IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	**21.11.2023**
Pronounced on	**13.12.2023**

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

W.P.Nos.13221, 13223 & 13224 of 2021

P.Sekar ... Petitioner in WP.No.13221 of 2021
A.Subramani ... Petitioner in WP.No.13223 of 2021
B.Suthakaran ... Petitioner in WP.No.13224 of 2021

Vs.

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

2. The Additional Chief Secretary/
   Commissioner of Commercial Taxes,
   Chepauk, Chennai - 600 005. ... Respondents in all WPs.

Prayer in WP.No.13221 of 2021: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent pertaining to his impugned order in Proceedings. No. E1/37456/2013- IV dated 13.05.2019 and consequential impugned order passed by the first respondent in G.O (D) No. 39 Commercial Taxes and Registration Department dated 16.02.2021 and quash the both as illegal and unconstitutional consequently direct the respondents to permit the petitioner to retire from service with effect from 30.06.2019 with all monetary and service benefits.

Prayer in WP.No.13223 of 2021: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent pertaining to his impugned order in Proceedings. No. E1/37456/2013- V dated 13.05.2019 and consequential impugned order passed by the first respondent in G.O (D) No. 38, Commercial Taxes and Registration Department dated 16.02.2021 and quash the both as illegal and unconstitutional consequently direct the respondents to reinstate the petitioner in service with all monetary and service benefits.

Prayer in WP.No.13224 of 2021: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent pertaining to his impugned order in Proceedings. No. E1/37456/2013- II dated 13.05.2019 and consequential impugned order passed by the first respondent in G.O (D) No. 37 Commercial Taxes and Registration Department dated 16.02.2021 and quash the both as illegal and unconstitutional consequently direct the respondents to permit the petitioner to retire from service with effect from 28.02.2015 with all monetary and service benefits.

In all WPs.

For Petitioner : Mr.J.Pooventhera Rajan

For Respondents : Mrs.K.Vasanthamala
Govt. Advocate (Taxes)

COMMON ORDER

These Writ Petitions have been filed seeking issuance of Writ of Certiorarified Mandamus to call for the records of the second respondent pertaining to his impugned order in Proceedings Nos. E1/37456/2013-IV, E1/37456/2013-V and E1/37456/2013-II dated 13.05.2019 and consequential impugned order passed by the first respondent in G.O (D) Nos. 39,38,37, Commercial Taxes and Registration Department dated 16.02.2021 and quash the both as illegal and unconstitutional consequently direct the respondents to permit the petitioners in W.P.Nos.13221 and 13224 of 2021 to retire with effect from 30.06.2019 and 28.02.2015 and the petitioner in W.P.No.13223 of 2021 seeking to reinstate him in service and to provide all monetary and service benefits.

2. The facts in brief are as under:

The petitioners were all working in the Commercial Taxes Department, Salem. The petitioner in W.P.No.13221 of 2021 was working as a Record Clerk, the petitioner in W.P.No.13223 of 2021 was as Office Assistant and the petitioner in W.P.No.13224 of 2021 was working as Deputy Commercial Tax Officer (Enforcement), Tiruchengode.

2.1. The allegations against all the petitioners is that they demanded ransom from the traders in and around Tiruchengode area around the Diwali festival. The petitioner in W.P.No.13221 of 2021 demanded illegal gratification to the tune of Rs.10,000/-. The petitioner in W.P.No.13223 of 2021 demanded illegal gratification for more than Rs.10,000/- from two or more unknown traders. The petitioner in W.P.No.13224 of 2021 received totally a sum of Rs.33,000/- in connivance with the petitioners in W.P.No.13221 and 13223 of 2021.

2.2. When the petitioners were in service and working as Record Clerk, Office Assistant and Deputy Commercial Tax Officer respectively, in the office of the Commercial Tax Officer, Thiruchengode (Enforcement), on 1.11.2013 at about 10.00 am a surprise inspection was conducted by the Vigilance and Anti Corruption Wing police which resulted in registration of a criminal case. Pursuant to the surprise inspection disciplinary proceedings were initiated against the petitioners before the Commissioner of Disciplinary Proceedings, Coimbatore.

2.3. After conclusion of the enquiry, the petitioners were found guilty and they were imposed with a punishment of dismissal from service. The petitioners preferred an appeal before the 1st respondent and the appeal also dismissed by confirming the punishment of dismissal of service imposed by the second respondent. Challenging the same, these writ petitions have been filed.

3. Heard,Mr.J.Pooventhera Rajan, learned counsel for the petitioner and Mrs.K.Vasanthamala, learned Government Advocate (Taxes) for the respondents and perused the materials available on record.

