IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

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THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.14567 of 2020 and

W.M.P.Nos.18058 and 18059 of 2020

K.Govindasamy ... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Commercial Taxes and Registration Department,
Secretariat, Fort St.George, Chennai-9.

2.The Commissioner of Commercial Taxes,
O/o the Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-6. ... 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 in connection with G.O.(D).No.78 dated 28.05.2020 issued by the first respondent and quash the same and direct the respondents to accord the due increments including seniority and promotion to the post of Commercial Tax Officer on par with his junior Mr.R.Jeyapandian, whose name is found in S.No.118 in the panel of Commercial Tax Officer dated 22.11.2018 with all consequential benefits.

For Petitioner : Mr.K.Krishnamoorthy
For Respondents : Ms.Amirtha Poonkodi Dinakaran, GA

ORDER

This Writ Petition has been filed seeking issuance of Writ of Certiorarified Mandamus to call for the records in connection with G.O.(D).No.78 dated 28.05.2020 issued by the first respondent and quash the same and direct the respondents to accord due increments including seniority and promotion to the post of Commercial Tax Officer on par with his junior Mr.R.Jeyapandian, whose name is found in S.No.118 in the panel of Commercial Tax Officer dated 22.11.2018 with all consequential benefits.

2. Heard Mr.K.Krishnamoorthy, learned counsel for the petitioner and Ms.Amirtha Poonkodi Dinakaran, learned Government Advocate appearing for the respondents.

3. <u>The facts of case in brief are as follows:</u>

The petitioner was working as DCTO II / BTPS, Trichy and who form part of the inspection team comprised of Mr.G.Balasubramanian, Commercial Tax Officer and two DCTOs namely the petitioner herein and Mrs.P.Kanchana. The inspection team conducted a surprise inspection in the premises of Tvl.Mangal Enterprises, Trichy. During the course of inspection, the defect of reversal of Input Tax Credit for non- production of original purchase bills for the years 2011-12 to 2012-13 to the tune of Rs.23,124/- was found out. But the inspection team was charged for the lapse on their part for not bringing to the notice of the Department that during the earlier years from 2007-08, number of defects including the stock difference to the tune of Rs.35,71,385/- which has a tax effect of Rs.2,82,847/- was not unearthed. The above fact was brought to the notice of the Department by the subsequent inspection team and hence, the petitioner and other members of the team has been charged for careless handling of the surprise inspection and suppression of the material facts that should be brought to the notice of the Department.

3.1. The other charge framed against the petitioner was that he has caused huge revenue loss to the exchequer and improperly functioned as Inspecting Officer. Disciplinary proceedings have been initiated against the petitioner and the petitioner was found guilty and he was imposed with the punishment of stoppage of increment for one year with commulative effect inclusive of any period spent on leave. The punishment part in the order of the Commercial Tax Authority is extracted as under:

> *"In charge 1, the element of "ulterior motive" has not been established – only negligence is clearly establised. It is also a fact that the DCTO is a relatively lower ranking officer and the failures were not detected by the superiors also; but the superior's failure to detect the failure of the subordinate cannot be an excuse for the subordinate. However, the absence of proof of ulterior motive is a ground for some leniency in quantum of punishment. Hence, taking a lenient view, the punishment of stoppage of increment for one year with cumulative effect inclusive of any period spent on leave is imposed on Thiru.K.Govindasamy, formerly Deputy Commercial Tax Officer-II/BTPS, Trichy now Deputy State Tax Officer / Superintendent, Office of the Assistant Commissioner(ST), Woraiyur Assessment Circle, Trichy Division and ordered accordingly."*

4. The appeal filed by the petitioner against the said order has also been confirmed by the Appellate Authority. Now, this Writ Petition has been filed challenging the order passed in G.O.(D)No.78 dated 28.05.2020 issued by the first respondent.

5. Heard the submissions of the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

6. The learned counsel for the petitioner stressed upon the ground that the Commercial Tax Officer who was the head of the inspection team has been exonerated from the charges and the petitioner who is also similarly placed and who also forms part of the same inspection team alone was punished. The proceedings in G.O.(2D).No.01, CT & R(E1) Department dated 05.01.2022 which dropped the charges against the then Commercial Tax Officer G.Balasubramanian who is presently working as the Assistant Commissioner (CT), has been also produced before this Court. In the said Government Order dated 05.01.2022, the charges against the then Commercial Tax Officer G.Balasubramanian was dropped in view of the fact that the revenue effect found on the alleged lapse stood eliminated. The relevant portion of the above said Government Order is extracted hereunder:

