IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14542 OF 2018

Shivaji Baburao Avhad,
Occ: Retired Govt. Servant,
R/at: 605/B, Jaibharati CHS Ltd.,
Savarkar Nagar, Thane (W). ..**Petitioner**

Versus

1. The Special Commissioner of Sales Tax, Maharashtra State, Mumbai, having his Office at: 3rd Floor, Vikrikar Bhavan, Mazagaon, Mumbai – 400 010.

2. State of Maharashtra, Through the Principal Secretary in the Finance Department, Mantralaya, Mumbai – 400 032. ..**Respondents**

Mr. R. M. Haridas i/by. Mr. Swapnil R. Patil for the Petitioner.
Mr. A. R. Deolekar, AGP for the Respondent-State.

CORAM : A. S. CHANDURKAR & JITENDRA JAIN, JJ.

Date on which the Arguments were concluded : 17th APRIL 2024.
Date on which the Judgment is pronounced : 23rd APRIL 2024.

Judgment :- (Per Jitendra Jain, J.)

1. **Rule**. Rule made returnable forthwith. Heard finally by consent of the parties.

2. This Petition is filed under Article 226 of the Constitution of India to quash the order dated 8th May 2013 passed by the Maharashtra Administrative Tribunal, Mumbai (for short 'Tribunal'), whereby the Tribunal rejected the contention of the Petitioner to treat the period of of suspension as period spent on duty and consequently to compute salary allowance and other monetary benefits for the period of suspension.

Brief facts are as under:-

3. In 1981, the Petitioner joined the Sales Tax Department as a Clerk. In the year 2001, the Petitioner was prosecuted for demanding illegal gratification under the Prevention of Corruption Act, 1988 and Special Case No.48 of 2003 was registered against the Petitioner. The said Special Case was disposed of on 10th January 2011 acquitting the Petitioner.

4. During the pendency of the above proceedings before Criminal Court, the Respondents initiated disciplinary proceedings in respect of the alleged misconduct of the Petitioner. The said proceedings resulted in passing of order dated 22nd February 2012, whereby the Petitioner was found guilty and a punishment of permanently withholding one increment came to be passed. In the departmental enquiry, the Respondents on 4th May 2012 further directed the period of suspension undergone from 28th August 2001 to 3rd May 2011 as suspension period.

5. The Petitioner preferred an internal departmental appeal against aforesaid two punishments namely withholding of increment and suspension. The Appellate Authority by an order dated 8th August 2012 dismissed the appeal of the Petitioner.

6. Being aggrieved by the aforesaid order of the Appellate Authority, the Petitioner challenged the order of suspension and withholding of increment by filing two Original Applications with the Tribunal. In Original Application No.952 of 2012, the Petitioner challenged the order of suspension and in Original Application No.953 of 2012, the Petitioner challenged the withholding of increment order passed in the departmental proceedings and confirmation of the same in appeal.

7. On 8th May 2013, the Tribunal passed an order in Original Application No.952 of 2012. The Tribunal did not interfere with the order dated 4th May 2012 of suspension for the period 2001 to 2011. However, in Original Application No.953 of 2012, the Tribunal remanded the matter back to the Original Authority for passing a reasoned order. Pursuant to the order passed in Original Application No.953 of 2012, the Appellate Authority reiterated and confirmed withholding of increment which was further challenged before the Tribunal in Original Application No.89 of 2015. On 12th December 2014, the Tribunal passed an order giving relief to the Petitioner insofar as withholding of increment is concerned and observed that the issue of suspension is already decided against the Petitioner in Original Application No.952 of 2012 which has not been challenged, and therefore, the order of suspension was not interfered with.

8. The Petitioner being aggrieved by the order of the Tribunal dated 12th December 2014 passed in Original Application No.89 of 2014 confirming the suspension challenged the same by filing Writ Petition No.3513 of 2015 before this Court. A Coordinate Bench of this Court on 22nd January 2018 disposed of Writ Petition No.3513 of 2015 confirming the order of the Tribunal insofar as it relates treating the period of suspension as period not spent on duty and thereby the writ petition came to be dismissed. The said order passed in Writ Petition No.3513 of 2015 has attained finality.

