IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2023

PRONOUNCED ON : 01. 02.2024

C O R A M

THE HONOURABLE Dr. JUSTICE D.NAGARJUN

Writ Petition No.20713 of 2015
and
W.M.P.No.25525 of 2022

S.Ramaswamy ... Petitioner

Versus

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

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari to call for the records pertaining to the order of the respondent herein passed in Proc.No.EE2/56680/2007 dated 30.05.2015 in so far as ordering recovery of all the consequential benefits with interest of 8% per annum paid to the petitioner in the cadre of Assistant Commercial Tax Officer re-designated as Deputy Commercial Tax Officer and in so far as imposing the punishment of reduction in rank to the post of Junior Assistant with clear effect on pension and quash the same.

For petitioner ... Mr.Ravi Shanmugam

For Respondent ... Mr.K.Vasanthamara
Government Advocate

O R D E R

The petitioner has filed this Writ Petition seeking quashment of the order dated 30.05.2015 passed by the respondent in Proc.No.EE2/56680/2007.

2. The petitioner has joined the department of Commercial Taxes Department in the Government of Tamil Nadu as Junior Assistant on 10.02.1982. Later he was promoted as an Assistant. In order to get promotion as Assistant Commercial Tax Officer, the petitioner is required to pass departmental tests in Commercial Taxes Act Part III, Accountancy Test for Subordinate Officers Part I and Accountancy Test (Junior Grade). The petitioner has filed documents claiming that he has passed all three tests required for promotion of Assistant Commercial Tax Officer. The petitioner stated that he has passed Accountancy test for Subordinate Officers Part I in May 1989 and he has passed Accountancy Test (Junior Grade) examination on 18.05.2001. He has also claimed that he has

passed District Officer Manual Test in the year 1983 and departmental test in Commercial Taxes Act Part I, Part II & Part III in the year 1984. Considering the certificates submitted by the petitioner, the petitioner was promoted as Assistant Commercial Tax Officer in the year 2002 as per Proc.No.P2/50013/2004 dated 11.05.2006.

3. The Deputy Commissioner of Commercial Taxes has issued A charge memo to the petitioner under rule 17 (b) on 06.11.2007 stating that petitioner has committed misconduct. The two charges are as under:

> *"Charge No.I: Thiru. S.Ramaswamy, Assistant Commercial Tax Officer (Additional) Purasawalkam Assessment Circle. While working as Assistant has produced false certificate for having passed Accountancy (Junior grade) Examination and got promotion as Assistant Commercial Tax Officer, for which he is otherwise not eligible by resorting to fraudulent means.*
>
> *Charge No.II That Thiru. S.Ramaswamy, Assistant Commercial Tax Officer (Additional) Purasawalkam Assessment Circle has acted with malafide motive and dishonestly in submitting the bogus and false certificate of Qualification as referred in charge I above and thereby failed to maintain absolute integrity and devotion to duty*

> *and the above conduct is unbecoming of a government servant and thereby violated Rule 20 (1) of the Tamil Nadu Government Service conduct Rules 1973."*

along with the charge imputations of misconduct were also furnished to the petitioner in respect of both the charges.

4. The sum and substance of the *Charge No.I* is that the petitioner who was working as Assistant has produced false certificates projecting as if he has passed Accountancy Test (Junior Grade) examination and got promoted as Assistant Commercial Tax Officer.

5. In respect of the *Charge No.II* is concerned it is mentioned that petitioner has acted with malafide motive and dishonestly submitted the bogus and false certificate of Qualification as referred in charge I and failed to maintain absolute integrity and devotion to the duty, thereby his conduct in unbecoming of a government servant which is in violation of Rule 20 (1) of the Tamil Nadu Government Service conduct Rules 1973.

6. The petitioner has submitted his explanation on 06.12.2007 and Enquiry Officer was appointed, the petitioner has filed the written

statement of defence and enquiry was conducted by giving an opportunity to the petitioner and finally enquiry report was submitted on 27.07.2009, finding the petitioner guilty of both the charges. A letter was addressed to the the petitioner calling for his representation on the enquiry report and on consideration of the representation, punishment was imposed on the petitioner on 31.08.2014. A further representation was sent by the petitioner and finally on 30.05.2015 impugned orders vide Proc.No.EE2/56680/2007, were and the relevant portion of the impugned orders are as under:

> *"3. The charges framed in the disciplinary action initiated against Thiru. S.Ramasamy, formerly Depurty Commercial Tax Officer, Roving Squad-III, Enforcement (South) and now Deputy Commercial Tax Officer/Superintendent, O/o Assistant Commissioner (CT), Royapettah Assessment Circle, Chennai, Enquiry Officer's report and Further Representation and the connected records were examined. It is clear that the individual had not qualified to be promoted as Assistant Commercial Tax Officer. Hence it is ordered that he be immediately be demoted as Assistant with effect from the date of his promotion as Assistant Commercial Tax Officer and all consequent benefits recovered from him with interest. The*

interest rate applicable for the recovery shall be 8% per annum (simple) as applicable General Provident Fund and other Government transactions. This has the effect of cancellation of his promotion and makes good the loss suffered by Government."

