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W.P. No. 16057 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P. No. 16057 of 2018

and

W.M.P. No. 19077 of 2018

Gabriel

... Petitioner

Vs.

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

2.The Deputy Commissioner (CT),
Enforcement (Central),
Greams Road,
Chennai – 600 006.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the first respondent vide Procds. No. E2/10795/2012 dated 04.05.2018 and quash the same and consequently direct the first respondent to reinstate the petitioner into service with all back wages.

For Petitioner : Mr. R. Ramesh
For Respondents : Mr. K. Vasanthamala,
Government Advocate



ORDER

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Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondent and carefully examined the materials available on record.

2.1 While the petitioner was working as Deputy Commercial Tax Officer (Enforcement wing), Chennai on 20.03.2012, he has been instructed to verify the application submitted by one Tvl.Alaska Engineering Solution Pvt. Ltd., for grant of new registration under TN VAT Act. After conducting inspection on 22.03.2012, the petitioner found that the person who have made application for registration was not entitled for grant of registration. The said person gave a complaint on 26.03.2012 against the petitioner to the Vigilance and Anti Corruption Department, Chennai. Based on that, the case was registered and the petitioner was arrested and later he was released on bail.

2.2 Pursuant to the pendency of the criminal case, the petitioner was placed under suspension on 29.03.2012. Learned Special Judge, under Prevention of Corruption Act Cases, Chennai, by judgment dated 27.10.2017 convicted the petitioner and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.1,000/-. Against the said judgment passed in C.C. No. 13 of 2013, the petitioner preferred Criminal Appeal in CrI. No. 743 of 2017 before this Court. This Court by order dated 23.11.2017 granted suspension of sentence and the said



criminal appeal is pending. On 28.02.2018, the petitioner received a memo from the first respondent calling explanation of the petitioner to pass orders in disciplinary proceedings. The petitioner submitted his representation on 12.04.2018. After receipt of the same, the first respondent issued the impugned proceedings dated 04.05.2018 imposing punishment of dismissal from service. Aggrieved by the said order, the petitioner has constrained to approach this Court.

3. A counter affidavit has been filed on behalf of the respondents.

4. Learned counsel for the petitioner would submit that the first respondent has issued the impugned order dismissing the petitioner from service by invoking Rule 17(c)(i)(1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Learned counsel would submit that the order of punishment is issued by the first respondent with predetermined mind. Without considering the explanation in a proper manner, the order of dismissal of service is issued.

5. Learned counsel for the petitioner has drawn the attention of this Court to the paragraph No.2 of the memo dated 28.02.2018 wherein, the petitioner is called for to submit his representation. At paragraph No.2 of the said memo, it is stated that the first respondent originally decided to impose the penalty of dismissal from service.



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6. On perusal of the same, it is clear that before calling for the representation from the petitioner, the first respondent has decided to impose punishment of removal of service of the petitioner, which is against to the settled law.

7. In view of the facts and circumstances of the case, in the considered opinion of this Court, it is appropriate and reasonable to dispose of the writ petition without going into the merits of the case by setting aside the order impugned in this writ petition and remanding the matter to the first respondent for passing appropriate orders afresh, by following due process of law.

8. Accordingly, this Writ Petition is disposed of with the following directions:-

- i) the order impugned in this writ petition is hereby set aside.
- ii) the first respondent is directed to pass orders afresh, if so advised, after giving reasonable opportunity to the petitioner and by following due process of law.

9. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

21.10.2024



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Index : Yes/No

Neutral Citation : Yes/No

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To

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

2. The Deputy Commissioner (CT),
Enforcement (Central),
Greaves Road,
Chennai – 600 006.



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BATTU DEVANAND, J.

AT

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