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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.8790 of 2023
and
W.M.P(MD)No.8033 of 2023

S.Gunasekaran ... Petitioner

Vs

1.The Commissioner of Commercial Taxes,
Commercial Tax Department,
Elilagam,
Chepauk,
Chennai – 600 005.

2.The Joint Commissioner (Admin),
Commercial Tax Department,
Elilagam,
Chepauk,
Chennai – 600 005.

3.The Joint Commissioner,
State Taxes Commercial Taxes Department,
Tirunelveli Division.

4.The Joint Commissioner (Intelligence),
Commercial Taxes Department,
Tirunelveli Division. ... Respondents

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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the second respondent in his proceedings in EE1/1867460/2022 dated 10.08.2022 and quash the same as illegal.

For Petitioner	:	Mr.J.Jeyakumaran
For Respondents	:	Mr.T.Villavan Kothai Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2.The petitioner was visited with an order of punishment vide order dated 25.06.2004 passed by the Commissioner of Commercial Tax Department, Chepauk, Chennai. The petitioner was working as Record Clerk then. The petitioner is on the verge of retirement. The petitioner pointed out to the second respondent that in the case of similarly placed employees, the punishment was modified to one of stoppage of increment without cumulative effect. He therefore sought modification of the punishment passed on him. The second respondent made it clear that the modification would apply only to those employees who approached the Court and obtained judicial redress. Since the petitioner had not obtained an order in his favour, it is not possible

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for the second respondent to modify the punishment. Challenging the said memorandum dated 10.08.2022, the present writ petitioner came to be filed.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petitioner and called upon this Court to set aside the impugned order and grant relief as prayed for.

4.I am not persuaded by the said submission. As rightly pointed out by the learned Additional Government Pleader appearing for the respondents, the order of punishment was passed by the Commissioner of Commercial Taxes. Therefore, it would not be open to the Joint Commissioner (Admin), Commercial Tax Department to modify the punishment imposed by the superior authority. That apart, the writ petition suffers from the vice of laches. If the petitioner felt aggrieved by the order dated 25.06.2004 he ought to have gone before the Tribunal. It is seen that similarly placed individuals filed O.A.Nos.782 of 2003 etc batch ***(V.Gomathinayagam & Others Vs The Special Commissioner & Commissioner for Commercial Taxs & Another)*** and obtained relief on 05.06.2003 itself. The order dated 25.06.2004 passed by the Commissioner of Commercial Tax, Chepauk, Chennai is subsequent in point of time. It is seen that one P.Ganapathy filed W.P.No.4887 of 2005 before

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the Principal Seat and obtained relief on 08.12.2010. Since the petitioner failed to challenge the order within reasonable time, it would not be proper for this Court to entertain the writ petition at this point of time when petitioner is about to retire. The petitioner may not be justified in claiming parity because the order passed in his case was subsequent to the passing of the order by the Tribunal. I do not find any ground to grant relief.

5.This writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

18.04.2023

Index : Yes / No
Internet : Yes/ No
NCC : Yes / No
MGA

To

1.The Commissioner of Commercial Taxes,
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Chepauk,
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2.The Joint Commissioner (Admin),
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Elilagam,
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G.R.SWAMINATHAN, J.

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