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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2127 OF 2023

State of Maharashtra
through the Principal Secretary,
Finance Department, Mantralaya, Mumbai … Petitioner

V/s.

Smt. Iravati Shamsundar Mulgaonkar,
Ex. Deputy Commissioner of Sales Tax,
with last posting in Audit No.1, Pune
since deceased by her legal heir :
Mr. Shyam Yashwant Mulgaonkar, Husband,
R/o. 3-01, Sugam Pandurang Colony, Pune ... Respondent

Mr. N.C. Walimbe, Addl. G.P. with Mr. R.P. Kadam, AGP for the Petitioner - State

Mr. Gaurav A. Bandiwadekar i/b. Mr. Bhushan A. Bandiwadekar for the Respondent

CORAM : NITIN JAMDAR &
MANJUSHA DESHPANDE, JJ.

DATE : 26 OCTOBER 2023

***P.C.* :-**

Heard the learned Counsel for the parties.

2. The Petitioner – State of Maharashtra has challenged the order dated 12 April 2022 passed by the Maharashtra Administrative Tribunal partly allowing the Original Application No. 248 of 2014 filed by the Respondent – Original Applicant.

3. The Respondent – Original Applicant, since deceased, prosecuted through her husband, was working as Deputy Commissioner of Sales Tax at Pune. The Respondent – Applicant while working as an Assessing Officer had assessed a return of an assessee for the period 1 April 2020 to 31 March 2001 beyond the statutory period of limitation. The Respondent – Applicant was served with the statement of charges that in view of the action of the Respondent – Applicant passing the assessment order in violation of statutory provision has resulted a loss of the Government Revenue to the tune of Rs. 21,46,000/-. The Respondent – Applicant was also charged on the ground that she attempted to change certain dates.

4. Charge-sheet was served on 7 July 2007 under Rule 8 of the Maharashtra Civil Services (Discipline and Appeals) Rules, 1979. Enquiry Officer was appointed to submit a report on 19 May 2010 and held that charges 1 and 2 were proved and the petitioner was guilty of misconduct. The Respondent – Applicant submitted a reply to the report of the Enquiry Officer and thereafter, the Disciplinary Authority imposed the punishment of dismissal from service on 21 March 2011. The Respondent – Applicant filed an

appeal against the order of dismissal. The appeal was dismissed by order dated 27 July 2013 and thereafter, the Original Application was filed. The Original Applicant passed away and her cause was prosecuted by her husband.

5. The Tribunal agreed with the enquiry report and that findings of guilt against the Respondent – Applicant. However, considering the overall circumstances and the nature of allegations came to the conclusion that the punishment of dismissal from the service was harsh and disproportionate and set aside the same. The Tribunal further directed reduction of major penalty into minor penalty under Rule 5 of the Rules of 1979 and directed the Appellate Authority to decide the quantum of minor penalty as per Rule 5 of the Rules of 1979 and inform the decision to the legal heirs of the Applicant.

6. The learned AGP has reiterated the contentions raised before the Tribunal. The learned AGP states that the charges were grave enough including the charges of change of dates and therefore, the punishment of dismissal was correct and proportionate and if such view is taken, various employees will be benefited by the same.

7. The learned Counsel for the Respondent supported the impugned order submitting that the Tribunal has correctly observed that the punishment was disproportionate in the circumstances relied upon by the Tribunal are germane.

8. The Tribunal has considered totality of the circumstances. The Respondent – Original Applicant is no more. The Tribunal also considered the admitted position that throughout her long career, there was no misconduct ever attributed to the Respondent – Applicant. The Tribunal has noted that there is no charge of seeking any undue personal benefit from carrying out assessment in violation of the statutory provisions. It is not that the assessment was not carried out but since it was beyond limitation, the assessee succeeded in its challenge and that in turn caused loss to the Government. There are several instances where the assessment orders are questioned by the Judicial Authorities on the ground of limitation. The Tribunal has therefore noted that at the most this could be considered as a mistake on the part of the Respondent - Applicant. The Tribunal went through the statements of the witnesses in the enquiry and found that, though the Respondent – Applicant was wrong to change the dates, but observed that this could be in the light of her mistake of delay in passing the assessment order. The Tribunal rightly noted the degree of misconduct has to be weighed and commensurate to the punishment to be awarded. The Tribunal found that the punishment of dismissal was harsh and shocking.

9. It is not debated before us that the Tribunal has no power to reduce the penalty on the ground of proportionality. The Tribunal has considered the facts and circumstances of the case and

has opined that this is the case where the punishment is disproportionate. This is a view taken by the Tribunal after examining all the necessary factors. Merely because of re-examination of the same factors, we can reach a different conclusion is not a reason to interfere with the order of the Tribunal, which cannot be considered as perverse. The contentions of the learned AGP that this would open the flood gates is entirely misplaced. The principle of proportionality depends on the facts and circumstances of each case. It is not that the Respondent – Applicant is entirely exonerated but would be subject to decision of the appellate authority as to the minor punishment as per the impugned order. In the light thereof, no interference is warranted.

10. The Writ Petition is accordingly rejected.

MANJUSHA DESHPANDE, J. ***NITIN JAMDAR, J.***

JYOTI PRAKASH PAWAR

Digitally signed by JYOTI PRAKASH PAWAR
Date: 2023.10.31 10:33:51 +0530