : Mr.M.Muthappan

For Respondents R1 to R3 : Mr.R.Siddarath, Government Advocate.

O R D E R

The writ petition has been filed questioning the validity of the order passed by the Government in G.O.(3D) No.17, Commercial Taxes and Registration Department, dated 27.06.2014 and G.O.(D) No.262, Commercial Taxes and Registration Department, dated 30.06.2014.

2. The writ petitioner was working as Joint Commissioner of Commercial Taxes (Special Cell) in the office of the Principal Secretary/Commissioner of Commercial Taxes, Chepauk, Chennai-600 005. The petitioner was due to retire from service on attaining the age of superannuation on 30.06.2014.

3. The learned counsel appearing on behalf of the writ petitioner made a submission that as on the date of retirement of the writ petitioner on 30.06.2014, the impugned order had not been communicated to him and therefore, the order subsequently communicated cannot be held as valid and on that ground the impugned order of suspension and not allowing the writ petitioner to retire from service, are liable to be set aside.

4. The learned counsel appearing on behalf of the petitioner made a submission that the order impugned placing the writ petitioner under suspension and not allowing him to retire from service under Rule 56(1)(c) of the Fundamental Rules was issued on the date of retirement on 30.06.2014. However, the said order was communicated to the writ petitioner on the next day on 01.07.2014 and therefore, the order became invalid. The date of communication of the impugned order to the writ petitioner is to be taken into consideration for the purpose of holding the validity of such order.

5. In this regard, the learned counsel for the petitioner relied on the order passed by the learned Single Judge of Madurai Bench of this Court dated 10.02.2017 in WP (MD) No.12072 of 2012. In the said order, the Madurai Bench of this Court observed that the retention order issued was served on the delinquent on 29.06.2012, though the order was passed on 31.05.2012. Relying on the said order, the learned counsel for the petitioner made a submission that though the order of suspension and not allowing the writ petitioner to retire from service was issued on the date of retirement on 30.06.2014, it was not served on the petitioner on the same day and therefore, the order impugned is liable to be set aside.

6. The learned Government Advocate appearing on behalf of the respondents objected the contentions raised on behalf of the writ petitioner by stating that the order passed by the

Government was duly communicated to the writ petitioner and he evaded receipt and it was subsequently affixed. In this regard, paragraph-12 of the counter-affidavit filed by the Principal Secretary/Commissioner of Commercial Taxes reveals that a direction to dispose of the TDP case pending against the writ petitioner was issued by this Court on 03.04.2014. The same was concluded and the findings have been duly sent to the first respondent. On 30.06.2014, at about 04.00 P.M., the dealing Assistant of the office of the second respondent went to the petitioner's chamber to inform about the receipt of Government Orders dated 27.06.2014 and 30.06.2014 respectively from the Government. At that time, the petitioner was not available in his chamber. When approached again at 05.15 P.M., it was informed that the whereabouts of the writ petitioner was not known to the staff attached to the chamber of the petitioner. Hence action was taken to serve the Government Orders at his last known residential place at No.5, Commercial Tax Officers' Association Campus, Narasimmam Maligai, Vepery, Chennai and the same was served by affixture at 08.00 P.M., on 30.06.2014 in the presence of witnesses as per the procedures laid down in law. The said fact has been totally suppressed by the petitioner for the reasons best known to him. The petitioner has chosen to come to the office of the second respondent and received copies of the said two Government Orders in person, acknowledging the receipt. The petitioner did not even receive the order of his superannuation while leaving from the office on 30.06.2014 and received the same only on 01.07.2014 at 02.00 P.M. Therefore, the contention of the petitioner is not correct that the two impugned Government Orders were served on him on 01.07.2014 at 02.00 P.M. The respondents state that the petitioner had suppressed the fact of non-availability of himself in the office till the end of superannuation day i.e., on 30.06.2014.

7. The learned counsel for the petitioner made a submission that the petitioner has given a reply by stating that he was very much available in the Chamber on 30.06.2014. However, these factors cannot be adjudicated in the present writ petition. The fact remains that the Government passed an order before the date of superannuation of the writ petitioner.

8. Mere communication of the order belatedly to the delinquent official would not vitiate the entire proceedings. The Government is passing an order and such order is to be communicated to the officials concerned by following the procedures as contemplated. Such procedures may take sometime on account of distance or non availability of the particular official and the place of service etc. When such mitigating factors are also to be considered, mere non-serving of the order to the delinquent official on the same day would not be a ground to set aside the entire order passed by the Government, which is

otherwise in accordance with law.

9. In the present case, the departmental disciplinary proceedings are pending against the writ petitioner on the date of his superannuation. The petitioner was working in the responsible higher position of Joint Commissioner of Commercial Taxes. The petitioner was placed under suspension by the Government and his services were extended by invoking the Fundamental Rules. When the Government passed an order before the time and date of superannuation, the serving of the said order to the petitioner would not invalidate the entire order and such service of orders depending upon various other factors and therefore the very ground raised in this regard is unsustainable.

10. This Court is of the considered opinion that the delinquent officials cannot be allowed to escape from the clutches of law on these flimsy grounds. It is possible that such delinquent officials are either refusing to receive the orders or evading to receive the same. There are several ways and means to evade receiving of such orders and those factors are also to be taken into account while considering these nature of grounds raised by the delinquent officials for the purpose of challenging the order of suspension and not allowing the official to retire from service.

11. The allegation against the writ petitioner is accumulation of disproportionate wealth. The Tribunal for departmental disciplinary proceedings have conducted the enquiry and the final order is yet to be passed.

12. The learned Government Advocate appearing on behalf of the respondents brought to the notice of this Court that the enquiry has already been concluded and the enquiry report also has been submitted. Thus the respondents are bound to follow the procedures as contemplated and pass final order in the departmental disciplinary proceedings as expeditiously as possible in view of the fact that the petitioner has already reached the age of superannuation.

13. As far as the challenge regarding order of suspension and the consequential order of not allowing the writ petitioner to retire from service are concerned, the writ petitioner has not established any acceptable legal grounds for the purpose of granting the relief as such sought for and in view of the fact that the enquiry in the departmental disciplinary proceedings had already been concluded, the respondents are directed to follow the procedures and pass final orders in the departmental disciplinary proceedings as expeditiously as possible.

14. With the abovesaid directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

Svn

To

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

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

3. The Commissioner for Disciplary Proceedings.
   Tribunal for Disciplinary Proceedings,
   Coimbatore.

+1cc to the Special Government Pleader, S.R.No.39442

WP 18058 of 2014

SKM(CO)
UMA(11/07/2022)