IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.1298 of 2022
& WMP.No.1411 of 2022

M.Ravi ... Petitioner

Vs.

1.The Principal Secretary to Government
Commercial Taxes and Registration Department,
Government of Tamilnadu,
Fort St.George, Chennai-9.

2.The Commissioner of Commercial Taxes,
Chepauk, Chennai-5. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling of the records of the 2nd respondent in its Proc.No.EE2/21208/2013 dated 10.12.2018 as modified in appeal in G.O.(D)No.5 dated 03.01.2020 of the 1st respondent and quash both the orders and consequently direct the respondents to reinstate the petitioner with all attendant benefits including back wages and arrears.

For Petitioner : Mr.V.Vijay Shankar
For Respondents : Mrs.K.Vasanthamala (R1 & R2)
Government Advocate

ORDER

On a set of charges framed under Section 17(b) of the Tamilnadu Civil Services (Discipline & Appeal) Rules, the petitioner was subjected to a departmental enquiry and on the strength of the proven charges, the Disciplinary Authority had imposed the punishment of dismissal from service on 10.12.2018. On Appeal, the Government had modified the punishment of dismissal from service to compulsory retirement. These orders are put under challenge in this present Writ Petition.

2.Initially, when the disciplinary proceedings initiated under Section 17(b) of the Act was pending, the Joint Commissioner (CT)(FAC) Enforcement-I, Chennai had ordered to revert the Appellant as Assistant, from the post of Deputy Commercial Tax Officer, through his proceedings dated 18.12.2014. The said reversion would amount to a punishment also.

3.In this background, the learned counsel for the petitioner submitted that when the respondents had already imposed the punishment of reversion, the punishment of compulsory retirement would amount to double jeopardy. He also submitted that, in a similar case, when the punishment of reversion was already imposed and thereafter, another punishment of compulsory retirement was made, the respondents themselves have recalled the order of compulsory retirement, in view of the earlier punishment of reversion. One such case, is the proceedings of the Principal Secretary/Commissioner of Commercial Taxes, Cheqauk, Chennai – 5 in Proc.No.EE2/56680/2007 dated 30.05.2015.

4.Though several grounds have been raised in the present Writ Petition challenging the order of punishment, the learned counsel for the petitioner submitted that he would be satisfied, if the reversion order is upheld and the punishment of compulsory retirement is recalled.

5.The proceedings of the Principal Secretary/Commissioner of Commercial Taxes, Cheqauk, Chennai – 5 dated 30.05.2015, passed in favour of similarly placed Deputy Commercial Tax Officer, recalling the punishment of compulsory retirement and upholding the order of reversion alone, is not in dispute. When a similarly placed employee has been extended the benefit of retainment of the original punishment of reversion, the petitioner herein also would be entitled for a similar relief.

6.The Hon'ble Supreme Court in the case of ***State of Uttar Pradesh***

and Others Vs. Arvind Kumar. Srivastava and Others reported in **(2015) 1 SCC 347** has held that in service law, when one set of employees are given a relief, the same requires to be extended to others who are entitled to such benefits and the absence of the same, would amount to discrimination, even when such employees have not approached the Court earlier. The relevant portion of the order reads as follows:-

> *"22.1. Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently."*

7.In the light of the law laid down by the Hon'ble Supreme Court and taking note of the fact that similarly placed persons have also been given the relief which the petitioner herein now seeks for, this Court is of the view that the order of punishment of compulsory retirement can be set aside and the earlier order of reversion dated 18.12.2014 can be upheld.

8.Accordingly, the impugned order in Proc.No.EE2/21208/2013 dated 10.12.2018 on the file of the 2nd respondent is quashed. Consequently, the proceedings of the Joint Commissioner (CT)(FAC) Enforcement-I, Chennai reverting the petitioner as Assistant from the post of Deputy Commercial Tax Officer in his proceedings dated 18.12.2014 is upheld. The said order shall also extend to all the service and monetary benefits that are applicable to the petitioner. Such order shall be passed within a period of six (06) weeks from the date of receipt of a copy of this order.

9.Accordingly, this Writ Petition is partly allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

20.12.2023

Index:Yes
Speaking order
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M.S.RAMESH,J.

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To

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