IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.A.No.3072 of 2024
and
C.M.P.No.23207 of 2024

1.The Secretary to Government of Tamil Nadu,
Commercial Taxes & Registration Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2.The Principal Secretary/
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005. ... Appellants

Vs.

M.K.Ganesan
Deputy Commercial Tax Officer,
21-B, Chennaikrishnapuram,
Salem -7. ... Respondent

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 29.11.2023 in W.P.No.7172 of 2022 on the file of this Court.

For Appellants : Mr.G.Nanmaran
Special Government Pleader

For Respondent : Mr.G.K.R.Pandian

J U D G M E N T
(Judgment was delivered by **S.S. SUNDAR, J.**)

This Writ Appeal is directed against the order of the learned Single Judge dated 29.11.2023 in W.P.No.7172 of 2022.

2.Brief facts that are necessary for the disposal of this Writ Appeal are as follows :

2.1.The respondent, who is the writ petitioner, joined in the Commercial Taxes Department as Record Clerk in the year 1969. During his tenure from 18.12.2002 to 09.01.2005, when he was working as Deputy Commercial Tax Officer in Kothagiri, a charge memo was issued against him by the Deputy Commissioner on 04.01.2006. From the reading of the said charge memo, it is seen that 7 charges have been framed and the charges are serious. Since the respondent denied the charges, an Enquiry Officer was appointed and he submitted his enquiry report. Subsequently, another charge memo was also issued to the respondent framing 5 more charges against the respondent. As regards the 2nd charge memo, the Enquiry Officer gave his findings dated 29.03.2006. Since the Enquiry Officer held that many of the charges framed against the respondent were proved, major punishment of dismissal was imposed on the respondent by order dated 03.06.2009.

2.2.As against the order of punishment, the respondent has stated that he had preferred an appeal petition on 08.07.2009. It is also on record that a representation was submitted by the respondent on 15.02.2014 for early disposal of the appeal stated to have been filed by the respondent.

2.3.Thereafter, the respondent filed a writ petition in W.P.No.4361 of 2015 for a direction. When the writ petition was pending, the order in G.O.(D) No.205, Commercial Taxes and Registration (A1) Department, dated 30.12.2021, was passed by the 1st respondent, rejecting the appeal only on the ground that the appeal had not been preferred within the period of limitation.

2.4.It is against the said order rejecting the the appeal filed by the respondent, the present writ petition in W.P.No.7172 of 2022 was filed. Learned Single Judge, considering the fact that the Government had disposed of the appeal without application of mind, i.e., rejecting the appeal on the ground that it had been belatedly filed after 5 years, by assuming the representation of the writ petitioner dated 15.02.2014 as the date of appeal, allowed the writ petition and directed the appellants to forthwith pass orders notionally retiring the writ petitioner from service from the date of his superannuation and to disburse all the retirement and pension benefits within a period of four weeks from the date of receipt of a copy of the order.

2.5.Aggrieved by the same, the respondents in the writ petition have preferred the above Writ Appeal.

3.Even though the learned Special Government Pleader appearing for the appellants submitted that the appeal was rejected on the ground of delay in filing the appeal, the order clearly discloses that no appeal was received by the Government. Therefore, when there is no record produced by the appellants to show that the appeal is not filed within time, the learned Judge has presumed that the appeal has been dismissed erroneously, even though the appeal had been filed within time. Sum and substance, the learned Special Government Pleader appearing for the appellants projected the case that no appeal had been presented by the respondent within time. However, learned counsel appearing for the respondent produced before this Court appeal memorandum along with the registered postal receipt to show that the appeal memorandum was sent by Registered Post. In the absence of any record produced by the appellants, this Court cannot now presume that the appeal had never been received by the appellants. The appellants could have produced enough records or other documents to show that the document relied upon by the respondent regarding proof of filing appeal, cannot be relied upon. In the absence of any such records on the side of the appellants, this Court is unable to believe the version of appellants that the appeal was never received by the Government as contended by the appellants.

4.The order impugned in the writ petition reads as if the limitation has been calculated from the date of representation of the respondent for early disposal of the appeal. Therefore, the learned Judge is right that the appeal had been disposed of by the Government without an application of mind. However, the respondent has suffered the punishment of dismissal after a full fledged enquiry, finding that the serious charges against the respondent are proved. In such circumstances, merely because the appeal is dismissed without assigning proper reasons, the order of dismissal cannot be reversed. The appellants should be permitted to dispose of the appeal on merits.

5.In that view of the matter, this Writ Appeal is partly allowed. We set aside the order directing the appellants to pass orders permitting the respondent to retire from service and to disburse all the retirement benefits. While confirming the order setting aside the impugned order in the writ petition dated 30.12.2021 passed by the 1st appellant, the matter is remitted to the 1st appellant for fresh consideration and disposal in accordance with law and on merits. The 1st appellant shall pass orders, after holding an enquiry, giving adequate opportunity to the respondent, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) (A.D.M.C., J.)
21.10.2024

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Neutral Citation : Yes

To

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S.S. SUNDAR, J.
and
Dr.A.D. MARIA CLETE, J.

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