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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on 13.11.2024	Order Pronounced on 20.11.2024

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE P.B.BALAJI

W.A.No.3274 of 2024
and C.M.P.No.25368 of 2024

State of Tamil Nadu
Rep. By its Principal Secretary to Government,
Home (Tr-II) Department,
Fort St.George,
Chennai – 600 009. ..Appellant

Vs.

S.Murugan ..Respondent

PRAYER: The Writ Petition filed under Clause 15 of the Letters Patent, praying to set aside the order dated 27.07.2021 made in W.P.No.9193 of 2014 and allow the writ appeal.

For Appellant : Mr.P.Kumaresan
Additional Advocate General
Assisted by Mr.Vadivel Deenadayalan
Additional Government Pleader

For Respondent : Mr.P.Kannankumar

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JUDGMENT

(Judgment of the Court was made by P.B.BALAJI, J.)

The State, aggrieved by the order passed in W.P.No.9193 of 2014 dated 27.07.2021, has preferred the present writ appeal.

2.We have heard Mr.Mr.P.Kumaresan, Additional Advocate General assisted by Mr.Vadivel Deenadayalan, Additional Government Pleader for the appellant and Mr.P.Kannankumar, learned counsel for the respondent.

3.The admitted facts of the case are as follows:

The petitioner was employed as an Assistant in the office of RTO, Sivagangai and in the course of his employment, he was issued with a Charge Memo for dereliction of duty, namely, intentionally failed to collect Lifetime Tax arrears from the owner of the LMV Ford Icon car bearing Regn.No.TN-45-M-5290. The Enquiry Officer appointed by the department, on enquiry, found that there was no intentional commission of the offence. However, the Disciplinary Authority disagreeing with the findings of the Enquiry Officer, issued a show cause notice to the writ petitioner, citing the reasons for such

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disagreement. Though writ petitioner replied to the same, punishment of stoppage of increment for a period of five years with cumulative effect came to be awarded. The said order was challenged by the writ petitioner/respondent herein before the writ Court. The Writ Court, after considering the submissions advanced on either side, modified the punishment of stoppage of increment from five years, with cumulative effect to two years, without cumulative effect and directed the terminal benefits to be computed and settled to the writ petitioner within a period of four months.

4.Challenging the said order of the Writ Court, the learned Additional Advocate General appearing for the appellant/the State would submit that the Writ Court ought not to have interfered with the decision making process of the Disciplinary Authority, especially on the quantum of punishment.

5.The learned Additional Advocate General would also refer to the decisions of the Hon'ble Supreme Court in *Om Kumar and Others Vs. Union of India* reported in *(2001) 2 SCC 386, the State of Karnata Vs. N.Ganga Raj* reported in *(2020) 3 SCC 423* and *Union of India Vs. P.Gunasekaran* reported in *(2015) 2 SCC 610.* Relying on the above decisions, the learned

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Additional Advocate General would submit that the scope of judicial review under Article 226 is very limited and it is not open to the Writ Court to have proceeded to modify the punishment awarded by the Disciplinary Authority.

6.The learned Additional Advocate General would further submit that the punishments awarded to the co-delinquents being lesser in nature was of no consequence since the writ petitioner's primary duty was to check whether the Lifetime Tax was paid and he was bound to collect such tax and therefore, the charges framed against him or the punishment awarded to him cannot be equated to co-delinquents.

7.Per contra, the learned counsel for the respondent/writ petitioner would submit that the Enquiry Officer had clearly held that there was no willful intention on the part of the writ petitioner in not collecting the Lifetime Tax arrears and he would further submit that the Lifetime Tax was collected subsequently on 21.01.2008 and there was no loss for the Government. The learned counsel for the respondent would further submit that the mistake was committed only by the Motor Vehicles Inspector, Sankarankovil, who was responsible for taxing the vehicles and therefore, the writ petitioner cannot be

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found fault. He would further submit that the Writ Court has rightly appreciated the facts and circumstances of the case and allowed the writ petition and therefore, the same does not warrant interference.

8.We have considered the submissions advanced by the learned counsel on either side.