> *"From the report furnished by the Principal Secretary / Commissioner of Commercial Taxes with regard to the revenue loss involved in this disciplinary case, it is observed that revision orders had been passed based on the enforcement proposals in which Input Tax Credit was reversed for the reasons that sufferance of tax was not proved for the years from 2010-2011 to 2014-2015. Stock difference, reversal of ITC on purchase from cancelled dealers were the issues for the year 2015-2016. Aggrieved against the revision order, the dealer filed appeal before the Appellate Deputy Commissioner, Trichy. The Appellate Authority allowed all the appeals filed by the dealer. Subsequently, appeal orders have been given effect to all the years from 2010-2011 to 2015-2016 and demands were eliminated. Hence, revenue effect stands eliminated. In the light of the above developments, the Government, after careful and independent examination of the charges framed, explantion of the charged officer, findings of the Inquiry Officer, and the further representation of the charged officer, along with the connected records, have decided*

to hold both the charges levelled against G.Balasubramanian, Assistant Commissioner (Commercial Taxes) / Personal Assistant to Joint Commissioner (under suspension) as "NOT PROVED". The Government have therefore decided to drop further action in the disciplinary case initiated against the above official and order accordingly.

7. The learned counsel for the petitioner also cited a judgment of the learned Division Bench of this Court dated 10.08.2021 made in W.A.No.1558 of 2021 and submitted that when the charges of misconduct was identical and the charges against the co-delinquent has been dropped, the similar advantage should be extended to the petitioner as well. In the said judgment, several Supreme Court judgments on the same point have been referred and it is held as under:

"11. A reading of the above paragraphs makes it abundantly clear that the courts cannot assume the function of disciplinary / departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority, but, an exception

is carved out therein to the effect that if the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was identical or the co-delinequnt was foisted with more serious charges, then the Court is at liberty to interfere with the punishment. In such case, instead of remitting the matter back, the Court can substitute a suitable punishment.

12.If the principle enunciated in the above judgments is applied to the facts of the instant case, it is clear that the writ petitioner is entitled for the similar treatment, that has been extended to N.Subramanian and after passage of time, remitting the matter again to the authorities would not serve any purpose. Thus, directing the authorities to modify the punishment impoed on the writ petitioner to th one that has been imposed on N.Subramanian would meet the ends of justice. Thus, the learned Single Judge rightly set aside the Government Order refusng to extent such benefit to him. We find no reason to interfere with the said order."

8. However, the learned Government Advocate appearing for the respondents vehemently argued that in service jurisprudence, Article 14 of the Constitution of India has got no application and the petitioner is not entitled to base his claim that he should also be extended with the similar treatment that has been given to his fellow delinquent. In support of the above contention, the judgment of the Hon'ble Supreme Court in Civil Appeal Nos.6974 & 6975 of 2013 dated 22.08.2013, reported in (2013) 14 SCC 81 has been relied. This Court's attention was drawn to the paragraph No.8 of the said judgment which is extracted hereunder:

> "*8.It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraude, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similary situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well.If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality an irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot*

invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order / decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwse it would make functioning of administrtion impossible. (Vide Chandigarh Admn. v. Jagjit Singh, Anand Buttons Ltd. v. State of Haryana, K.K.Bhalla v. State of M.P. and Fuljit Kaur v. State of Punjab."

9. A careful perusal of the ratio laid down in the above judgment would clarify that if similarly placed persons have been granted some relief due to inadvertance or mistake, such orders do not confer any legal right on others to get the same relief. So the import is the 'wrong' committed in a earlier case should not be perpetuated and such benefit cannot be extended to all other similarly placed persons.

10. But in the case on hand, it is not the claim of the respondents that the team head G.Balasubramanian was discharged in view of certain illegality / inadvertence / mistake committed on the part of the Department. The Commercial Tax Officer has been discharged consciously by admitting the fact that there was a lapse on his part as well. He has been discharged, since the revenue impact has been eliminated subsequently. In such case, the same logic for granting the advantage ought to have been extended to the petitioner who is also similarly placed.

11. No point of time the respondents have alleged any *malafide* intention on the part of the petitioner. In fact, even in the order of punishment, it has been explicitly mentioned that there is no element of any ulterior motive on the part of the petitioner. So there cannot be any difficulty to grant the same benevolence shown to the then Commerial Tax Officer, who was the leader of the inspection team, to the members of the team as well.

12. With the above observations, this Writ Petition is allowed and the order passed by the first respondent in G.O.(D).No.78 dated 28.05.2020 is set aside. The respondents are directed to accord due increments including seniority and promotion to the post of Commercial Tax Officer on par with his junior Mr.R.Jeyapandian, whose name is found in S.No.118 in the panel of Commercial Tax Officer dated 22.11.2018 with all consequential benefits. No costs. Consequently, connected miscellaneous petitions are also closed.

03.10.2023

Index : Yes
Internet : Yes/No
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To

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O/o the Commissioner of Commercial Taxes,
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R.N.MANJULA, J.

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