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. 381 of 2020
and
WMP.No.431 of 2020

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

Vs

1. The Principal Secretary to the Government,
   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 Assistant Commissioner (CT),
   Sivakasi. ... 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.34, Commercial Tax and Registration (E1)

Department dated 28.06.2019 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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O R D E R

This writ petition has been filed challenging the order of the first respondent passed in G.O.(2D) No.34, Commercial Tax and Registration (E1) Department, dated 28.06.2019, wherein the petitioner was imposed with a punishment of cut in pension at the rate of Rs.500/- p.m. for a period of one year.

2. The case of the petitioner is that while she was holding the post of Deputy Commercial Officer at Sivakasi, a charge memo came to be issued to the petitioner by the second respondent through proceedings dated 23.07.2007. The main charge against the petitioner is that she has failed to

undertake sincere, meticulous and serious efforts to collect the entertainment tax and thereby, had caused loss to the State Exchequer to the tune of Rs.3,51,091/-.

3. The petitioner gave her explanation for the charges and an Enquiry Officer came to be appointed and an enquiry report was submitted on 17.03.2008.

4. As per the report of the Enquiry Officer, it was found that the first charge framed against the petitioner was partly proved and the second and third charges were not proved. In the mean time, the petitioner attained the age of superannuation on 31.05.2008 and she was not permitted to retire and was retained in service through order dated 30.05.2008.

5. The first respondent, after considering the findings of the Enquiry Officer and the explanation given by the petitioner, disagreed with the findings of the Enquiry Officer with regard to second and third charges and gave a finding that all the three charges framed against the petitioner have been proved. Accordingly, through the impugned Government Order, the

petitioner was imposed with a punishment of cut in pension at the rate of Rs.500/- p.m. for a period of one year. Aggrieved by the same, the present writ petition has been filed before this Court seeking for appropriate directions.

6. The respondents have filed a counter affidavit. They have taken a stand that the petitioner was expected to take serious efforts to collect entertainment tax from 12 Cable TV Operators. However, the petitioner had collected only a sum of Rs.4,43,040/- and there was arrears of Rs.3,51,091/. According to the respondents, if the petitioner had taken serious and sincere efforts, she could have collected the arrears amount also and due to the negligence of the petitioner, the same resulted in loss to the State Exchequer. Accordingly, the respondents have sought for dismissal of the writ petition.

7. 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.

8. The gravamen of the charge against the petitioner is that the petitioner did not take sincere efforts to collect entertainment tax arrears from 12 Cable TV Operators. It is seen from records that the total arrears of entertainment tax to be collected was Rs.8,04,091/- and the petitioner had collected more than 55% i.e. Rs.4,43,040/- and what was pending was only a sum of Rs.3,51,091/-. This arrears of tax was not able to be recovered since the issue with regard to collection of entertainment tax was pending before this Court and after the Apex Court passed final orders upholding the right of the Department to collect tax, steps were taken to collect the pending tax arrears.

9. The charge memo itself has been issued against the petitioner on the premise that there was loss to the State Exchequer due to failure to collect the balance arrears of Rs.3,51,091/-. The very premise on which the charges were framed, is unsustainable. The process of recovery of tax involves three officers, who were engaged in the process of collection and the petitioner was only acting in her supervisory capacity. After the Apex Court upheld the power of the Department to collect the entertainment tax, the petitioner had also issued notice and taken steps to collect the arrears.

This collection of arrears of entertainment tax is a continuing process. The respondents failed to see that the petitioner is exercising a quasi-judicial function and non-recovery of the entertainment tax during the tenure of the petitioner, by itself will not constitute misconduct.

10. The Enquiry Officer had given cogent reasons as to why the petitioner did not cause any loss to the State Exchequer and found that the second and third charges have not been proved against the petitioner. The first respondent, while disagreeing with the finding, merely overruled it without assigning any reason. There is yet another fact that has to be taken into consideration in the present case. It is seen that the State Government, through G.O.(2D) No.34, Commercial Tax and Registration Department, dated 27.03.2008, had waived the entertainment tax arrears relating to Cable TV Operators that is outstanding as on 31.03.2008. Therefore, there is no question of any loss of revenue to the Government when the Government has taken a decision to waive the entertainment tax.

11. In the light of the above discussion, this Court finds that the Government Order passed by the first respondent by imposing punishment

against the petitioner is illegal and the same requires interference of this Court.

12. Accordingly, the impugned order passed in G.O.(2D) No.34, Commercial Tax and Registration (E1) Department, dated 28.06.2019, by the first respondent is hereby quashed. There shall be a direction to the respondents to refund the recovery that was made from the petitioner pursuant to the impugned Government Order and this process shall be completed within a period of four (4) 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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