7. It is vehemently submitted by the learned counsel for the petitioner that imposition of the punishment under the impugned orders are against the law procedure and in violation of Principles of natural justice. According to the learned counsel for the petitioner that no person shall be punished twice for the same misconduct. Further he was punished multiple times for the one misconduct. According to him, he has demoted from Assistant Commercial Tax Officer cadre to Assistant. Secondly, he has been imposed punishment of recovery of monitory benefits paid to him as Assistant Commercial Tax Officer. Thirdly, he has been awarded recovery of 8% interest and the monetary benefits paid to him and fourthly, his rank was reduced from Assistant to Junior Assistant affecting his pension. Therefore the petitioner sought for setting aside the impugned order.

8. Learned Government Advocate appearing for the respondent

has filed counter affidavit and submitted that the petitioner is not qualified to be promoted as Assistant Commercial Tax Officer, thereby petitioner demoted to Assistant only with effect from the date of his promotion and accordingly recovery of all the benefits as Assistant Commercial Tax Officer with 8% interest is justified. It is submitted on account of the irregular promotion given, the petitioner was paid excess money and the recovery of the same is sustainable.

9. On proving charges I and II, the petitioner was imposed punishment of demotion from Assistant Commercial Tax Officer to Assistant with immediate effect from the date of his promotion as Assistant Commercial Tax Officer and all consequential benefits are ordered to be recovered with interest at the rate of 8%. The petitioner was also imposed punishment of reduction of rank to Junior Assistant from Assistant with clear effect on his pension.

10. As rightly submitted by the learned counsel for the petitioner, the imposition of dual punishment for one misconduct appears to be excessive. The misconduct of the petitioner in filing false/fake/bogus certificates to show as if he has passed departmental test and by virtue of

the filing those documents the petitioner got promoted as Assistant Commercial Tax Officer as per Proc.No.P2/50013/2004 dated 11.05.2006. After realizing that the petitioner has submitted fake certificates of passing of departmental test an enquiry was initiated and ultimately both the charges were found to be proved. Both charges are interconnected Charge No.1 in respect of filing of the fake certificates, whereas Charge No.2 is the extension of the charge No.1 that the petitioner being an employee has submitted fake certificates in violation of Rule 20 (1) of the Tamil Nadu Government Service conduct Rules 1973, thereby his act of unbecoming the employee. The petitioner was reverted to Assistant and from Assistant his rank was reduced to Junior Assistant and recovery of all the monetary benefits that was given to him while working as Assistant Commercial Tax Office and recovery of amount with interest at the rate of 8% per annum. Out of the four alleged punishments, this Court is of the opinion that reverting the petitioner to the rank of Assistant does not form part of the punishment because prior to promotion as Assistant Commercial Tax Officer with effect from 11.05.2006, he was working as Assistant. There is no dispute that the promotion of the petitioner from Junior Assistant to Assistant was in proper lines. Since, enquiry has concluded that the petitioner has not passed the departmental test as required and thereby promotion of the petitioner as Assistant Commercial Tax Officer is irregular. Therefore the promotion given on account of the misconduct committed by the petitioner has been set right, thereby the promotion which was given to the petitioner as Assistant Commercial Tax Officer has been taken away, thereby he was reverted back to the post of Assistant. In fact the petitioner is not challenging his reversion from Assistant Commercial Tax Officer to that of the Assistant. Therefore, the reversion of the petitioner from Assistant Commercial Tax Officer to Assistant is not in question.

11. The main contention of the petitioner is that since he was promoted as Assistant basing on the seniority as per procedure, he should not have reverted from Assistant to Junior Assistant. It is true that insofar as the petitioner promotion from Junior Assistant to Assistant is concerned there are no allegations against the petitioner from the respondent department. But however the charges leveled against the petitioner were proved in the departmental enquiry that he has submitted fake certificates in order to get promotion as Assistant Commercial Tax Officer irregularly. Hence, both the charges against the petitioners were

proved. Once charges are proved, the disciplinary authority decided to punish him with major penalty as misconduct committed by the petitioner is very grave in nature. Accordingly, the punishment was imposed by the department to the petitioner by reduction of rank from Assistant to Junior Assistant. The contention of the petitioner is that he was reverted from Assistant Commercial Tax Officer to Assistant, further reduction in the rank from Assistant to Junior Assistant amounts to double jeopardy is incorrect and cannot be accepted. As already observed, the reversion of the petitioner from Assistant Commercial Tax Officer to Assistant cannot be termed as punishment because the irregularity committed in promoting the petitioner as Assistant Commercial Tax Officer has been set right, thereby, the petitioner will go back to original position as Assistant and therefore that cannot be termed as punishment. Therefore, reducing the rank of the petitioner from Assistant to Junior Assistant is a major punishment imposed by the department for the misconduct committed by the petitioner after proving of two charges in respect of filing of the fake certificates.