9. It is on the above backdrop that the present writ petition is filed by the Petitioner challenging the order dated 8th May 2013 passed by the Tribunal in Original Application No.952 of 2012, whereby the Tribunal confirmed the order of suspension.

Submissions of the Petitioner & Respondents :-

10. The Petitioner submitted that the delay in challenging the order after a period of five years was on account of a mistake by an Advocate to challenge the original order of withholding of increment and suspension order which was pending and was further carried to the Tribunal and before this Court, and therefore, the period for which the proceedings were pending should be excluded for considering prayer for delay in filing the Petition. The Petitioner further relied upon the Additional Affidavit filed on 14th March 2024 in support of his prayer for condonation of delay. The Petitioner, therefore, prayed that the delay in challenging the order of the Tribunal dated 8th May 2013 after a period of five years be condoned. The Petitioner on merits submitted that he has been acquitted by Criminal Court and since the issue raised in criminal proceedings and for conducting departmental proceedings being same the departmental proceedings insofar as it relates to issue of suspension is also required to be quashed.

11. Per contra, the Respondents supported the order of the Tribunal and submitted that since the disciplinary enquiry and criminal proceedings are separate, merely because the Petitioner has been acquitted in criminal proceedings he cannot seek a prayer for quashing of departmental proceedings. The Respondents further resisted the petition on the ground of the delay also. The Respondent-State, therefore, prayed for dismissal of the writ petition.

12. We have heard the learned counsel for the Petitioner and the learned counsel for the Respondents and with their assistance have perused the documents annexed to the Petition, Additional Affidavit filed by the Petitioner and proceedings of Original Application Nos.952 and 953 of 2012.

Analysis and conclusion:-

13. The Respondents by their order dated 4th May 2012 suspended the Petitioner for the period 2001 to 2011. The said order was challenged by the Petitioner by filing a departmental appeal which came to be dismissed. Thereafter, the Petitioner carried the order of suspension and departmental appeal order to the Tribunal by filing Original Application No.952 of 2012. On 8th May 2013, the Tribunal dismissed the said Original Application and confirmed the suspension order. This order of the Tribunal dated 8th May 2013 confirming the suspension order was not challenged by the Petitioner till the filing of the present petition on 5th October 2018. In the meanwhile, against the order withholding held increment the Tribunal in Original Application No.953 of 2012 remanded the matter back for re-adjudication. In the remand proceedings, the Respondents confirmed the withholding of the increment and also reiterated that the Petitioner would stand suspended for the period 2001-2011. The said remand order came to be challenged before the Tribunal on 12th December 2014 in Original Application No.89 of 2014. The Tribunal insofar as the issue relating to withholding of increment is concerned granted relief to the petitioner, but insofar as the suspension issue is concerned held that since the original order of the Tribunal in Original Application No.952 of 2012 dated 8th May 2013 confirming the suspension order had not been challenged by the petitioner, the petitioner could not re-agitate the same after having accepted the Tribunal's order dated 8th May 2013 passed in Original Application No.952 of 2012. The Petitioner filed a writ petition against this order of the Tribunal's dated 12th December 2014 before this Court in Writ Petition No.3513 of 2015. The Coordinate Bench of this Court disposed of the said challenge raised in Writ Petition No.3513 of 2015 vide order dated 22nd January 2018, wherein the Coordinate Bench confirmed the order of the Tribunal in Original Application No.89 of 2014 by observing that since the Petitioner had not challenged the Tribunal's order dated 8th May 2013 in Original Application No.952 of 2012, whereby the suspension order was confirmed, the Petitioner is deemed to have accepted the suspension order and cannot re-agitate the issue merely because the suspension order is reiterated in the remand proceedings, pursuant to the Tribunal's order in Original Application No.953 of 2012 dealing with withholding of increment. The order of this Court in Writ Petition No.3513 of 2015 has become final since we have not been shown that the same was challenged further. Therefore, in our view, the issue of suspension has become final by the order of this Court in Writ Petition No.3513 of 2015. Any attempt on the part of the petitioner to re-agitate the said issue of suspension in the present petition before us would amount to intra court appeal from an order of Coordinate Bench of same strength to another Bench. This course of action is not permissible in law. We cannot sit in appeal over the decision of a Coordinate Bench of this Court. Therefore, since the Petitioner has not challenged the order in Writ Petition No.3513 of 2015 dated 22nd January 2018, whereby the suspension order has been confirmed, the present writ petition is not maintainable and cannot be entertained.

