IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 29.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.7172 of 2022
and WMP No.7197 of 2022

M.K.Ganesan ...Petitioner

Vs

1. The Secretary to Government of Tamil Nadu,
Commercial Taxes & Registration Department,
Secretariat, Fort St.George,
Chennai-600 009.

2. The Principal Secretary /
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005 ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in G.O.(D) 205 of the Commercial Taxes and Registration (A1) Department dated 30.12.2021 and to quash the same and consequently direct the respondents to release all the terminal benefits and emoluments due to the petitioner, M.K.Ganesan, Deputy Commercial Tax Officer.

For Petitioner : Mr.G.K.R.Pandian

For Respondents : Mrs.Vasantha Mala
Spl.Government Pleader

ORDER

Heard Mr.G.K.R.Pandian, learned counsel for the petitioner and Mrs.Vasantha Mala, learned Special Government Pleader for the respondents.

2. Through Charge Memo dated 29.03.2006, under Rule 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, the petitioner was levelled with five charges relating to alleged incorrect assessments, non-production of 18 assessment files to internal audit and non-filing of Annual Property Statement.

3. In the said charge memo, reliance has been placed on three

documents viz., Accountant General's Audit Notes, Internal Audit Notes and Related Assessment files. However, no list of witnesses was furnished together with charge memo. Not being satisfied with the petitioner's reply dated 05.02.2007 to the charges levelled against him, an enquiry was conducted, wherein, the charges against the petitioner was held to be proved in the Enquiry Officer Report dated 16.08.2007. The petitioner had given his further representation on 10.01.2008. The further representation came to be rejected by the second respondent herein and accordingly, the punishment of dismissal was passed on 03.06.2009. The petitioner had preferred an appeal against the order of dismissal on 08.07.2009, which was rejected on 30.12.2021. Challenging the order of punishment as well as the order in appeal, the present writ petition has been filed.

4. Insofar as the charge memo is concerned, whenever the disciplinary authority intends to place reliance on any document during the course of enquiry, the contents of the documents require to be proved

through witnesses and this is settled proposition of law in service jurisprudence. In the case of ***Roop Singh Nehi vs Punjab National Bank*** reported in ***(2009) 2 SCC 570***, the Hon'ble Supreme Court has upheld such a proposition.

5. In the instant case, the charges against the petitioner relate to allegation of making incorrect assessments, non-production of 18 assessment files to the internal audit and non-filing of Annual Property Statement. The Enquiry Officer, by placing reliance on the account general audit notes and the internal audit notes, had come to the conclusion that these charges have been proved. When such a reliance has been placed on audit notes, the Enquiry Officer cannot render his personal opinion on the files, but, rather, should convince himself with regard to the authenticity of the audit notes by examining witnesses. In the absence of the same, the Enquiry Officer's Report would itself stand vitiated and the consequential punishment cannot be sustained.

6. This apart, on perusal of the Enquiry Officer's Report, would reveal that though he had extracted the difference statement in his Report, there is no independent finding with regard to the explanation rendered by the petitioner on the charges levelled against him. On the other hand, he had extracted the difference statement of the petitioner and in one sentence had come to the conclusion that the charges have been proved. This sort of consideration would amount to a non-speaking order having been passed and on this ground also, the Enquiry Officer's Report would stand vitiated. Thus, the consequential dismissal order imposed by the second respondent herein cannot be sustained.

7. The petitioner had preferred an appeal against the order of dismissal on 08.07.2009 and when the appeal was not considered within reasonable time, he had been sending representations to the Government for consideration of the appeal petition expeditiously. One such representation was made on 15.02.2014, a copy of which, has also been produced before this Court. When the representation of the petitioner in

this regard was not considered within a reasonable time, he had filed a writ petition before this Court in W.P.No.4361 of 2015, in which, the respondents had also filed their counter. While the writ petition was pending, the Government had taken up the petitioner's representation dated 15.02.2014 and by considering it as an appeal, had rejected on the ground that the appeal has been preferred after five years. It is rather shocking to note that the Government had construed the representation given by the petitioner for consideration of his appeal petition dated 08.07.2009 as an appeal. The representation dated 15.02.2014 is only for consideration of his appeal dated 08.07.2009 and not a fresh appeal petition. This blatant mistake committed by the Government is without any application of mind at all. Thus, the rejection of the appeal on the ground that it has been belatedly filed after five years cannot be sustained.

8. In the light of the above findings and observations, the impugned order dated 30.12.2021 passed by the first respondent is

hereby quashed and in view of the order passed today, there shall be a direction to the respondents to forthwith pass orders notionally retiring the petitioner from service on the date of his age of superannuation and thereby disburse all retirement and pensionary benefits within a period of four weeks from the date of receipt of a copy of this order.

9. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

29.11.2023

Index:Yes
Speaking order
sr

To
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   Chennai-600 009.

2. The Principal Secretary /
   Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk, Chennai-600 005

M.S.RAMESH,J.

W.P.No.7172 of 2022

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