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.20262 of 2016
and W.M.P.No.17425 of 2016

S.Ramaswamy ... Petitioner

Versus

The Joint Commissioner (Commercial Tax),
Chennai East Division,
PAPJM Building, III Floor,
Greams Road, Chennai-06 ... 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 Rc.No.3240/2016/A3 dated 31.05.2016 placing the petitioner under suspension and not allowing the petitioner to retire from service with effect from 31.05.2016 and quash the same and consequently direct the respondent herein to allow the petitioner to retire from service with effect from 31.05.2016 as Assistant with all consequential retirement benefits.

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 31.05.2016 passed by the respondent in Rc.No.3240/2016/A3.

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.*
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> *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."*

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 passed 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. Challenging the punishment imposed on petitioner vide order dated 30.05.2015, he has preferred W.P.No.20713 of 2013 and on 13.07.2015, this Court had granted interim relief insofar as reverting the

petitioner to the post of Junior Assistant and granted interim stay of recovery. Further vide Rc.No.3240/2016/A3, dated 31.05.2016, the respondent has passed order of invoking Rule 17(e)(2) of the Tamil Nadu Civil Services (Disciplinary & Appeal) Rules placing the petitioner under suspension and not allowed to retire from service on reaching the age of the superannuation on 31.05.2016, so as to implement the orders already passed in the departmental proceedings and after the disposal of the writ petition. Aggrieved by the same present Writ Petition is filed.

8. Learned counsel for the petitioner has submitted that impunged orders passed by the respondent in R.C.No.3240/2016/A3 Dated 31.05.2016 suspending the petitioner under Clause 17(e)(2) of the Tamil Nadu Civil Services (Disciplinary & Appeal) Rules is irregular and sought to set aside on the ground that rule 17(e)(2) of tTamil Nadu Civil Services (Disciplinary & Appeal) Rules has to be applied in case when the employee is under police custody for more than 48 hours.

9. The respondent without answering the grounds raised by the petitioner in this Writ Petition has filed counter affidavit explaining the facts and also filed copy of the counter affidavit filied in W.P.No.20713

of 2015.

10. Now the question to be examined is whether the suspension of the petitioner as per 17(e)(2) of the Tamil Nadu Civil Services (D and A) rules is sustainable and the said Rules speaks as under:

> *" A member of a service may be placed under suspension from service where a government servant who is detained in custody whether on a criminal charge or otherwise for a period longer than 48 hours, shall be deemed to have been suspended under the Rule".*

11. In the case on hand the petitioner was not detained under the custody either on the criminal charge or otherwise for a period more than 48 hours. The petitioner was alleged to have filed fakes certificates thereby grave charges were framed and after departmental enquiry both the charges were proved against the petitioner. Therefore in the context of the facts suspending the petitioner under Rule 17 (e)(2) of the Tamil Nadu Civil Services (D & A Rules) is erroneous.

12. An employee can be suspended by the disciplinary authority

in anticipation or during the pendency of the disciplinary proceedings. Rule 56(1)(c) of the fundamental rule speaks as under:

> *"56. (1) (c) Notwithstanding anything contained in clause (a), a Government servant who is under suspension,*
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> *(i) on a charge of misconduct; or*
>
> *(ii) against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct, is pending; or*
>
> *(iii) against whom an enquiry into grave charges is contemplated or is pending; or*
>
> *(iv) against whom a complaint of criminal offence is under investigation or trial.*
>
> *shall not be permitted by the *appointing authority to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or the enquiry into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceeding taken under rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or rule 3(c) of the Tamil Nadu Police Sub-ordinate service (Discipline and Appeal) Rules, as the case may be, in respect of item (iv) above is concluded and a final order passed thereon by the competent authority or by any higher authority.*

Explanation.-For the purpose of this clause, the expression 'criminal misconduct' shall have the same. meaning as in Section 13 of the Prevention of Corruption Act, 1988 (Central Act 49 of 1988).

Instruction under Rule 56 (1) (c).—Whether a Government servant referred to in clause (c) is fully exonerated or not, he shall be considered to have been on extension of service for the period from the date of retirement to the date of termination of the proceedings. During such an extension of service, the service rights which have accrued to the Government servant shall freeze at the level reached on the date of retirement and the salary during that period shall not exceed the pension which has accrued to the Government servant on that date."

13. Basing on the above provision an employee against whom disciplinary proceedings are pending can be placed under suspension. The petitioner was placed under suspension on 31.05.2016. The disciplinary proceedings pending against the petitioner were culminated and orders were passed on 31.05.2016 imposing major penalties. Therefore as on the date of passing impugned order on 31.05.2016, there were no disciplinary proceedings pending against the petitioner. Once

disciplinary proceedings was not pending, simply by invoking the provision under Rule 17 (e)(2) of the Tamil Nadu Civil Services (Disciplinary & Appeal) Rules, the petitioner was suspended. The petitioner was imposed major penalties of reduction in rank and other punishment. May be because the petitioner has filed the Writ Petition challenging the same, the respondent department might have suspended the petitioner. As long as there were no stay orders, the respondent should have gone ahead implementing the orders passed by the disciplinary authority imposing the major penalties.

14. Considering from any angle, suspending the petitioner under Rule 17 (e)(2) of the Tamil Nadu Civil Services (Disciplinary & Appeal) Rules is erroneous and therefore the order of suspending shall not sustain and the impugned proceedings vide Rc.No.3240/2016/A3 dated 31.05.2016 is hereby quashed. Accordingly, this Writ Petition is allowed. No costs. Consequently connected miscellaneous petition is closed.

.02.2024
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Index: Yes/No
Neutral Citation: Yes/No

To

The Joint Commissioner (Commercial Tax),
Chennai East Division,
PAPJM Building, III Floor,
Greams Road, Chennai-06

Dr.D.NAGARJUN, J.

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W.P.No.20262 of 2016

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