IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **25.10.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.P.No.15934 of 2020
and
W.M.P.Nos.19811 & 19837 of 2020

N.Saravana Kumar ....Petitioner

Vs

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

2. Commissioner of Commercial Taxees
   Ezhilagam
   Chepauk,
   Chennai 600 005.

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

4. The Deputy Commissioner(ST)
   Chennai East Division,
   3rd Floor, PAP JM Buildings
   Greams Road
   Chennai 600 006.

....Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleased to issue a Writ of Certiorari calling for the records of the 1st Respondent in G.O.(D) No.94 Commercial Taxes and Registration (E1) Department dated 17.06.2020 and quash the same.

For Petitioner	:	Mr.Adithya Reddy
For Respondents	:	Mr.S.Nanmaran Special Government Pleader

O R D E R

The instant Writ Petition has been filed challenging the order of the Appellate Authority dated 17.06.2020.

2. The learned counsel for the petitioner would submit that, a Show Cause Notice was issued to him for the delay in submitting the Fortnightly daily report, and that the report relied by the Disciplinary Authority has not been furnished to him. Furthermore, the delay in submission of report was neither willful nor wanton, and only due to the shortage of staff strength in his Office. His further contention is that, the instant disciplinary proceeding has been initiated only to victimize him, as he had preferred Writ Petition against the authorities concerned and hence, prayed to interfere with the order of the Appellate Authority as the order of the Appellate Authority is cryptic one.

3. Per contra, the learned Government Advocate would vehemently contend that for the misconduct a charge memorandum was issued against the petitioner under Section 17(a) of Tamil Nadu Discipline and Appeal Rules, and that all the due procedures have been followed before concluding against the petitioner. Though the petitioner contended that the order of Disciplinary Authority and the Appellate Authority did not contain reasons, in contrast, there are sufficient reasons, and all the objections raised by the petitioner has been considered. Thus the punishment imposed against the petitioner is proportionate to the gravity of the charges accordingly there are no grounds to interfere with the order of the Appellate Authority.

4. I have given my anxious consideration to the either side submissions.

5. It is the specific contention of the petitioner that there were some circular during the period 2014, with a direction to submit the fortnightly daily report to their superiors. It is the submission of the learned counsel for the petitioner that submission of the manual fortnight daily report is nothing but an redundant exercise, as they have been already submitting the

same through e-mail. But the fact remains that, as per Standing Order 214(A) of the Tamil Nadu Commercial Taxes Manual, Volume III, there is a duty cast upon the Assistant Commissioners to submit manual fortnightly diary.

6.It is in this background, the petitioner was issued with a show cause notice dated 31.07.2017 for delayed submissions of such diary, and the delay caused by the petitioner are ranging from 19 days to 628 days. Admittedly, there is no serious dispute in respect of the delayed submission of report, but they would contend that, the delayed submission of report is in no way hindrance to the administration, as they have been regularly submitting similar report through email. The yet another defence is shortage of man power. This aspect was dealt by the disciplinary authority in his report and observed that, when standing order mandates the concerned authority to submit a fortnightly report, the same becomes mandatory, and the petitioner cannot take advantage of shortage of staff as defence for the delay, in as much as the report has to be submitted by the individual Officer concerned, and not through the staff. In such view of the matter, this Court do not find any infirmity in the orders of the Disciplinary Authorities. Similarly, the Appellate Authority had also dealt the issue elaborately and concurred with the findings of the disciplinary authority. The delay is one of the indication to manifest that the petitioner had lack of devotion to the duty and insubordination.

7. The contention of the petitioner in respect of the order of the Appellate Authority is that, his grounds for appeal has not been considered by the Appellate Authority, in it's right perspective. While considering the order of the Appellate Authority, the Appellate Authority has dealt all the material particulars. The petitioner cannot expect the Appellate Authority to answer all his grounds, as many of the grounds is neither fact in issue nor relevant fact. Accordingly, this Court could not find any perversity in the orders of both the Disciplinary Authority and the Appellate Authority.

8. At this juncture, to understand the powers of judicial review, it is useful to refer the following judgements:. In ***B.C.Chaturvedi Vs. Union of India*** reported in ***(1995) 6 SCC 749***, the Hon'ble Supreme Court has held as follows. The relevant paragraphs are paragraphs 12 & 18 and the same read as follows:-

> ***"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of***

judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court*.* *When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge.* ***The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.***

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18**. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct.* ***The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

(Emphasis supplied by this Court)

9. In ***Deputy General Manager (Appellate Authority) Vs. Ajai Kumar Srivastava*** reported in ***(2021) 2 SCC 612,*** the Hon'ble Supreme Court held that if the decision is against the natural justice, then the same can be interfered**.** The relevant paragraphs are paragraphs 25 & 29 and the same read as follows:-

> ***"25**. It is thus settled that the power of judicial review, of the Constitutional Courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The Court/Tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the Rules of natural justice or in violation of the statutory Rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority if based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.*
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> ***26. ......***
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> ***27**. **.......***
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> ***28**. **........***
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> ***29**. The Constitutional Court while exercising its jurisdiction of judicial review Under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of malafides or perversity, i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained."*

10. Through the above judgments, the following principles are emerging:-

(i) Power of Judicial review is not like an appeal. But such power is meant to ensure that the individual receives fair treatment and to ensure the compliance of natural justice.

(ii) The power of judicial review is not like a appellate remedy to substitute its own finding, unless the findings of the Disciplinary Authority and Appellate Authority is perverse and without evidence.

(iii) The High Court had no jurisdiction to review the penalty, unless it is shockingly disproportionate.

(iv) Since because there is a possibility to arrive at yet another finding, cannot be a reason to substitute the finding of the disciplinary Authority.

(v) The judicial review is meant only to ensure fairness in treatment and not to ensure fairness of conclusion.

(vi) While exercising the power of judicial review, so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.

Therefore, in view of the above settled legal principles, this Court do not find any perversity in the order of the impugned order.

11. Coming to the proportionality of the punishment, it is the settled

principle of law that, unless the punishment is shockingly disproportionate, the Writ Court cannot interfere with the same. Here, considering the long delay of more than 600 days at two occasions, more than 500 days at seven occasions, more than 400 days delay at six occasions, more than 300 days delay at seven occasions, more than 200 days delay at seven occasions, and more than 100 days delay at six occasions, the Disciplinary Authority has imposed the punishment of withholding of increment for six months without cumulative effect. Considering gravity of the proven charge, this Court could not find any disproportionality in the punishment imposed against the petitioner. In this background, this Court do not find any merits in this Writ Petition.

12. In the result, the Writ Petition stands dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

25.10.2024

Index :Yes/No
Neutral Citation : Yes
Speaking order : Yes
Sma

To

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<u>C.KUMARAPPAN, J</u>

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