IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 19.11.2024

DELIVERED ON: 20.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

and

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No.2631 of 2024

and CMP. No.18901 of 2024

1.The Principal Secretary to
Government, Commercial Taxes &
Registeration Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
Chepauk, Chennai – 600 005.

.. Appellants

Vs

Thiru.M.Ravi

..Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to allow the Writ Appeal to set aside the order dated 20.12.2023 in W.P. No.1298 of 2022 passed by this Court.

For Appellants : Mr.J.Ravindran,
Additional Advocate General
assisted by Mr.C.Harsha Raj,
Additional Government Pleader

For Respondent : Mr.V.Vijay Shankar

J U D G M E N T

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

The respondents, namely, the State and the Commissioner of Commercial Taxes, aggrieved by the order of the Writ Court in W.P No. 1298 of 2022, dated 20.12.2023 are the appellants before us.

2. Brief facts of the case are as follows:

The respondent/writ petitioner joined the second appellant Department as Typist in the year 1997 and later, he was promoted as Assistant on 17.08.2007, thereafter, he was further promoted as Deputy Commercial Tax Officer on 04.03.2013. According to the Department, the respondent had claimed to have passed in Junior Accountancy Grade examination which is a mandatory requirement for considering the respondent for promotion to the post of Deputy Commercial Tax Officer. It is the further case of the appellants that the respondent has produced a certificate regarding passing Junior Accountancy grade examination.

3. However, during routine verification process, the officials of the appellants found that the certificate submitted by the respondent was bogus and that the respondent had failed in the examination securing only 40 marks in Paper-1 as against 45 marks, which was the minimum required to secure a pass. On receipt of the said information regarding the certificate being not genuine, the promotion of the respondent to the panel of Deputy Commercial Tax Officer was sought to be nullified. A show cause notice was issued to the respondent on 21.08.2014 regarding the objection to the said proposal to nullify his promotion. In pursuance of the said show cause notice, the respondent's promotion was cancelled and he was reverted to the post of Assistant vide proceedings of the Joint Commissioner (Commercial Tax) dated 18.12.2014. According to the appellants the said reversion order came to be passed after affording a fair opportunity to the respondent to put forth his objections and therefore, the respondent cannot be found fault with

the same.

4. However, the respondent claimed that, he was not even aware of the enquiry proceedings and had also given his objections to the enquiry report which was also not considered by the appellants' Department. Thereafter, the writ petitioner was afforded a hearing on 12.11.2018 by the second appellant and finding no fresh material provided by the respondent, the second appellant decided to dismiss the respondent from service. The respondent preferred an Appeal before the first appellant and the first appellant taking a considerate view modified the punishment from removal of service to that of compulsory retirement.

5. The respondent/writ petitioner challenged the order of the second appellant before the Writ Court. The Writ Court taking into account that a similarly placed employee was also extended the benefit of retainment of original punishment of reversion, the respondent would also be entitled for similar relief and proceeded to allow the Writ Petition.

6. Aggrieved by the said order of the Writ Court, the appellants challenging the final orders of the Writ Petition have come up by way of the present Writ Appeal.

7. We have heard Mr.J.Ravindran, learned Additional Advocate General, assisted by Mr.C.Harsha Raj, learned Additional Government Pleader counsel for the appellants and Mr.V.Vijayshankar, learned counsel for the respondent/writ petitioner.

8. The learned Additional Advocate General would submit that the production of a bogus certificate was a serious offence and reversion cannot be treated as a punishment and the Writ Court erroneously applied the principle of double jeopardy which could not be made applicable to the facts of the present case. The learned Additional Advocate General would further state that there is also a statutory remedy of review and revision available even under the Tamil Nadu Civil Services (Discipline and Appeal) Rules which have not been exhausted by the respondent and therefore, even on the ground of availability of the alternate remedy, the Writ Court ought to

have dismissed the Writ Petition. The learned Additional Advocate General would therefore pray for the Writ Appeal being allowed.

9. Per contra, the learned counsel for the respondent/writ petitioner Mr.Vijayshankar would submit that in identical circumstances, a similarly placed employee was reverted to the post of Assistant and therefore, the respondent/writ petitioner cannot be discriminated against and awarded a different and higher punishment. He would also place reliance on the decision of the Hon'ble Supreme court in *State of Uttar Pradesh and others vs. Aravind Kumar Srivatsava and others* reported in *(2015) 1 SCC 347*, where the Hon'ble Supreme Court deciding an issue arising under service law, held that, when one set of employees have been given a particular relief, then the same relief ought to be extended to other employees also, and failure to do so would amount to discrimination. In fact the Hon'ble Supreme Court even extended the said benefit to the employees who did not even approach the Court earlier as they could not be treated differently. Mr.Vijayashankar would therefore pray for the Writ Appeal being dismissed.

10. On 23.10.2024, we had directed the learned Additional Advocate General to file an affidavit before us as to whether any similarly placed persons have been reverted to their original positions. In compliance with the said order, the Commissioner of Commercial Taxes, viz., the second appellant has filed an affidavit dated 06.11.2024 from which we find that , for the production of bogus certificates of pass in Accountancy Junior Grade, one Mr.Loganathan was proceeded against under Rule 17(b) and a punishment of reduction to that of Junior Assistant was awarded by the Principal Secretary/Commissioner of Commercial Taxes by proceedings dated 16.05.2023.

11. The learned Additional Advocate General would also fairly bring to our notice an order passed by Writ Court in W.P No. 20713 of 2015, where the learned Single Judge of this Court had modified the punishment to reduction of rank to the post of Junior Assistant from Assistant. Meeting the said affidavit filed by the learned Additional Advocate General, the learned counsel for the respondent/writ petitioner Mr.Vijayashankar would fairly

submit that, since a similarly placed employee was awarded a punishment and he was reverted to the post of Junior Assistant, at least the same treatment can be given to the writ petitioner also.

12. Considering the submission advanced on either side and also going through the records as well as the order of the Writ Court, we pass the following order:

(i) The order of the Writ Court in W.P. No. 1298 of 2022 is modified and consequently, the respondent/writ petitioner shall be reverted to the post of Junior Assistant with effect from the original date of award of punishment viz., 18.12.2014.

(ii) The respondent/writ petitioner shall be entitled to 50% back wages and all other monetary benefits, as applicable.

(iii) In respect of the amounts to be paid to the respondent/writ petitioner, while releasing the amounts payable to the respondent/ writ petitioner, if any payments are already made, the same shall be adjusted.

(iv) The appellant shall pass suitable orders in compliance with the above directions within a period of four weeks from the receipt of copy of the order.

13. In fine, the Writ Appeal is disposed of with the above terms. Consequently, connected Miscellaneous Petition is closed. No costs.

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

20.11.2024

Internet: Yes/No
Index : Yes/No
Speaking Order/Non Speaking Order
rkp
To

1.The Principal Secretary to
Government, Commercial Taxes &
Registeration Department,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
Chepauk, Chennai – 600 005.

<u>D. KRISHNAKUMAR. J.,</u>
and
<u>P.B.BALAJI, J.</u>

rkp

<u>Pre-delivery Judgment in</u>

<u>W.A.No.2631 of 2024</u>

<u>and CMP. No.18901 of 2024</u>

20.11.2024