BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.7477 and 7591 of 2014
and
M.P.(MD).Nos.1 and 1 of 2014

W.P.(MD).No.7477 of 2014:

J.Muthazhagu ... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Commercial Taxes and
Registration, Secretariat,
St.George Fort,
Chennai – 600 009.

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

3.The Joint Commissioner of
Commercial Taxes,
Madurai Division,
Dr.Thangaraj Salai,
Madurai – 625 020. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order of the second respondent in Procds.No.E2/21732/06-I dated 30.01.2014 and quash the same.

W.P.(MD).No.7591 of 2014:

L.Janarthanan ... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Commercial Taxes and
Registration, Secretariat,
St.George Fort,
Chennai – 600 009.

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

3.The Joint Commissioner of Commercial Taxes,
Madurai Division,
Dr.Thangaraj Salai,
Madurai – 625 020. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order of the second respondent in Procds.No.E2/21732/06-III dated 04.02.2014 and quash the same.

For Petitioner : Mr.Senthil Dharmarajan

For Respondents : Mr.N.Muthu Vijayan,
Special Government Pleader.

COMMON ORDER

The Writ Petitions in W.P.(MD).No.7477 of 2014 is filed to quash the impugned order dated 30.01.2014 and W.P.(MD).No.7591 of 2014 is filed to quash the impugned order dated 04.02.2014. The contention of the petitioners are one and the same in both the Writ Petitions. Hence, both the Writ Petitions were taken up together.

2. The petitioner was appointed as Record Clerk in the respondent Department on compassionate ground. His service was regularized subsequently. The petitioner submitted a representation dated 12.08.2013

requesting to implement the Government Order which has granted regularization retrospectively and grant promotion and seniority by fixing before the petitioner's immediate Junior. Since the same was not considered, the petitioner filed W.P.(MD).No.460 of 2014, this Court vide order dated 08.01.2014 directed the respondents to consider and pass orders within a period of four (4) weeks from the date of receipt of a copy of this order. In the meanwhile, the respondents have passed an order awarding a punishment of stoppage of increment for the period of one year without cumulative effect in respect of charge memo dated 06.06.2006. The contention of the petitioner is that in June 2006, the petitioner has worked as Record Clerk in the Lower Camp Check Post. During that time, it was alleged that in a surprise visit of joint team of Vigilance and Anti Corruption officers on 21.12.2002 at Lower Camp Check Post, they found that the Officers of Check Post with the help of staffs were collecting “mamools” ranging from Rs.20/- to Rs.500/- through some private individuals from vehicles passing the check post. Further it was alleged that the Officers of the check post with the help of the staffs detained the goods in the check post for more than 24 hours to one year which is violative of TNGST Act. The said issue was referred to Tribunal for Disciplinary Proceedings, Madurai in TDP Case No.1/2006 dated 09.06.2006 along with the copies of charge memos dated 06.06.2006, complaints and statement of witnesses were circulated directing to submit an explanation. A common written statement was filed by all the accused officers on 04.10.2006. An enquiry report was filed by the Tribunal for Disciplinary Proceedings, Madurai on 23.10.2006. After hearing the parties, the Tribunal has held that the charges are proved vide order dated 30.01.2014. Based on the order, the impugned order was received by the third respondent on 26.02.2014 and served to the petitioner on 04.03.2014. In the impugned order, the petitioner was imposed with a punishment of stoppage of increment for one year. The contention of the petitioner is that the enquiry report in TDP Case No.1 of 2006 was also filed on 23.10.2006. The petitioner has filed an petition on 23.04.2006. But the second respondent kept the proceedings for abeyance for more than seven years and they have passed an order awarding the punishment with an ulterior motive to defeat the petitioners promotion. Aggrieved over the declining of the promotion and the impugned order, the present Writ Petitions are filed.

