IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.07.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.41495/2016 & WMP.No.35468/2016

R.Prabhu ... Petitioner

Versus

1.The Additional Chief Secretary/Commissioner
of Commercial Taxes, Chepauk,
Chennai 600 005.

2.The Joint Commissioner [CT]
Enforcement-I, Chennai 600 006. ... Respondents

Prayer : - Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the 1st respondent in proceedings Proc.No.EE2/16033/2015 dated 20.07.2016 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondents : M/s.K.Vasanthamala, GA

ORDER

(1) The writ petition has been filed in the nature of a certiorari seeking records of the 1st respondent, Additional Chief Secretary/Commissioner of Commercial Taxes at Chennai, in Proceedings No.EE2/16083/2015 daed 20.7.2016 and quash the same.

(2) The petitioner had joined the Commercial Taxes Department as a direct recruit DCTO through the Tamil Nadu Public Service Commission Group-II Selection and was appointed on 06.12.2012. He joined the duty on 12.12.2012 in the office of the Joint Commissioner [CT] Enforcement-I. After completion of training, he was posted in Central Parcel Office as Check Post Officer in December 2013. There was yet another similarly placed officer who was also doing the similar line of work. The primary duty assigned to the petitioner was to check railway parcels transported by Railways, to see if they were accompanied with requisite documents and necessary payments have been made particularly under the TANVAT and CST Acts. The further duty imposed on the petitioner was to

detain any suspicious looking parcels. This is a very important duty assigned to the petitioner and it is expected that he puts devotion to it. He had received a show cause notice on 08.04.2014 within three months of that posting. It was claimed that the number of wagons which he had checked was comparatively less than the previous statistics. It was also stated that there was a short fall in the penalty and fees collected during February 2014. It was also observed that the petitioner had not even made one adverse entry relating to tax collection in February 2014. It was thus concluded that his performance was poor. The show cause notice on these lines, had been issued. The petitioner filed a reply. An enquiry was conducted. It was concluded that the allegations in the show cause notice stood established.

(3) The petitioner then filed an appeal before the 1st respondent. The 1st respondent concurred with the findings of the Enquiry Officer. The petitioner was imposed with a penalty of cut of increment for one year without cumulative effect.

(4) The learned counsel for the petitioner stated that the other co-delinquent who was also similarly charged and who had longer period of experience and had put in nearly 19 years of service, was however not inflicted any punishment, but the charges were dropped. Learned counsel therefore stated that parity should be maintained and that this is a very important aspect insofar as the imposing of punishment is concerned. It is also contended by the learned counsel that there are no fixed rules or norms giving the number of parcels which should be checked and there are also no rules or norms or a target for the penalty to be collected. It is further contended that the petitioner was comparatively a raw entrant in the field and this was his first posting after training and therefore, it was claimed that it should be considered as a mitigating factor. It is also the grievance raised by the learned counsel for the petitioner that though all these aspects were raised in the explanation, the 1st respondent/Appellate Authority had not considered any of these factors. It is stated that a non-speaking order had been passed.

(5) Learned Standing counsel appearing on behalf of the respondents however contended that the order is not the end, but there is an appellate remedy available. It is stated that the fact that an appeal can be filed had been mentioned in the impugned order itself. Learned counsel disputed the contentions of the learned counsel for the petitioner that there were no rules/norms and that the petitioner was a raw entrant into the office is a mitigating circumstance. It is also contended that the rules provide for a further appeal.

(6) Let me not enter into any further direction about whether the punishment imposed on the petitioner was warranted or not. To give an opportunity, the petitioner may, if he so pleases, to file an appeal. If he files an appeal on or before 16.08.2023, then the issue of limitation should not be put against the petitioner and the Appellate Authority may examine the appeal in manner known to law. The choice is with the petitioner. It is purely left to him to file an appeal.

(7) Since there is an appellate provision available, it may not be prudent on the part of this Court to examine the order of the 1st respondent as it would mean that this Court is stepping into the shoes of the

Appellate Authority and entering into the discussions on facts. The judicial review would lie on the procedure adopted but very rarely lie on the quantum of punishment imposed.

(8) The Appellate Authority can examine both namely, the procedure involved and also the quantum of punishment and balance the mitigating circumstances. The petitioner may, if he so pleases, file an appeal **on or before 16.08.2023.** Since there is an effective alternate appellate remedy available, the writ petition cannot be maintained by this Court and therefore, the writ petition stands **dismissed.**

(9) It is made clear that the usage of the word 'dismissed' does not mean that the issue raised by the petitioner had been examined on merits, but the petitioner has only been relegated to the Appellate Authority again if he takes such decision. No costs. Consequently, connected miscellaneous petition is closed.

20.07.2023

AP
Internet : Yes

<u>NB:-</u>Learned counsel for the petitioner may file a Memo for return of the original order and if it is done so by substituting a copy of the same, the Registry may return the original impugned order to the learned counsel under due acknowledgment.

To

1.The Additional Chief Secretary/Commissioner
of Commercial Taxes, Chepauk,
Chennai 600 005.

2.The Joint Commissioner [CT]
Enforcement-I, Chennai 600 006.

C.V.KARTHIKEYAN, J.,

AP

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