IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.6761 of 2017
and W.M.P.No.7322 of 2017

K.Boopathi ... Petitioner

Vs.

1. The Government of Tamil Nadu,
   Represented by the Additional Chief Secretary,
   Commercial Taxes Department, Secretariat,
   St. George Fort,
   Chennai – 600 009.

2. The Commissioner of Commercial Taxes,
   O/o. the Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai – 600 005.

3. The Joint Commissioner, (CT), Administration,
   Coimbatore Division,
   Coimbatore.

4. V.Subburayan, Assistant Commissioner,
   Deputy Commissioner (FAC) Admin,
   O/o. Joint Commissioner (CT), Administration,
   Coimbatore Division,
   Coimbatore. ... Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records from the third respondent in connection with the impugned charge memo viz., No.8728/2010/A1 dated 03.12.2010 and all its consequential proceedings viz., Proc.No.EE2/33803/2011 dated 27.06.2013 issued by second respondent, G.O.(D).No.150 issued by first respondent dated 21.04.2015, G.O.(D).No.244 issued by first respondent dated 06.07.2016 and quash the same and direct the Respondents 1 & 2 to pass appropriate orders granting all consequential benefits on par with his immediate junior namely Mr.Saravana Sattayappan, Assistant Commissioner.

For Petitioner	: Mr.V.Prakash, Senior Counsel for Mr.K.Krishnamoorthy
For Respondents	:
For R1 to R3	: Mrs.K.Vasanthamala Government Advocate
For R4	: No Appearance

ORDER

The petitioner has filed this writ petition for the issuance of Writ of Certiorarified Mandamus to call for the records from the third respondent in connection with the impugned charge memo viz., No.8728/2010/A1 dated 03.12.2010 and all its consequential proceedings viz., Proc.No.EE2/33803/2011 dated 27.06.2013 issued by second respondent, G.O.(D).No.150 issued by first respondent dated 21.04.2015, G.O.(D).No.244 issued by first respondent dated 06.07.2016 and quash the same and direct the Respondents 1 & 2 to pass appropriate orders granting all consequential benefits on par with his immediate junior namely Mr.Saravana Sattayappan, Assistant Commissioner.

2. The punishment of stoppage of increment for three months without cumulative effect imposed on the writ petitioner is sought to be quashed in the present writ petition.

3. The writ petitioner joined the services of the second respondent office as Assistant Commercial Tax Officer (now re-designated as Deputy Commercial Tax Officer) on 20.11.2008. The petitioner was recruited through Tamil Nadu Public Service Commission in the year 2008 and completed his nine months training on 10.09.2009 and was appointed with effect from 11.09.2009 at the office of the Assistant Commissioner, Pollachi (Rural) Circle.

4. A Charge Memorandum under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was issued. Four charges were framed against the writ petitioner and all the charges are relating to certain lapses failed to be noticed by the petitioner while performing his duties. The failure on the part of the petitioner to trace out the lapses resulted in misappropriation of the funds by one Thiru.B.Krishnamoorthy, Sales Tax Collection Inspector and therefore, the petitioner was issued with the Charge Memorandum.

5. The petitioner denied the charges. Not satisfied with the explanation, the Disciplinary Authority appointed an Enquiry Officer who conducted an enquiry. Accepting the report of the Enquiry Officer, the Disciplinary Authority provided an opportunity to submit further objections on the findings and finally the order of punishment of stoppage of increment for three months without cumulative effect was issued.

6. The learned Senior Counsel appearing on behalf of the writ petitioner mainly contended that the principles contemplated under Rule 9(A) of the Tamil

Nadu Civil Services (Discipline and Appeal) Rules had not been followed in the case of the writ petitioner. In view of the fact that yet another officer from the same office one Mr.D.Vijayakumar was also responsible for such lapses and a Charge Memorandum was issued against him in proceedings dated 30.08.2011. Perusal of the charges framed against the said Mr.D.Vijayakumar reveals that the same set of allegations are framed and therefore, the authorities competent ought to have conducted a joint trial by invoking Rule 9 (A) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

7.Importantly, in respect of the very same allegations, the said Mr.D.Vijayakumar was exonerated from the disciplinary proceedings and the petitioner suffered the punishment of stoppage of increment for three months without cumulative effect. Thus, regarding the similar allegations, the petitioner was treated differently and he was discriminated, resulted in punishment which caused denial of promotion to him.

8.The learned Senior Counsel for the petitioner further contended that the Enquiry Officer had not conducted the enquiry by following the established principles as laid down by the Hon'ble Supreme Court of India in the case of ***Chamoli District Co-Operative Bank Limited and Another Vs. Raghunath Singh Rana and Ors.,*** in Civil Appeal No.2265 of 2011 vide order dated 17.05.2016.

