IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2024

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THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.27234 of 2021 and

W.M.P.No.28739 of 2021

T.Jeyageetha ... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Commercial Taxes and Registration Department,
Secretariat, Fort St.George, Chennai-9.

2.The Commissioner of Commercial Taxes,
O/o the Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-6. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in connection with G.O.(D).No.29 dated 08.02.2021 issued by the first respondent and quash the same and direct the respondents to accord the due increments including seniority and promotion to the post of Commercial Tax Officer on par with her junior with all consequential benefits.

For Petitioner : Mr.K.Krishnamoorthy
For Respondents : Mr.S.Arumugam, GA

ORDER

This Writ Petition has been filed seeking issuance of Writ of Certiorarified Mandamus to call for the records in connection with G.O.(D).No.29 dated 08.02.2021 issued by the first respondent and quash the same and direct the respondents to accord the due increments including seniority and promotion to the post of Commercial Tax Officer on par with her junior with all consequential benefits.

2. Heard Mr.K.Krishnamoorthy, learned counsel for the petitioner and Mr.S.Arumugam, learned Government Advocate appearing for the respondents.

3. The petitioner while working as DCTO in Karur Division, was asked to join the surprise inspection conducted in the place of business at Mangal & Mangal, Trichy. During the inspection, certain lapses were identified and a report was submitted to that effect. Subsequently another team from Coimbatore had conducted audit in the business place of Mangal and Mangal in the year 2015 and they pointed out several lapses committed by the dealer based on the materials already provided to them. Hence the petitioner and other members of the team has been charged for careless handling of the surprise inspection and suppression of the material facts that should be brought to the notice of the Department. Therefore, the petitioner was imposed with the punishment of stoppage of increment with cumulative effect and the same was also confirmed by the Government in the appeal. The grievance of the petitioner is that her co-delinquents against whom also the charges were framed, have been exonerated from the charges. But the petitioner has been imposed with the above punishment. Challenging the same, the petitioner is before this Court.

4. The case of the petitioner is similar to the dispute arose in a Writ Petition in W.P.No.14567 of 2020 (K.Govindasamy Vs. The State of Tamil Nadu and Another). In the said Writ Petition, this Court has passed the following order:

> *"7. The learned counsel for the petitioner also cited a judgment of the learned Division Bench of this Court dated 10.08.2021 made in W.A.No.1558 of 2021 and submitted*

that when the charges of misconduct was identical and the charges against the co-delinquent has been dropped, the similar advantage should be extended to the petitioner as well. In the said judgment, several Supreme Court judgments on the same point have been referred and it is held as under:

> *"11. A reading of the above paragraphs makes it abundantly clear that the courts cannot assume the function of disciplinary / departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority, but, an exception is carved out therein to the effect that if the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was identical or the co-delinequnt was foisted with more serious charges, then the Court is at liberty to interfere with the punishment. In such case, instead of remitting the matter back, the Court can substitute a suitable punishment.*
>
> *12.If the principle enunciated in the above judgments is applied to the facts of the instant*

case, it is clear that the writ petitioner is entitled for the similar treatment, that has been extended to N.Subramanian and after passage of time, remitting the matter again to the authorities would not serve any purpose. Thus, directing the authorities to modify the punishment impoed on the writ petitioner to th one that has been imposed on N.Subramanian would meet the ends of justice. Thus, the learned Single Judge rightly set aside the Government Order refusng to extent such benefit to him. We find no reason to interfere with the said order."

8. *However, the learned Government Advocate appearing for the respondents vehemently argued that in service jurisprudence, Article 14 of the Constitution of India has got no application and the petitioner is not entitled to base his claim that he should also be extended with the similar treatment that has been given to his fellow delinquent. In support of the above contention, the judgment of the Hon'ble Supreme Court in Civil Appeal Nos.6974 & 6975 of 2013 dated 22.08.2013, reported in (2013) 14 SCC 81 has been relied. This Court's attention was drawn to the paragraph No.8 of the said judgment which is extracted hereunder:*

"8.It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraude, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similary situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well.If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality an irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order / decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong

> *decision. Even otherwise, Article 14 cannot be stretched too far for otherwse it would make functioning of administrtion impossible. (Vide Chandigarh Admn. v. Jagjit Singh, Anand Buttons Ltd. v. State of Haryana, K.K.Bhalla v. State of M.P. and Fuljit Kaur v. State of Punjab."*

9. *A careful perusal of the ratio laid down in the above judgment would clarify that if similarly placed persons have been granted some relief due to inadvertance or mistake, such orders do not confer any legal right on others to get the same relief. So the import is the 'wrong' committed in a earlier case should not be perpetuated and such benefit cannot be extended to all other similarly placed persons.*

10. *But in the case on hand, it is not the claim of the respondents that the team head G.Balasubramanian was discharged in view of certain illegality / inadvertence / mistake committed on the part of the Department. The Commercial Tax Officer has been discharged consciously by admitting the fact that there was a lapse on his part as well. He has been discharged, since the revenue impact has been eliminated subsequently. In such case, the same logic for granting the advantage ought to have been extended to the petitioner who is also similarly placed.*

11. *No point of time the respondents have alleged any malafide intention on the part of the petitioner. In fact, even in the order of punishment, it has been explicitly mentioned that there is no element of any ulterior motive on the part of the petitioner. So there cannot be any difficulty to grant the same benevolence shown to the then Commerial Tax Officer, who was the leader of the inspection team, to the members of the team as well.*

12. *With the above observations, this Writ Petition is allowed and the order passed by the first respondent in G.O.(D).No.78 dated 28.05.2020 is set aside. The respondents are directed to accord due increments including seniority and promotion to the post of Commercial Tax Officer on par with his junior Mr.R.Jeyapandian, whose name is found in S.No.118 in the panel of Commercial Tax Officer dated 22.11.2018 with all consequential benefits. No costs. Consequently, connected miscellaneous petitions are also closed."*

5. The matter in issue is also similar to the earlier Writ Petition filed in W.P.No.14567 of 2020, in which the above order has been passed. Since the petitioner is also similarly placed, her case would also have the similar line of appreciation that was considered in the above

Writ Petition. Hence the petitioner is also entitled to the same relief as already granted to the other similarly placed person in the earlier judicial order.

6. With the above observations, this Writ Petition is allowed and the order passed by the first respondent in G.O.(D).No.29 dated 08.02.2021 is set aside. The respondents are directed to accord due increments to the petitioner including seniority and promotion to the post of Commercial Tax Officer on par with her junior with all consequential benefits. No costs. Consequently, connected miscellaneous petition is also closed.

22.02.2024

Index : Yes
Internet : Yes/No
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R.N.MANJULA, J.

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To

1.The Secretary,
Commercial Taxes and Registration Department,
Secretariat, Fort St.George, Chennai-9.

2.The Commissioner of Commercial Taxes,
O/o the Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-6.

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