IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.4620 of 2021
and
W.M.P.No.5258 of 2021

N.Saravana Kumar,
Assistant Commissioner (ST),
Arumbakkam Assessment Circle,
F-50, Second Floor,
First Avenue,
Anna Nagar-East, Chennai – 600 102. ... Petitioner

Vs.

1.The Principal Secretary to Government,
Commercial Taxes Department,
Secretariat, Fort St.George,
Chennai – 600 009.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

3.The Joint Commissioner (ST),
Chennai East Division,
3rd Floor, PAPJM Buildings,
Greams Road, Chennai – 600 006.

4.The Joint Commissioner (ST),
Chennai Central Division,
3rd Floor, PAPJM Buildings,
Greams Road, Chennai – 600 006. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent in Ref.No.CP2/3981/2016 dated 04.01.2019 and quash the same and consequently direct the respondents to regularize the petitioner's service between the period 14.08.2015 and 15.11.2015 and grant all consequential service benefits.

For Petitioner : Mr.Aditya Reddy

For Respondents : Mrs.K.Vasanthamala
Government Advocate

ORDER

While the petitioner was working as an Assistant Commissioner (Audit) in Sivaganga District, he was transferred by an order dated 13.07.2015 as an Assistant Commissioner (ST) (Assessment) in Tambaram Assessment Circle. However, immediately on the very next date i.e., on 14.07.2015, the petitioner was once again transferred by modifying the previous transfer order and posted as Assistant Commissioner (Audit) in Namakkal Assessment Circle.

2. Aggrieved by the said modified transfer order dated 14.07.2015, the petitioner has approached this Court by filing W.P.No.21975 of 2015 and this Court by an order dated 22.07.2015 stayed the said modified transfer order.

However, subsequently, the said writ petition came to be dismissed by this Court by an order dated 21.09.2015. Aggrieved by the said order dated 21.09.2015, the petitioner has filed W.A.No.1486 of 2015 and a learned Division Bench of this Court by order dated 03.11.2015 disposed the said writ appeal by quashing the modified transfer order dated 14.07.2015.

3. According to the learned counsel for the petitioner, though the impugned modified transfer order dated 14.07.2015 was stayed by this Court on 22.07.2015, the petitioner was not allowed to work in his original place and ultimately the said modified transfer order dated 14.07.2015 came to be quashed. Hence, it is contended that the petitioner is deemed to have been continuing in his original post as a result of quashing of the modified transfer order dated 14.07.2015 and therefore, he is entitled for all the service benefits in the post held by him prior to his transfer dated 22.07.2015 including the pay, allowances and encashment of earned leave etc.

4. Thus, claiming the above benefits, the petitioner has approached the respondents by sending representations dated 04.11.2015 and 09.02.2016. However, the said request of the petitioner though was considered by the respondents, no orders have been passed on merits and the request of the

petitioner was postponed through impugned order dated 04.01.2019 on the ground that regularizing the said period during which, the petitioner was not allowed to work i.e., from 14.07.2015 to 15.11.2015 would be considered after restoration of W.A.No.838 of 2016 and after appropriate orders are passed in the said writ appeal. The said writ appeal was filed against the order passed by the learned Single Judge of this Court quashing the disciplinary proceedings that were initiated against the petitioner.

5. According to the learned counsel for the petitioner, the impugned disciplinary proceedings are the basis for initial transfer of the petitioner and the very disciplinary proceedings came to be quashed and therefore, the petitioner is entitled for all the service benefits for the period between 14.07.2015 and 15.11.2015.

6. As seen from the impugned order dated 04.01.2019, the respondents have not taken any decision on the entitlement or dis-entitlement of the petitioner for treating the period from 14.07.2015 to 15.11.2015 as on duty or not. But through the impugned order, the respondents only postponed the consideration of the request of the petitioner.

7. Today, when the matter is taken up for consideration, it is brought to the notice of this Court that W.A.No.838 of 2016 preferred by the respondents against the order of the learned Single Judge of this Court in W.P.No.29030 of 2015 dated 30.09.2015, was dismissed by the learned Division Bench of this Court by an order dated 01.08.2022.

8. In view of the same, the basis on which the request of the petitioner was postponed by the respondents by passing the impugned order is no more subsisting. Therefore, it is obligatory on the part of the respondents to consider the claim of the petitioner for regularizing the period from 14.07.2015 to 15.11.2015 as the respondents themselves have not taken any decision on merits on the request of the petitioner and this Court is not inclined to examine the matter on merits at the first instance.

9. In the light of the above, the impugned order dated 04.01.2019 is set aside and the matter is remanded back to the respondents for considering the request of the petitioner for regularizing the period between 14.07.2015 and 15.11.2015 and to pass appropriate orders as thereon, in accordance with law.

10. The petitioner is also granted liberty to submit a fresh representation

before the respondents within a period of two weeks from the date of receipt of a copy of this order. On such submission of representation, the respondents shall consider the claim of the petitioner as directed above and pass appropriate orders thereon as expeditiously as possible, at any rate within a period of six weeks from the date of submission of the representation by the petitioner.

11. Accordingly, this Writ Petition stands disposed of. No costs. Connected Writ Miscellaneous Petition is closed.

10.06.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

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MUMMINENI SUDHEER KUMAR, J.

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