4. Mr.J.Pooventhera Rajan, learned counsel for the petitioner submitted that the order of first respondent is in violation of principles of natural justice. Without any adverse findings on the charge levelled against the petitioners, the punishment has been given.

5. Per contra, Mrs.K.Vasanthamala, learned Government Advocate (Taxes) for the respondents for the respondents submitted that the disciplinary action has been initiated as against the petitioners on the basis on a statement been given by one Perumal who served as the Manager of Lorry Body Builder Association, Tiruchengode. The issue involved is the demand of bribe in the name of Deepavali festival. During surprise inspection, the petitioners had unaccounted money and they could not offer any reasonable explanation for the money possessed by them. A detailed enquiry was conducted and in which all essential witnesses were examined.

5.1. The quantum of punishment is proportionate to the gravity of the offence. Since the corruption being one of the most serious offences in government service, it cannot be taken lightly. The first respondent has imposed the punishment of dismissal from service only after getting the opinion from the Tamil Nadu Public Service Commission and after thoroughly studying the materials. The government had also carefully examined the appeal field by the petitioner. The petitioner was found guilty to be in possession of money other than legal remuneration and for which they did not give any satisfactory explanation.

5.2. The TDP Coimbatore has stated that the covers containing money is found to be written with 'அன்புடன் தீபாவளி வாழ்த்துக்கள்'[Affectionate Deepawali Wishes]. The 1st respondent sought the opinion of the Tamil Nadu Public Service Commission not for imposing the punishment. Hence, the non furnishing opinion of the TNPSC does not prejudice to the petitioner. The petitioner did not raise any grounds and hence, the petitions are liable to be dismissed.

6. The office of the Commercial Tax Office [Enforcement] Tiruchengode consists of one Commercial Tax Officer, Deputy Commercial Tax Officer, Record Clerk and Office Assistant. The Deputy Commercial Tax Officer (Enforcement) [B.Sudhakaran], and the Record Clerk [P.Sekar] and Office Assistant [A.Subramani] are the petitioners herein. On 01.11.2013 at about 10.00, a surprise inspection was conducted by the Vigilance and Anti Corruption Police in the office premises and during that time, various amounts were recovered from the petitioners and others. The Deputy Commercial Tax Officer was in possession of Rs. 33,000/-[B.Sudhakaran]. The Record Clerk [P.Sekar] was having Rs.10,000/- and Office Assistant [A.Subramani] had Rs.10,000/-. The Inspective Authority after investigation had recommended to conduct an enquiry into the substantial allegation against the Commercial Tax Officer Vishwalingam and his team.

7. After a detailed enquiry was conducted by the Tribunal for Disciplinary Proceedings by following the principle of natural justice, all the three writ petitioners were found guilty. An opportunity was given to the petitioners to make their submissions by furnishing the copy of the report. The petitioners submitted their respective representations and thereafter, the appointing authority had considered and passed an order of dismissal from service.

8. The report of the investigation officer is a preliminary report. It is only the enquiry officer during the disciplinary proceedings after giving an opportunity to the delinquent can record a finding whether the charges are proved or not. As per the enquiry report, during the inspection carried out during Deepavali time, the petitioners were found to be in possession of covers with name 'Deepavali Mamool' and in which, money was found.

9. So far as, the Commercial Tax Officer Vishwalingam is concerned, the charge against him was proved partially and he was imposed with a punishment of 1/3rd cut of pension for a period of seven months. So far as the petitioner B.Sudhakaran is concerned, the charge against him was proved. After giving an opportunity to submit his representation and on considering the same, he was given with the punishment of dismissal of service. The petitioners P.Sekar, Record Clerk and A.Subramani, office assistant have also been dismissed from service.

10. The one and only contention raised by the petitioners before imposing punishment by the appropriate authority is that they did not obtain any opinion from the TNPSC. So far as the facts and evidences available during the enquiry the appropriate person who has to consider the same and appreciate its veracity and acceptability is only the

Appropriate Authority.

11. Having been satisfied with the materials available on record, the order of punishment has been imposed. In service matters, the Court has got only limited scope and it cannot exercise its appeal power over the order of the Appellate Authority. The High Courts are excepted to pass orders in those matters only if the following conditions are present and appreciated:

> " *i) The punishment is too harsh and disproportionate.*
>
> *ii) The penalty order leaves the appellant and his family without any means of life.*
>
> *iii) The unblemished track record has not been given due credence*
>
> *iv) The charges were not proved convincingly and conclusively by the Presenting Officer.*
>
> *v) The Statement of Defence submitted by the Appellant had been totally negated by the Disciplinary Authority."*

12. Only if the petitioners could produce the materials to prove that any of the above conditions are present, the Court can interfere. As against the Commercial Tax Officer who also form part of the team, a lesser punishment is given.