12. There are two more punishments imposed on the petitioner. The impugned order speaks that the petitioner was demoted from

Assistant Commercial Tax Officer to Assistant and all consequential benefits are ordered to be recovered from him with interest at 8% per annum. Insofar as, this part of the punishment is concerned, the contention of the petitioner is convincing. The petitioner was promoted as Assistant Commercial Tax Officer on 11.05.2006 and continued until 30.05.2015 and he was reverted back to the position of the Assistant. The petitioner was allowed to work for about nine years as Assistant Commercial Tax Officer. It is the contention of the learned counsel for the respondent that whatever money paid to the petitioner as Assistant Commercial Tax Officer is only the excess payment as the petitioner does not deserve for the promotion and thereby the excess amount paid can be recovered and the petitioner has also filed authority of Hon'ble Supreme Court of India, **Chandi Prasad Uniyal vs. State of Uttarkand reported in (2012) 8 SCC 417** and the relevant portion reads as under:

> *"14. We are concerned with the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations.The question to be asked is whether excess money has been paid or not, maybe due to a bona fide mistake. Possibly, effecting*

excess payment of public money by the government officers may be due to various reasons like negligence , carelessness, collusion, favouritism, etc because, money in such situation does not belong to the payer or the payee. Situations may also arise Where both the payer and the payee are at fault then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment."

13. There is no dispute in case if any excess payment is made to any employee under has to be recovered. In the case on hand, the petitioner was promoted as Assistant Commercial Tax Officer (erroneously) and was allowed to work for nine years. During the period of nine years, the petitioner was paid salary as Assistant Commercial Tax Officer and he was paid increments as such and he got all other monetary benefits for which Assistant Commercial Tax Officer is entitled to. The petitioner must have passed many orders and disposed of many files in the capacity of the Assistant Commercial Tax Officer. The responsibility of the Assistant Commercial Tax Officer are certainly more than the

responsibility of the Assistant. So what all the petitioner was paid as Assistant Commercial Tax Officer was his remuneration for working as Assistant Commercial Tax Officer. It is a different thing that he was erroneously promoted and his promotion was irregular. Even though the promotion of the petitioner as Assistant Commercial Tax Officer was irregular, he was allowed to work as Assistant Commercial Tax Officer. Therefore this Court is of the opinion whatever remuneration paid as Assistant Commercial Tax Officer including the wages and other benefits, are not excess amount. This is not a case where the petitioner has drawn excess money than what the petitioner is entitled as Assistant Commercial Tax Officer.

14. Further, as rightly observed by the learned counsel for the petitioner, there cannot be two punishments for one misconduct. The major punishment given to the petitioner for proving the two charges is reduction in the rank from Assistant to the Junior Assistant. Once the petitioner is punished by lowering of the rank, then again he cannot be punished by ordering recovery of the consequential benefits as enjoyed by the petitioner as Assistant Commercial Tax Officer. Therefore on that context also ordering of recovery of all consequential benefits as

Assistant Commercial Tax Officer with interest is erroneous.

15. Further, as rightly observed by the learned counsel for the petitioner the respondent can impose any punishment under the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules. The imposition of the punishment of recovery of interest and monetary benefits paid to the petitioner as Assistant Commercial Tax Officer do not form part of the penalties that are prescribed under Rule 8 of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules. This imposition of punishment of recovery of money with interest is totally outside the scope of the Rule 8 of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules. Therefore, on this account also the punishments imposed in respect of recovery of monetary benefits with interest at the rate of 8% per annum will not sustain.

16. In view of the above discussion, the Writ Petition is partly allowed. The proceedings in Proc.No.EE2/56680/2007 dated 30.05.2015, insofar as imposition of punishments in para no.3 is modifies as under:

17. In the result Writ Petition is disposed of, modifying the punishment imposed by the respondent by way of impugned order is restricted only to the extent of reduction of a rank of the petitioner to the Junior Assistant from the Assistant. The punishment of recovery of consequential benefits from the petitioner with interest at the rate of 8% per annum is set aside. No costs. Consequently, connected miscellaneous petition is closed.

01.02.2024
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Index: Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No

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

Dr.D.NAGARJUN, J.

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W.P.No.20713 of 2015

01.02.2024

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