14. Even otherwise, the Petitioner seeks to challenge the order of the Tribunal dated 8th May 2013 by filling a writ petition on 5th October 2018, i.e. after almost more than 5 years. The Petitioner in paragraph 6 of the writ petition has stated that since the appeal was pending and the proceedings continued up to the Tribunal and the High Court till the dismissal by the High Court on 22nd January 2018 in Writ Petition No.3513 of 2015, the delay stands explained. In our view, the reason given by the Petitioner would not amount to sufficient cause for condoning the delay. The Tribunal in Original Application No.952 of 2012 dated 8th May 2013 had confirmed the order of suspension and, therefore, there was no reason for the petitioner to believe that the issue of suspension order is still at large. The Petitioner ought to have challenged the order in Original Application No.952 of 2012 at that point of time. The remand order passed by the Tribunal in Original Application No.953 of 2012 was only with respect to withholding of increment and, therefore, there does not appear to be any reason for the Petitioner to believe that the remand is on suspension issue also. It is also not the case of the Petitioner that in the remand order in Original Application No.953 of 2012, there is any confusion on the issue of suspension and rightly so because the issue of suspension was never the subject matter of Original Application No.953 of 2012. Therefore, in our view, merely because in the remand proceedings dealing with withholding of increment, the suspension sentence is reiterated would not mean that the issue of suspension order has not reached finality on 8th May 2013, when the Tribunal confirmed the same in Original Application No.952 of 2012. Therefore, in our view, the reason given in challenging the order after a period of 5 years is not justifiable.

15. The Petitioner had filed an Additional Affidavit dated 14th March 2024 to explain the delay. We have perused the said additional affidavit which only states the facts of the proceedings starting from departmental enquiry till the filling of the petition. There is no explanation on the delay but on the contrary, the petitioner in paragraph 4 of the said additional affidavit states that there is no actual delay caused by the petitioner in challenging the order dated 8th May 2013 because if Respondent no.2 had not reiterated in remand proceedings the suspension order he would have challenged the original order passed by the Tribunal in Original Application No.952 of 2012. We do not agree with the said justification of the petitioner because the order passed by the Tribunal in Original Application No.952 of 2012 was very clear and at that point of time, the Petitioner could not have forseen that in the remand proceedings pursuant to Original Application No.953 of 2012, there would be reiteration of the suspension order. Mere reiteration of the suspension order in subsequent other proceedings would not give rise to fresh cause of action with respect to issue which had attained finality. Therefore, even on this count, we do not agree with the petitioner on the reason for approaching this Court after a period of 5 years.

16. The Petitioner in the course of the hearing made submission that on account of mistake by an Advocate in filing two Original Applications, namely, Original Application Nos.952 of 2012 and 953 of 2012, the present situation had arisen and, therefore, the Petitioner should not suffer on that account. We do not accept such submission, since it is neither stated in the petition nor in the additional affidavit but has merely being submitted across the bar. Therefore, even on this count, in our view, there is no justification in approaching this Court to challenge the order of 8th May 2013 after a period of 5 years and, therefore, even on this count, the present petition deserves dismissal.

17. Before parting, we may observe that we have perused the order dated 4th May 2012 by which the Petitioner was suspended for the period 2001-2011. The said order is a detailed order pursuant to the departmental enquiry and it is well settled that the criminal proceedings and departmental proceedings stand on a different footing. In our view, on a reading of the suspension order dated 4th May 2012, we do not find any infirmity or perversity in the suspension order, therefore, even on this count, the Petitioner does not have any case.

18. Looked from any angle and in view of our detailed reasoning above, the present Writ Petition is dismissed with no order as to costs.

[JITENDRA JAIN, J.] **[A. S. CHANDURKAR, J.]**

Signed by: Sayyed Saeed Ali
Designation: PA To Honourable Judge
Date: 23/04/2024 15:12:20