3. The respondents have filed a counter affidavit stating that the writ petitioners had faced criminal proceedings. Based on the report received by the

Vigilance and Anti Corruption Tribunal, Disciplinary proceedings were initiated by issuing charge memo dated 06.06.2006. Based on the written arguments dated 04.10.2016, the Commissioner for the disciplinary proceedings has held that the charges are proved. Based on the enquiry report of the Commissioner for disciplinary proceedings, further representation of the charged individual dated 23.04.2007 and 29.05.2007 was filed. Based on the available records, the punishment of stoppage of increment for one year and the punishment of stoppage of increment for two years were imposed on the petitioners. Since the punishment was imposed based on the order passed by the disciplinary proceedings, therefore the petitioner is not entitled to relief. There is an alternative remedy to file an appeal before the Principal Secretary to Government. Hence, the Writ Petition is not maintainable.

4. Heard Mr.Senthil Dharmarajan, learned counsel for the petitioner and Mr.N.Muthu Vijayan, learned Special Government Pleader for the respondents and perused the records.

5. The relevant portion of the impugned charge memo dated 06.06.2006 is extracted hereunder:

CHARGE

"Accused Officers 1 to 4 in charge of Commercial Taxes Check Post, Lower Camp, Theni District with the support of their staff Accused Officers 5 to 11, had fixed mamools ranging from Rs.20/- to Rs.500/- for allowing the goods vehicles through the check post and collected the mamool through private individual PI No.1 Thiru F.Rajan and his brother PI No.2 Thiru.F.Lawrence. Further they had engaged PI Nos.1 and 2 for attending orderly works in the check post violating the directions issued in the Circular VC1/63849/89, dated 24.7.89 and CD-1/35888/2002, dated 7.6.2002 of the Commissioner of Commercial Taxes, Chennai.

Accused Officers 1 to 4 with the support of Accused Officers 5 to 11 had detained goods in the check post for more than 24 hours to one year violating the instructions issued in Section 48(8) of Tamil Nadu General Sales Tax Act, 1959.

Accused Officers 1 to 11 had failed to maintain absolute integrity violating the instructions issued in Rule 20 (1) of Tamil Nadu Government Servants Conduct Rules, 1973".

6. The contention of the petitioner is that the accused Officers in serial Nos.1 to 4 are the authorities who are posted in the check post and the accused Officers in Serial No. 5 to 11 are posted in the office. The respondents have

imposed a punishment of censure against other respondents. However, the writ petitioners namely, Muthazhagu was imposed with a punishment of stoppage of increment for one year and for Janarthanan, was imposed a punishment of stoppage of increment for two years. The contention of the petitioners is that since both the petitioners were serving as Record Clerk, they are not involved in the incident, which is alleged to be happened in the Check Post.

7. On bare reading of the charge memo, it is seen that the allegations are bald, since it is not stating exact overt against each delinquent. Even the enquiry report, there is no specific findings against the writ petitioners namely Muthazhagu and Janarthanan. The enquiry report is also verbatim extracts of the charge memos. The enquiry is not specifically dealing with the writ petitioners namely Muthazhagu and Janarthanan. Even it is not stating any exact overt even after enquiry. As rightly pointed out by the learned counsel appearing for the petitioners after lapse of six years, the punishment was imposed against the petitioners. Strangely, the persons who are standing in the Check Post were imposed a lesser punishment. However, the petitioners were imposed higher punishment.

8. Therefore, this Court is inclined to set aside the impugned order as far as the petitioners are concerned. Hence, the impugned orders dated 30.01.2014 and 04.02.2014 are quashed. The respondents are directed to confer the promotion by placing the petitioners in the year 2006 and fix the appropriate seniority of the petitioners in the year 2006 and grant notional promotional to the petitioners with a consequential monetary benefits. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

9. In view of the above, the Writ Petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

16.12.2022

Index : Yes / No
Internet : Yes/ No
Nsr

To

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Department of Commercial Taxes and
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S.SRIMATHY, J.

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W.P.(MD).Nos.7477 and 7591 of 2014

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