IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2023

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 8269 of 2023
and
W.M.P. Nos. 8466 and 8468 of 2023

P.Dhandapani … Petitioner

-vs-

1. The Secretary to Government,
   Ministry of Finance,
   Department of Revenue,
   North Block, New Delhi – 110 001.

2. The Chairman,
   Central Board of Indirect Taxes & Customs,
   North Block, New Delhi – 110001.

3. The Additional Commissioner of GST & Central Excise,
   26/1, Mahatma Gandhi Road,
   Chennai – 600034.

4. The Assistant Commissioner of GST & Central Excise,
   Poonamallee Division, Cheenai Outer Commissionerate,
   No. 40, A-1, 100 Feet Road,
   Mogappair,
   Chennai – 600037. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, to cal for the records pertaining to the impugned speaking order dated 17.09.2020 vide C. No.

II/39/45/2020-CCA Estt passed by the Office of the Third Respondent and quash the same and consequently direct the Third Respondent to regularize the services of the Petitioner from the date of initial appointment dated 01.08.1997 vide C. No. II/39/1/97 Estt and confer all consequential service and monetary benefits based on the initial appointment dated 01.08.1997 within a time frame as fixed by this Court.

For Petitioner : Mr. R.Abdul Mubeen

For Respondents : Mr. V.Ashok Kumar,
Central Government Standing Counsel

O R D E R

Heard Mr. R.Abdul Mubeen, Learned Counsel for the Petitioner and Mr. V.Ashok Kumar, Learned Central Government Standing Counsel takes notice for the First Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the order in C. No. II/39/45/2020-CCA Estt dated 17.09.2020 passed by the Third Respondent and to consequently direct the Third Respondent to regularize the services of the Petitioner from the date of initial appointment on 01.08.1997 and confer all consequential service and monetary benefits.

3. Learned Central Government Standing Counsel for the Respondents raises an objection as to the maintainability of the Writ Petition on the ground that the Petitioner would have to approach the Central Administrative Tribunal for any dispute relating to employment in the services of the Central Government. At this juncture, it would be necessary to refer to the binding ruling of the Constitution Bench of the Hon'ble Supreme Court of India in ***L.Chandra Kumar -vs- Union of India*** [(1997) 3 SCC 261] in which it has been held as follows:-

> *"99. ...The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned ...."*

In that backdrop, Learned Counsel for the Petitioner seeks permission of this Court to withdraw the Writ Petition with liberty to file an application under Section 19 of the Administrative Tribunals Act, 1985, before the Central Administrative Tribunal for the relief claimed in this Writ Petition and he has also made an endorsement to that effect in the court record.

4. It is made clear that for the purpose of reckoning limitation for availing the aforesaid remedy, the period from the date of filing of the Writ Petition, viz., 06.03.2023, till the date on which certified copy of this order is made ready by the Registry, shall be excluded.

In the result, the Writ Petition is dismissed as withdrawn granting such liberty. Consequently, the connected Miscellaneous Petitions are closed. No costs.

17.03.2023

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Index: Yes/No
Neutral Citation: Yes/No

Note: (i) Issue order copy by 10.04.2023

(ii) Registry is directed to return the original copy of the impugned order under written acknowledgment after retaining a copy of the same for record.

To

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   Department of Revenue,
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   North Block, New Delhi – 110001.

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P.D. AUDIKESAVALU, J.

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