IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2023

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.16281 of 2013
and M.P.Nos.2 of 2013 and 1 of 2014

K.Velu ... Petitioner

Vs

1. The State of Tamil Nadu,
   Represented by its
   Secretary to Government,
   Commercial Taxes and Registration
   (E1) Department, Secretariat,
   Chennai – 600 009.

2. The Commissioner of Commercial Taxes,
   Chepauk,
   Chennai -600 005. ....Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India praying for the issuance of Writ of Certiorari, calling for the records relating to the proceedings in G.O. (D). No: 346, Commercial Taxes and Registration (E1) Department, dated 08.08.2012, issued by the first respondent and quash the same in so far as the petitioner is concerned and the consequential proceedings, in CD1/20472/2012, dated 16.08.2012, of the second respondent and quash the same.

For Petitioner : Mr.M.Arun Kumar
For Respondents : Mrs.K.Vasanthamala
Government Advocate

ORDER

This writ petition has been filed challenging the order passed by the first respondent in G.O.(D).No:346, Commercial Taxes and Registration (E1) Department, dated 08.08.2012 and the consequential charge memo dated 16.08.2012 issued by the second respondent.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

3. The petitioner was appointed as a Junior Assistant through Tamil Nadu Public Service Commission and he had joined duty on 01.11.1972 in the Commercial Taxes Department. He was promoted to the post of Assistant Commissioner of Commercial Taxes on 24.07.2006. Thereafter, he retired from service on attainment of superannuation on 30.06.2009. After his retirement, he was served with a charge memo

dated 12.09.2012. He was compelled to sign as "31.08.2012", with regard to the receipt of charge memo. On 15.09.2012, by post, the petitioner had also received the proceedings dated 12.09.2012, copy of G.O.(D).No:346, Commercial Taxes and Registration (E1) Department, dated 08.08.2012 and a copy of charge memo dated 16.08.2012 issued by the second respondent.

4. A perusal of records also revealed that the petitioner had worked as an Assistant Commissioner of Commercial Taxes at Bodinayakanur Assessment Circle, Madurai Division during the period from 24.07.2006 to 30.06.2009. The Assessment orders in respect of four traders for the Assessment year 2004-2005 were issued by his predecessor by proceedings dated 28.04.2006. The Audit Party of Accountant General's Office official conducted audit from 21.07.2008 to 05.08.2008 and verified the Assessment files pertaining to the Assessment year 2004-2005 and pointed out about the incorrect exemption as the consignee dealer at Delhi was found to be not genuine by Inter State Investigation Cell (ISIC). It had also instructed the

petitioner, on 05.08.2008, to obtain the verification report from the said ISIC, Chennai and take appropriate action. Accordingly, the petitioner had taken action by sending reference to the Higher Officer on 29.09.2008 and 12.11.2008. On receipt of the instructions from the second respondent dated 25.11.2009, revised orders were issued by the petitioner's successor as per Rules. Therefore, the petitioner did not commit any wrong in this regard and the impugned orders in this writ petition are illegal.

5. That apart, as per the Rule and limitation prescribed under the Pension Rules, the charge memo is not maintainable. The petitioner's predecessor had issued the assessment order for the year 2004-2005 in respect of four traders vide proceedings dated 28.04.2006. Whereas, the petitioner had worked as an Assistant Commissioner, Commercial Taxes at Bodinayakanur Assessment Circle, Madurai Division only from 24.07.2006 to 30.06.2009. The Accountant General's Audit Party made verification of the files for the assessment year 2004 to 2005, from 21.07.2008 to 05.08.2008 and pointed out that the dealer at Delhi was

found to be not genuine.

6. However, the petitioner did not receive any verification letter till his retirement i.e., on 30.06.2009. Only after his retirement, on 25.11.2009, instructions were issued for taking action. Thereafter, revised assessment orders were issued by his successor on 25.11.2009. The first respondent issued G.O.(D).No:346, Commercial Taxes and Registration (E1) Department dated 08.08.2012 invoking the power under Rule 9(2)(b)(i) of TN Pension Rules, 1978 and accorded sanction to the institution of Departmental proceedings as against the petitioner under Rule 17(b) of TNCS (D and A) Rules. It has been specifically mentioned that the four years limitation period under Tamil Nadu Pension Rules, 1978 expires on 31.08.2012. However, the charge memo was served on the petitioner only on 12.09.2012, after the expiry of four years limitation.

7. A perusal of the counter filed by the respondents revealed that though they stated that the charge memo was affixed before completion

of four years, they failed to produce any iota of evidence to substantiate the said contention.

8. It is relevant to extract the Rule 9(2)(b)(i) and (ii) of Tamil Nadu Pension Rules, 1978 as follows:-

> *" 9(2)(b) The Departmental Proceedings, if not instituted while the Government Servant was in service, whether before his retirement or during his re-employment:-*
> *(i) Shall not be instituted save with the sanction of the Government.*
> *(ii) Shall not be in respect of any event which took place more than four years before such institution......."*

Rule 9 (6)(b) of Tamil Nadu Pension Rules, 1978 as follows:-

> *"Rule 9 (6)(b): Departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government Servant or Pensioner or if the Government Servant has been placed under suspension from an earlier date.............."*

9. Whereas, a perusal of charge memo dated 16.08.2012 revealed that it was served on the petitioner only on 12.09.2012 and other papers were received by him by post only on 15.09.2012.

10. In view of the above Rule, the limitation period of four years was over as early as on 27.04.2010, whereas the date of original

assessment order i.e. On 05.08.2012.

11. Therefore, on this sole ground, the impugned orders cannot be sustained and are liable to be quashed. Accordingly, the proceedings in G.O. (D).No: 346, Commercial Taxes and Registration (E1) Department, dated 08.08.2012, issued by the first respondent and consequential proceedings, in CD1/20472/2012, dated 16.08.2012, of the second respondent are hereby quashed.

12. In the result, this writ petition stands allowed. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

07.08.2023

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
mn

G.K.ILANTHIRAIYAN. J,

mn

To

1. The Secretary to Government,
   The State of Tamil Nadu,
   Commercial Taxes and Registration
   (E1) Department, Secretariat,
   Chennai – 600 009.

2. The Commissioner of Commercial Taxes,
   Chepauk,
   Chennai -600 005.

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