IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

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**THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

W.P.No.31001 of 2022

B.Nowshath .. Petitioner

Versus

1.The Deputy Commissioner (Sales Taxes),
Intelligence,
Coimbatore – 641 018.

2.The Joint Commissioner (ST),
Intelligence Wing,
Coimbatore.

3.The Principal Secretary /
Commissioner of Commercial Taxes,
Chepauk,
Chennai – 600 005.

4.The Principal Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai – 600 009. ... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order of the first respondent in R.C.No.2598/2016/A1 dated 12.10.2022 imposing a punishment of stoppage of one year increment with cumulative effect and quash the same as the respondent has no jurisdiction in view of the rule 56(1)(c) of the Tamil Nadu Government fundamental rules to continue disciplinary proceedings and impose punishment to the petitioner, who was allowed to retire on superannuation and consequently, direct the first respondent to revise my last pay drawn at the time of superannuation by restoring the increment due to the petitioner retrospectively and consequently revise my pension and to pay the increment and consequential pension arrears along with simple interest of 6% calculated until the date of disbursal of the arrear amount within the time as may be fixed.

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| For Petitioner | : Mr.R.Rajendran |
| For Respondents R1 to R4 | : Ms.K.Vasantha Mala |

**ORDER**

This writ petition has been filed challenging the proceedings of the 1st respondent/Disciplinary Authority imposing the punishment of stoppage of one year increment with cumulative effect and to direct the first respondent to revise the last pay drawn at the time of superannuation by restoring the increment due to the petitioner retrospectively and consequently revise the pension and to pay the increment and consequential pension arrears along with simple interest of 6% calculated until the date of disbursal of the arrear amount.

2. The petitioner has faced charges for certain misconduct and for not obeying the order of the superior officers and thereby violating the Rule 20(1) of Tamil Nadu Government Servant Conduct Rules, 1973, and the petitioner has been proceeded with departmental enquiry. Originally, the departmental proceeding against him was initiated on 19.05.2014 thereby imposing punishment of stoppage of one year increment with cumulative effect.

3. The said punishment has been challenged before the Appellate Authority/the Joint Commissioner (ENF), Commercial Taxes, Coimbatore, and the same has been rejected by an order dated 31.03.2015. The petitioner has preferred a review before the Additional Chief Secretary/Commissioner of Commercial Taxes, Chepauk, Chennai. However, the Government sought opinion from the Tamil Nadu Public Service Commission (TNPSC). However, the TNPSC has found that since the enquiry report has not been communicated and there are deviations in the enquiry report with regard to the certain charges, advised that, after following the due procedure scrupulously, final orders should be passed by the Disciplinary Authority in the above case. Based on the report of the TNPSC, the Government by its order dated 22.07.2022, directed the 2nd respondent to pass final orders, after following the procedure as per the advice

of the TNPSC. Thereafter, it appears that the enquiry report has been served on the petitioner on 29.07.2022 and the petitioner was permitted to retire from service on 31.07.2022 without reserving any right to continue the disciplinary proceeding or without prejudice to the disciplinary proceeding. Thereafter, the impugned order has been passed imposing the punishment of stoppage of one year increment with retrospective effect from the year 2014, which has been challenged in this writ petition.

4. The main contention of the writ petitioner is that once the jural relationship between the employer and the employee ceases to exist, the same cannot be continued after his retirement, unless the employer reserves the right to proceed with the pending disciplinary proceedings.

5. The learned counsel for the respondent would submit that admittedly, the enquiry report has been served on the petitioner on 29.07.2022 though he was permitted to retire from service on 31.07.2022. It is her contention since at the time of retirement, enquiry was pending, the impugned order cannot be found fault with.

6. The issue is no longer res integra. Once the jural relationship between the employer and the employee ceases and the employee is permitted to retire from service without retaining him in the service, enquiry proceedings cannot be proceeded.

7. In this regard, it is relevant to rely upon the judgment reported in ***2016 (3) CTC 374*** in the case of ***the Commissioner, Tiruvallore Municipality, Tiruvallore, Vs. L.Krishnan, Town Planning Inspector, Tiruvallore Municipality, Tiruvallore, and Another***, wherein this Court has held as follow:

> *"Thus, the jural relationship between an employer, Master and the employee, Servant will continue to exist till the employee ceases so, the said relationship also ceases unless there is a provision in the Service Rule to the contrary or unless his services were extended. Such extension cannot be a matter of assumptions or by way of legal fiction or it cannot be a matter of his services being deemed to have been extended, in the view of the continuation of the Disciplinary proceedings extending his services. However, without prejudice to such pending Disciplinary proceedings or any Criminal proceedings, if he is permitted to retire, the Enquiry proceedings may*

*go on, by as per Rule 9(2) of the Tamilnadu Pension Rules, 1978, only a portion of the Pension can be withheld or loss, if any, caused to the department can be recovered from the Gratuity after due enquiry, but no major penalty can be imposed because Employer and employee relationship has already been brought to an end."*

8. In such view of the matter, once the petitioner was permitted to retire from service without reserving any right or subject to the pending disciplinary proceedings, the impugned order passed after retirement cannot be sustained in law. Accordingly, the impugned final order in the disciplinary proceeding after retirement of the petitioner, issued by the 1st respondent dated 12.10.2022 is quashed and consequently, the respondents are directed to disburse all the service benefits to the petitioner as per Rules.

9. With the above observation, the writ petition is disposed of. There shall be no order as to costs.

14.09.2023

Index : Yes/No
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**N. SATHISH KUMAR, J.**

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