9.The Charge Memo issued for dereliction of duty is on the ground that the petitioner intentionally failed to collect the Lifetime Tax arrears in respect of a particular Light Motor Vehicle bearing Regn.No.TN-45-M-5290 and therefore, the petitioner had failed to maintain absolute integrity and devotion to duty and thereby violated the Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973.

10.The Government, vide its letter in Letter Ms.No.1171, Home (Tr-I) Department dated 07.12.2006, issued instructions for collection of Lifetime Tax after deducting Annual Tax paid as on the date of collection of Lifetime Tax. The authorities were directed to complete the process by 30.04.2007. The present Charge pertains to an alleged offence committed on 13.08.2007.

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It is to be borne in mind, the charge refers to an offence alleged to have been committed on 13.08.2007 which is after the issuance of the instructions in December 2006 and also the cut of date viz., 30.04.2007.

11.In the case on hand, when a request made for effecting transfer and ownership of vehicle in question before the writ petitioner, the petitioner had to see whether necessary tax had been collected, which the petitioner has failed to carryout. However, admittedly, even according to the Government, the Lifetime Tax has been paid for the said vehicle on 21.01.2008. Therefore, though there is some merit in the contention of the writ petitioner that because of the omission on the part of the writ petitioner, no loss was caused to the Government, the Writ Court rightly came to the conclusion that the lapse is certainly on the part of the writ petitioner and the findings of the Disciplinary Authority in that regard do not warrant interference.

12.However, the Writ Court, while looking into the charge, especially the intentional failure to collect Lifetime Tax, held that there is absolutely no material to prove that there was any *mens rea* on the part of the writ petitioner in his failing to collect the Lifetime Tax. The Writ Court has also

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held that in such circumstances, the punishment awarded should be proportionate to the offence and relying on the decision of the Hon'ble Supreme Court in *the Director General of Police and Others Vs. G.Dasayan* reported in *1998 2 SCC 407*, the Writ Court has modified the punishment to two years without cumulative effect, holding that the same would be proportionate to the misconduct on act.

13.Though normally the Courts exercising power under Article 226 would be slow in interfering with the award of punishment by the Disciplinary Authority, as held by the Hon'ble Supreme Court in *G.Dasayan's case* (referred herein supra), we find that when the Enquiry Officer had clearly rendered an opinion by way of a report that there was no willful omission on the part of the writ petitioner even while disagreeing with the findings of the Enquiry Officer, it has not been stated as to how the petitioner had willfully neglected to collect the Lifetime Tax.

14.The only ground on which the Government has issued a Charge Memo giving reasons for disagreement with the Enquiry Officer's report was that as a responsible Government servant, the writ petitioner had to ensure

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collection of Lifetime Tax before effecting transfer of ownership of the above vehicle. Therefore, even in the said reasons, there is absolutely no reference to any willful intention on the part of the writ petitioner which is the basis for the Charge Memo issued to the first incident itself. The Hon'ble Division Bench of this Court in *A.Sakunthala Devi Vs. Registrar General, High Court and Another,* reported in *2020 SCC Online Mad 2450*, held that taken into account the facts and circumstances of the case a lenient view can be taken instead of awarding harsh punishment. It is settled law that punishment should be commensurate with the delinquency that there is absolutely no material to show willful negligence on the part of the writ petitioner. We find that the order of the Writ Court modifying the punishment as referred herein above to be reasonable and the same does not warrant interference. Therefore, applying the ratio laid down in *A.Sakunthala Devi's case*, we do not find any infirmity in the order of the Writ Court modifying the punishment as already discussed herein above.

15.In fine, the Writ Appeal stands dismissed. However, the benefits payable to the respondent/writ petitioner, if any, the same shall be paid within a period of eight weeks from the date of receipt of a copy of this order.

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There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

(D.K.K,J.) & (P.B.B,J.)

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Index : Yes/No
Speaking Order/Non-Speaking Order
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To

The Principal Secretary to Government,
Home (Tr-II) Department,
Fort St.George,
Chennai – 600 009.

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