IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No. 376 of 2020
and
WMP.No.425 of 2020

S.Subbulakshmi
W/o.A.Subramanian ...Petitioner

Vs

1. The Principal Secretary to the
 Government of Tamil Nadu,
 Commercial Taxes and Registration Department,
 Secretariat, Fort St.George,
 Chennai – 600 009.

2. The Commissioner of Commercial Taxes,
 Office of the Commissioner of Commercial Taxes,
 Ezhilagam, Chepauk, Chennai – 600 005.

3. The Deputy Secretary,
 Tamil Nadu Public Service Commission,
 TNPSC Road Chennai – 600 003.

4. The Joint Commissioner (ST),
 Office of the Joint Commissioner (ST),
 Tirunelveli CT Division,
 Tirunelveli District. ... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records on the file of the

1st respondent in G.O.(2D) No.46, Commercial Tax and Registration (E1) Department dated 20.08.2019 and quash the same as illegal, invalid and against the Principles of Law laid down by this Court and the Hon'ble Supreme Court of India.

For Petitioner	: Mr.A.Chandrasekaran
For Respondents	: Mrs.K.Vasanthamala Government Advocate [R1 & R2] Mr.R.Bharanidharan Standing Counsel [R3]

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ORDER

This writ petition has been filed challenging the impugned G.O.(2D) No.46, Commercial Tax and Registration (E1) Department, dated 20.08.2019 issued by the first respondent wherein the first respondent has proposed for the imposition of punishment of cut in pension at the rate of Rs.2,000/- p.m. for a period of three years and also for recovery of a sum of Rs.4,25,580/- from Death cum Retirement Gratuity for the loss of revenue. This proposal was considered by the third respondent and ultimately, the punishment as suggested by the first respondent was confirmed.

2. The case of the petitioner is that while she was working as Deputy Commercial Tax Officer at Nagercoil, a charge memo came to be issued against her on the specific charge that the petitioner acted with an ulterior motive and had revised the assessment of a particular contractor in an incorrect manner and thereby, caused loss of revenue to the State Exchequer to the tune of Rs.4,25,580/-, which also led to refund of the tax collected along with interest to the contractor.

3. After the charge memo was issued, an Enquiry Officer was appointed and based on the enquiry report, the first respondent proceeded to impose punishment of cut in pension at the rate of Rs.2,000/- p.m. and for the recovery of the entire DCRG amount. The petitioner has taken a very specific stand that she had exercised her quasi judicial and statutory function as Assessment Officer and the same can never be made a subject matter of disciplinary proceedings against the petitioner.

4. The respondents have filed a counter affidavit. The respondents have basically reitereated the charges that have been framed against the petitioner and according to the respondents, the punishment that was

imposed against the petitioner was on proven charges and the same does not warrant any interference by this Court. Accordingly, the respondents have sought for dismissal of the writ petition.

5. Heard Mr.A.Chandrasekaran, learned counsel for petitioner and Mrs.K.Vasanthamala, learned Government Advocate, appearing for respondents 1 and 2 and Mr.R.Bharanidharan, learned Standing Counsel, appearing for the third respondent.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. For proper appreciation, the first charge that was framed against the petitioner is extracted hereunder:

> "**Charge 1:**
>
> Tmt.S.Subbulakshmi, Commercial Tax Officer, Sivakasi-III Assessment Circle has worked as the Deputy Commercial Tax Officer in Nagercoil (Tower Junction) Assessment Circle, from 01-06-2003 to 30-06-2005. During that period Tmt.S.Subbulakshmi, has acted with ulterior motive and had revised the assessment of Thiru.R.Thangam, Coup Contractor (TNGST No.886981/1993-94) in an incorrect manner. This incorrect finalisation of the remanded case in respect of the above dealer, had resulted in a loss of revenue to the State Exchequer to the tune of Rs.31,10,949/- and also led to

refund of tax collected Rs.3,24,369/- together with an interest of Rs.19,786/-."

8. On carefully going through the records, it is seen that the assessment order that was passed by the Deputy Commercial Tax Officer, Nagercoil, for the Assessment Year 1993-94 was taken on challenge by way of filing an appeal before the Appellate Authority. The Appellate Authority, by order dated 23.12.2004, set aside the assessment order. While doing so, the Appellate Authority had made various observations in the order and remanded the matter back to the Assessing Officer for redoing the assessment as per the directions given in the order.

9. It is pursuant to the above order, the matter once again came up before the petitioner and the petitioner passed the re-assessment order based on the directions given by the Appellate Authority.

10. In the considered view of this Court, the very basis on which the charge was framed against the petitioner is erroneous. The charge proceeds on the ground that the petitioner, on her own, had proceeded to re-assess the assessment and thereby, had caused loss of revenue to the State Exchequer.

The fact remains that the re-assessment was made by the petitioner only in compliance with the order passed by the Appellate Authority. That apart, the petitioner, while acting as an Assessing Officer, was performing quasi judicial function and statutory function and the same can never became the subject matter of disciplinary proceedings against the petitioner. If, ultimately, the re-assessment order passed by the petitioner pursuant to the remand made by the Appellate Authority is found to be going against the interest of the State, the Deputy Commissioner has power to interfere with the order u/s.32 of the erstwhile TNGST Act. Without exercising this power, no useful purpose would be served by initiating disciplinary proceedings against the petitioner.

11. In the light of the above discussion, this Court finds that the very disciplinary proceedings initiated against the petitioner is illegal and there was absolutely no basis for awarding a punishment against the petitioner by cutting her pension and recovering the entire amount from DCRG. The punishment imposed by the first respondent is liable to be set aside.

12. In the result, the order passed in G.O.(2D) No.46, Commercial Tax and Registration (E1) Department, dated 20.08.2019, is hereby set aside and there shall be a direction to the respondents to rework the pension of the petitioner based on her last drawn salary and whatever amount has been recovered from DCRG is also directed to be refunded to the petitioner. The arrears of pay shall also be settled to the petitioner. This process shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

This Writ Petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

06.02.2023

Index : Yes/No
Speaking order:Yes/No
Neutral citation:Yes/No
gm

N.ANAND VENKATESH, J

gm

To

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