IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.P.No.1435 of 2018
and
W.M.P.No.1818 of 2018

Union of India
Rep by its Secretary,
Ministry of Finance,
Department of Revenue
Central Board of Direct Taxes,
North Block, New Delhi-110 001 .. Petitioner

vs

1.G.Vathsala

2.G.Priyadarshini

3.The Registrar
Central Administrative Tribunal
Madras Bench,
Chennai. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records relating to the order dated 04.11.2017 made in O.A. No.1119 of 2014 on the file of the 3rd Respondent Tribunal.

For Petitioner : Mr.M.T.Arunan

For Respondents : Mr.N.V.Balaji, for R2
R1 - Deceased
R3 - Tribunal

ORDER

(Order of the Court was made by Dr. ANITA SUMANTH.,J)

The respondent / R1 in the Original Application, was one Mr.T.Goraknathan. While working as Commissioner of Income Tax, in the Income tax Department, he had been issued with a charge memorandum on 23.05.06 in terms of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 ('Rules').

2. The charge was to the effect that he had passed appellate orders in favour of seven assessees without proper examination of issues conferring undue benefit to those assessees with malafide intent. He had thus failed to maintain absolute integrity and devotion to duty, acting in a manner that was unbecoming of a Government servant.

3. R1 approached the Central Administrative Tribunal ('Tribunal / CAT') seeking to quash charge sheet dated 28.05.06 but failed as the Tribunal by order dated 20.11.06 directed the Department to conclude the enquiry under the charge memo, expeditiously.

4. Post enquiry, the charges were held to be proved by the enquiry officer, who submitted a report to the Ministry of Finance. The Ministry sought the advice of the Union Public Service Commission (UPSC) in regard to the subject disciplinary proceedings and the suggestion of the UPSC was for the levy of penalty by way of cut of 20% of pension for three years.

5. The recommendation of the UPSC is dated 08.08.2013 and clearly there has been a hiatus of four years prior thereto, when the matter was pending before the UPSC. A formal memorandum was issued thereafter on 20.02.2014 revealing that the disciplinary authority, being the Finance Minister, had accorded formal approval only on 04.02.2012 to charge memo dated 23.05.2006.

6. R1 then raised a preliminary objection assailing approval accorded on 04.02.2014. The objection was two pronged. Firstly, it was contended that the approval could not have been issued in 2012 post facto, relating to a charge sheet issued in May, 2006. The second objection was that R1 had superannuated on 31.05.2006 and in terms of the extant procedure, no charge sheet can be issued beyond the period of four years from date of superannuation.

7. Overriding the objections raised, an order came to be passed by petitioner on 14.03.2014 accepting the recommendation of the UPSC and imposing penalty under Rule 9 of the Central Civil Services (Pension), Rules, 2021 withholding 20% of monthly pension for three years. As against the same, R1 filed OA.No.119 of 2014 before the CAT.

8. Pending the matter before the CAT, R1 had passed away on 11.02.2016. The appeal came to be allowed on the ground that the approval granted by the Ministry of Finance for initiating disciplinary proceedings would amount to a retroactive approval of the charge memo, which was not permissible.

9. While the authority was at liberty to have issued a fresh charge sheet after receipt of the approval, they have proceeded to merely ratify the charge sheet earlier issued. Hence, and since the charge sheet issued originally was sans approval of the competent authority, it was set aside as being without jurisdiction and the original application was allowed. In so concluding, the CAT places reliance upon the judgment in *Union of India v B.V.Gopinath* [(2014) 1 SCC 351].

10. That was a matter which concerned Departmental proceedings as against various officials of the Income-Tax Department. The legal issue framed was identical to the issue that arises in the present case. In those cases as well, charge sheets had ultimately come to be dropped, as the Authority was of the view that proper procedure, as set out under Office Order No. 205/2005 ('Office Order'), had not been followed.

11. That Office Order, referred to in the judgment of *B.V.Gopinath,* specifies the requirement that a charge memo can be issued only with the approval of the disciplinary authority. The Department had defended the issuance of charge sheet even prior to approval on the ground that, that office memo had only stipulated the competent authority for granting approval for issuance of charge memo, and did not necessitate prior approval of the charge memo per se.

12. That submission had been negated by the Court holding that it was incumbent on the authority to have granted approval to the charge memo prior to such issuance. The Court also notes that pending the

proceedings before it, the procedure had been specifically amended in 2009 to provide/clarify that a charge memo shall be issued only after approval was granted by the Finance Minister.

13. It is relevant to note that the charge memos in those cases had been issued on 07.09.2005 / 08.09.2005 and ultimately, the Court had accepted the stand of the employees to the effect that those charge memos that had been issued without approval of the competent authority and were hence bad in law. In the present case, the charge memo is dated 23.05.2006 and hence the ratio of the judgment in *B.V.Gopinath* would be applicable on all fours to the present matter as well.

14. Reference is made to litigation in the case of *Union of India and anr v Sunny Abraham with Union of India and anr v Shri Pavan Ved and anr* [2017:DHC:4826-DB] which turn on facts identical to the present case. In the cases of *Sunny Abraham* and *Pavan Ved*, also officers of the Income-Tax Department, disciplinary proceedings had been initiated without obtaining approval from the competent authority. The approval was obtained prior to conclusion of proceedings. The CAT had held that post facto approval would be permissible as at that time the case of *B.V.Gopinath* was pending before the Apex Court.

15. Union of India had filed an appeal before the Delhi High Court in W.P.(C) Nos. 7649 of 2015 and 215 of 2016 in those cases, that came to be allowed on 25.08.2017. The matter was carried in further appeal by *Sunny Abraham* and in C.A.No.7764 of 2021, the Apex Court reiterated the ratio of the decision in *B.V.Gopinath*. They note specifically that when

a charge sheet / proceedings had been issued without approval of the competent authority, such an irregularity would be palpable and not remediable.

16. At paragraph 12, they state that *'in the event of legal instrument is deemed to be non-existent, because of fundamental defect in its issuance, subsequent approval cannot revive its existence and ratify acts done in pursuance of such instrument, treating the same to be valid'*. The observations would be applicable on all fours to the factual matrix that arises in the present matter.

17. To reiterate, in the present case, charge sheet dated 23.05.2006 has been issued without the approval of the competent authority. Hence, the mere fact that the Finance Minister has accorded approval on 04.02.2014, after seven years from superannuation of R1 cannot revive the same.

18. To reiterate, the charge sheet is dated 28.05.2006, the respondent had superannuated on 31.05.2006, approval of the disciplinary authority, being the Finance Minister, is dated 04.02.2012, the recommendation of the UPSC is dated 08.08.2013 and a final order of penalty was passed on 14.03.2014. The trajectory of dates and events reveals clearly that the Appellant was hardly vigilant in proceeding with the matter.

19. For the above reasons, the order of the Tribunal is confirmed and this writ petition is dismissed. Let all consequential benefits be quantified and paid over within a period of four weeks from date of receipt

of a copy of this order. No costs. Connected miscellaneous petition is closed.

[A.S.M., J] [G.A.M., J]
09.09.2024

Index:Yes
Neutral Citation:Yes
ssm

To

The Registrar
Central Administrative Tribunal
Madras Bench,
Chennai.

DR. ANITA SUMANTH,J.
and
G. ARUL MURUGAN.,J

ssm

W.P.No.1435 of 2018

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