IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2025

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.22510 of 2018

G. Manimozhi, M/69
Son of N.K.Ganapathy No.3,
Kamarajar Street Narasimman Nagar
Cheyyar-604 407
Tiruvanamalai District. .... Petitioner

Versus

1. Government of Tamil Nadu
   Rep. by its Additional Chief Secretary,
   Commercial Taxes and Registration Department
   Fort St. George, Chennai-600 009.

2. The Joint Commissioner (ST)
   Vellore Division,
   Vellore District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of CERTIORARIFIED MANDAMUS, calling for the records pertaining to the order passed by the 2nd Respondent in his proceedings Rc B1/4936/2016 dated: 18.01.2018 and QUASH the same, and direct the 1st respondent to step up the scale of the petitioner to figure equal to the pay fixed for the juniors in that higher post and confer all the consequential benefits.

For Petitioner : Mr.P.Ganesan

For Respondents : Mrs.K.Vasanthamala, GA for RR1 & 2

ORDER

Heard Mr.P.Ganesan, learned counsel for the petitioner and Mrs.K.Vasanthamala, learned government advocate for the respondents 1 & 2 and perused the materials available on record.

2. This writ petition has been filed challenging the order passed by the 2nd respondent in his proceedings Rc B1/4936/2016 dated 18.01.2018 and to direct the 1st respondent to step up the scale of the petitioner to figure equal to the pay fixed for the juniors in that higher post and confer all the consequential benefits.

3. The petitioner who was working as Deputy Commercial Tax Officer [DCTO] has retired from service on 31.01.2008 on his attaining the age of superannuation. In view of the seniority list which was published for the year 1989, the petitioner had given an application to the 2nd respondent while he was in service on 30.06.2002 to rectify the anomaly between himself and his junior. The 2nd respondent has considered and passed an order by allowing the claim of the petitioner partly on 20.07.2010, subsequent to his retirement. Now the 1st

respondent has directed the 2nd respondent, vide his letter dated 07.01.2016 and 09.06.2016, to cancel the order passed by the 2nd respondent order dated 20.07.2010 in view of the retirement of the petitioner and others as on 31.01.2008.

4. The learned counsel for the petitioner submitted that the impugned order had been issued on 18.01.2018 after the eight years of the orders passed by the respondent. It is further submitted that the petitioner is a retired employee who is now reached the age of 75 years, and at this distance of time, the order of cancellation made by the 1st respondent is causing agony in the mind of the petitioner.

5.It is further submitted that, based upon the judgement of the Hon'ble Supreme Court in the case of ***State of Punjab & Others, Vs. Rfiq Masih (White Washer) and others*** [reported in ***(2015) 4 SCC 334]***, the government has passed G.O.Ms.No.286 dated 28.08.2018. No doubt, the petitioner is a retired government servant against whom recovery has been ordered after 20 years of his retirement and nearly 8 years after the order was passed by the 2nd respondent, and that too without giving any opportunity to make any submission. As the order has been passed in violation of the government order in G.O.Ms.286, dated 28.08.2018, and in violation of the principles of natural justice, I feel the petitioner should be given with appropriate relief.

6. The learned government advocate for the respondents submitted that the government order had been passed as on 28.08.2010, subsequent to the impugned order, and now steps have been taken to recall the impugned order.

7. In such a case I feel it is appropriate to treat the impugned order itself as a show cause notice, and the petitioner can be allowed to make his representation to invite a positive order from the respondents. It is noted that in the counter filed by the 2nd respondent it has been stated that the 2nd respondent has cancelled the order dated 18.1.2018, and necessary proposals have been sent to the 1st respondent through proper channels to pass orders to rectify the anomaly. The appropriate part of the averments made in the counter of the 2nd respondent is under:

> *11........ Necessary proposals were also sent to the first respondent through the Commissioner of Commercial Taxes by the second respondent. Meanwhile, in Government Letter No.22508/FR-1/2019-1, Personnel and Administrative Reforms Department, dated 03.09.2019 format has been fixed for rectifying senior drawing less pay that the Junior and the*

proposal to fix the pay of the senior on par with that of the junior is being examined as per the revised format prescribed by the Government and appropriate order in this regard would be issued by the first respondent."

8. In such a case it is sufficient to allow the petitioner to make his representation also.

9. In view of the above stated reasons, the writ petition is **allowed**. The impugned order dated 18.01.2018 passed by the 2nd respondent in Rc B1/4936/2016 is set aside and the first respondent is directed to consider the propsal sent by the 2nd respondent on 03.09.2019 and pass appropriate orders to remedy in this situation within a period of 4 weeks from the date of receipt of a copy of this order. No costs, Consequently, the connected miscellaneous petition, if any, is also closed.

15.04.2025

Index : Yes
Internet : Yes/No
Speaking/Non- Speaking
Neutral: Yes/No
jrs

R.N.MANJULA, J.
jrs

To
1. Additional Chief Secretary,
   Government of Tamil Nadu
   Commercial Taxes and Registration Department
   Fort St. George, Chennai-600 009.

2. The Joint Commissioner (ST)
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