9. The Hon'ble Apex Court considered the principles laid down in the case of ***Sur Enamel and Stamping Works Private Limited*** *Vs.* ***Their Workmen***, reported in ***(1964) 3 SCR 616***, as follows:

> "An enquiry cannot be said to have been properly held unless:
>
> i. the employee proceeded against has been informed clearly of the charges levelled against him;
>
> ii. the witnesses are examined ordinarily in the presence of the employee in respect of the charges;
>
> iii. the employee is given a fair opportunity to cross-examine witnesses;
>
> iv. he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and
>
> v. the inquiry officer records his findings with reasons for the same in his report."

10. Relying on the above principles, the learned Senior Counsel for the writ petitioner reiterated that no such procedure was contemplated at the time of examining the witnesses and the petitioner was denied the valuable opportunity of cross-examining the witnesses and thus, the punishment was imposed based on an improper enquiry and consequently, the order of the punishment is to be set aside.

11. The learned Government Advocate appearing on behalf of the respondents 1 to 3 objected the contentions by stating that the writ petitioner was issued with the Charge Memorandum for the lapses committed by him. However, the said Mr.D.Vijayakumar was holding in-charge position and he was not regularly posted in the said post where the lapses occurred.

12. Though, the said Mr.D.Vijayakumar was holding in-charge as Head of Office, he cannot be compared with the petitioner who was working as his subordinate. Thus, the comparison made by the writ petitioner is unacceptable. Consequently, the writ petition is to be rejected.

13. Considered the arguments of the learned Senior Counsel appearing on behalf of the petitioner and the learned Government Advocate appearing on behalf of the first to third respondents. The allegations and the charges framed against the writ petitioner and Mr.D.Vijayakumar, Commercial Tax Officer are similar in nature. Additional details regarding the files are furnished in the Charge Memorandum issued to Mr.D.Vijayakumar which reveals that the charge is for the lapses committed by not noticing the irregularities in the files.

14. The lapses committed by the said Mr.D.Vijayakumar and the petitioner resulted in misappropriation of the funds by one Mr.B.Krishnamoorthy, who was issued with separate Charge Memorandum and the learned Government Advocate brought to the notice of this Court that Mr.B.Krishnamoorthy was imposed with penalty.

15. There is no infirmity in segregating the case of Mr.B.Krishnamoorthy as he had involved in the allegations of misappropriation of funds. However, so far as the writ petitioner and Mr.D.Vijayakumar are concerned, both are charged only for the official lapses committed while performing the duties.

16. While so, the case of the writ petitioner and the said Mr.D.Vijayakumar cannot be differentiated in the event of similar allegations with reference to the officials working in the same office.

17. More so, regarding the lapses, the authorities competent ought to have invoked Rule 9 (A) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, for the purpose of conducting joint enquiry so as to provide equal opportunity to all the employees and the witnesses who all are facing the departmental/disciplinary proceedings.

18. Pertinently in the present case, the said Mr.B.Krishnamoorthy was exonerated from the disciplinary/departmental proceedings and allowed to retire from service.

19. That being the case, the petitioner was discriminated in respect of the conduct of common enquiry under Rule 9 (A) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and he was imposed with the penalty of stoppage of increment for three months without cumulative effect.

20. More so, the punishment resulted in denial of promotional opportunity to the writ petitioner and thus, the learned Senior Counsel for the petitioner reiterated that though the punishment is minor, it affected the career of the petitioner in the matter of promotion.

21. In view of the facts and circumstances, this Court is of the considered opinion that the petitioner was unnecessarily differentiated and pertinently the respondents imposed penalty on the writ petitioner and exonerated the other officer namely Mr.D.Vijayakumar with reference to the allegations of lapses in the same office and consequently, conduct of an enquiry as well as the imposition of punishment is infirm and not in consonance with the established principles. Thus, this Court is inclined to consider the case of the writ petitioner.

22. Accordingly, the impugned order of punishment issued by the second respondent in his proceedings dated 03.12.2010 bearing Reference.No.8728/2010/A1 and the appellate order dated 21.04.2015 and review order dated 06.07.2016 are quashed.

23. Accordingly, this writ petition stands allowed. No Costs. Consequently, connected miscellaneous petition is closed.

16.09.2022

Index : Yes
Speaking order
rgm/ssr

To

1. The Additional Chief Secretary,
   Government of Tamil Nadu,
   Commercial Taxes Department, Secretariat,
   St. George Fort,
   Chennai – 600 009.

2. The Commissioner of Commercial Taxes,
   O/o. the Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
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   Coimbatore Division,
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4. The Assistant Commissioner,
   Deputy Commissioner (FAC) Admin,
   O/o. Joint Commissioner (CT), Administration,
   Coimbatore Division,
   Coimbatore.

S.M.SUBRAMANIAM, J.

ssr

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