13. It is submitted by Mrs.K.Vasanthamala, learned Government Advocate (Taxes) for the respondents that the punishment has been given only in accordance with the gravity of the offence and the act of criminality committed by each of the petitioners.

14. The learned counsel for the petitioners attracted the attention of this Court to the judgement rendered by this Court in WP.No.27638 of 2019 dated 01.08.2023, in support of their contention that similarly placed employees have been given with lesser punishment. In the above order the petitioner who was a junior assistant was found to be in possession of Rs.8,000/- and Rs.3,000/- and the enquiry revealed that it was the Deepavali Mamool collection. There are some other writ petitions have also been filed by similarly placed persons in WP.No.2806 of 2020 and WP.No. 2808 of 2020.

15. The above order has been incorporated in WP.No.27638 of 2019. The relevant part of the judgement is extracted hereunder:

"3. It is contended by the learned counsel for the petitioner that two other similarly placed employees had also been charged with the same offence and thereafter, they had also been inflicted by punishments. They have filed W.P.No.2806 of 2020 and W.P.No.2808 of 2020.

4. The learned counsel for the petitioner sought parity in the punishment as the said individuals.

5. The learned Single Judge decided the said two cases filed in W.P.No.2806 of 2020 and W.P.No.2808 of 2020 and had observed as follows:

6.The charge against the petitioner is that he along with his colleagues had collected Diwali Mamool from the traders and the petitioner-s share was Rs.6,000/~ from the said collection and therefore, he has failed to maintain absolute integrity and devotion to duty.

7. Admittedly, similarly placed employees were given lesser punishment namely two years increment cut with cumulative effect. On the face of the charge framed against the petitioner also, this Court is of the considered view that punishment of dismissal from service imposed on the petitioner is disproportionate to the nature of charge. The petitioner having admitted his guilt by filing a memo before this Court, after giving due consideration to the nature of charge, this Court is of the considered view that the petitioner shall also get the benefit of reduction of punishment instead of dismissal from service as was given to his colleagues who were also involved in the incident of *collecting bribe as Diwali Mamool from the traders.*

8. For the foregoing reasons, this writ petition is disposed of by issuing the following directions:

(a) The punishment imposed by the first respondent in G.O.(D).No.229, Commercial Taxes and Registration (A1) Department dated 19.11.2019 is reduced from dismissal of service to one of two years increment cut with cumulative effect.

(b) The petitioner shall rejoin the duty within a period of four weeks from the date of receipt of a copy of this order and the respondents are directed to permit the petitioner to rejoin the duty and pay his salary from the date when he rejoins the duty as per his legal entitlement.

9. However, it is made clear that the petitioner shall not make any claim for arrears of past salary and other monetary benefits on account of dismissal from service.?"

16. There is a direct similarity between the above said case and the present case in hand. From the petitioners herein also the covers containing 'அன்புடன் தீபாவளி வாழ்த்துக்கள்' [Affectionate Deepavali wishes] were seized. Whatever the manner the money is called it is only an illegal gratification. The inspection has been made on the basis of a petition sent by one President of Lorry Owner Association. The petitioners were not trapped while they were demanding money. They were found to be in possession of Deepavali presentation in terms of money. Even without demand if such gifts are offered to the petitioners, the petitioners ought not to have obtained the same. Taking into consideration of the extraneous circumstances involved in these matters and also considering the relief of reduction of punishment granted in respect of the similarly placed persons as found from the orders made in the Writ Petitions above cited, I feel the same yardstick can be adopted in the case of the petitioners also.

17. Accordingly, these Writ Petitions are **disposed** and the punishment of removal imposed as against the petitioners have been reduced to reduction of two years increment with cumulative effect by setting aside the orders of the dismissal passed against the petitioners vide Proceedings Nos. E1/37456/2013- IV, E1/37456/2013-V and E1/37456/2013-II dated 13.05.2019 and consequential impugned order passed by the first respondent in G.O (D) Nos. 39, 38 & 37, Commercial Taxes and Registration Department dated 16.02.2021 respectively. If the petitioners who have not attained the age of superannuation will be reinstated without any back wages but with all other attendant benefits. If any other petitioners have reached the age of superannuation, they may be reinstated and allowed to retire with all other attendant benefits. No costs.

13.12.2023

Index : Yes/No
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Neutral Citation : Yes/No
jrs

R.N.MANJULA, J.

jrs

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   Department of Commercial Taxes and Registration,
   Fort St. George, Chennai.

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