IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.20160 of 2020
and
W.M.P.No.24898 of 2020

G.Loganathan ...Petitioner

-Vs-

The Commissioner of Commercial Tax,
Office of the Commercial Tax,
Chepauk,
Chennai – 600 005. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the respondent, in his proceedings in Memo No.EE2/56680/2007 dated 07.11.2020, quash the same and consequently forbearing the respondent from initiating any action against the petitioner till the outcome of the Crl.R.C.No.238 of 2017 pending before this Court and pass such further orders.

For Petitioner	:	Mr.D.K.Mithelesh
For Respondent	:	M/s.Vasanthamala Government Advocate

O R D E R

This writ petition is filed to quash the impugned order passed by the respondent in his proceedings in Memo No.EE2/56680/2007 dated 07.11.2020 and consequently forbearing the respondent from initiating any action against the petitioner till the outcome of the Crl.R.C.No.238 of 2017 pending before this Court.

2. The Petitioner joined service in the Commercial Tax Department in the year 1983 as Junior Assistant, he got promoted and the petitioner superannuated as Deputy Commercial Tax Officer. The petitioner has rendered 17 years of unblemished service without any remarks on him. While being so, in the year 2013, i.e., a few days before his retirement, the petitioner was placed under suspension.

3. When the petitioner was working as Assistant Commercial Tax Officer (ACTO) in Salem Enforcement Wing, the petitioner was issued with a show cause notice dated 22.10.2007 as to why his appointment as ACTO should not be cancelled on the ground that the certificate produced by the petitioner to the said post was bogus. Thereafter, without even asking for a

reply from the petitioner, a charge memo under Rule 17(b) was issued on 06.11.2007. Thereafter, the petitioner gave a detailed explanation dated 22.12.2007 against the charges and there were no further proceedings.

4. In the year 2010, an inquiry officer was appointed to inquire into the charges against the petitioner. After the inquiry was completed, the inquiry officer in his report held that both the charges are not proved against the petitioner. However, no order was passed until 2013. While being so, the respondent suspended the petitioner a few days before retirement as the respondent disagreed with the findings of the inquiry officer. Thereafter, the petitioner gave a detailed explanation letter dated 26.03.2013 requesting to drop the charges against the petitioner. Since no final orders were passed, since he was attaining the age of superannuation, the petitioner filed W.P.No.10975 of 2013 before this Court seeking for a direction to pass final orders in his disciplinary case. This Court by order dated 22.04.2013 allowed the writ petition directing the respondent to pass orders within 4 weeks.

5. Pursuant to the above order passed by this Court, the respondent by a complaint dated 21.05.2013, i.e., 9 days before his date of retirement,

registered an FIR against the petitioner and arrested the petitioner for an offence that according to the respondent took place in the year 2000. Since the order of this Court in the earlier writ petition was not complied with, he had caused a legal notice on the respondent, for which the respondent by letter dated 14.06.2013 submitted that since a criminal case has already been filed, orders on the departmental proceedings would be decided only after the outcome of the criminal case.

6. Learned counsel would submit that a criminal case was filed against the petitioner in C.C.No.393 of 2015 on the file of the learned Judicial Magistrate No.II, Vellore, and he was convicted by order dated 26.04.2016. Against which, he preferred a criminal appeal in Crl.A.No.25 of 2016 before the learned Principal District and Sessions Judge, Vellore and the same was dismissed by confirming the order passed by the learned Judicial Magistrate-II, Vellore by order dated 03.10.2016.

7. Aggrieved by the same, a criminal revision case in Crl.R.C.No.238 of 2017 has been preferred by the petitioner and this Court by order dated 23.02.2017, held that the substantive sentence of

imprisonment alone is suspended.

8. It is seen that no action has been taken by the department. However, the respondent has issued the impugned order to show cause as to why an order of dismissal under Rule 17(c) (i) (1) of the TNCS (D&A) Rules for his conviction by the Criminal Court under Section of the Prevention of Corruption, Act, 1988. There is a total non-application of mind by the respondent since the petitioner has not been convicted or charged for offences under the Prevention of Corruption Act, 1988 but for offences under Sections 466, 468, 471 and 420 of IPC. Aggrieved by the impugned show cause dated 07.11.2020, the present writ petition is filed.

9. Learned counsel appearing for the petitioner would further submit that this Court at the time of admission has passed by the following order:

> "5. Accordingly, the respondents are restrained from issuing a dismissal order until further orders. List the matter after two weeks."

10. It is further submitted by the learned counsel that the respondent has proceeded with the show cause notice since there is no stay order for

show cause notice, enquiry was conducted and punishment of reduction of rank imposed by the respondent vide order dated 16.05.2023.

11. Learned counsel further submitted that the petitioner challenged the above said order by way of statutory appeal, which was filed before the Government on 18.07.2023 and the same is pending as on date. No orders were passed.

12. Learned Government Advocate appearing for the respondent would submit that no order has been passed in the appeal filed by the petitioner and a time frame may be stipulated by this Court to pass final orders in the appeal.

13. In view of the above submission made by the learned counsels on either side, the respondent is directed to pass appropriate orders on merits and in accordance with law on the statutory appeal filed by the petitioner dated 18.07.2023 within a period of three months from the date of receipt of a copy of this order.

In the result, the **writ petition stands disposed of with the above observations and direction**. No costs. Consequently, connected miscellaneous petition is closed.

02.01.2025

cda
Index : Yes/No
Speaking/Non Speaking order

To

The Commissioner of Commercial Tax,
Office of the Commercial Tax,
Chepauk,
Chennai – 600 005.

J.SATHYA NARAYANA PRASAD, J.

cda

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