



W.P.(MD)No.4902 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	08.01.2025
Pronounced on	06.02.2025

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.4902 of 2024
and
W.P.(MD)Nos.4710 and 4711 of 2024

Y.Kayalvizhi

... Petitioner

Vs

1. The Secretary,
Commercial Taxes and Registration Department,
Government of Tamil Nadu,
St.George Fort, Secretariat,
Chennai.

2. The Principal Secretary / Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the file of the 2nd respondent's vide proceeding No.CD2/1329085/2021 dated 28.08.2022 and appeal order passed by the 1st respondent vide G.O.(D) No.317 Commercial Taxes and Registration (E1) Department, dated 18.10.2023 and quash the same as illegal as devoid of merits.



W.P.(MD)No.4902 of 2024

For Petitioner : Mr.Raja Karthikeyan

For Respondents : Mr.A.Baskaran
Additional Government Pleader

ORDER

The present writ petition has been filed by the Assistant Commissioner (ST) / Personal Assistant to Joint Commissioner (ST), Tirunelveli Division, challenging the order of punishment imposed by the 1st respondent herein confirming the order of punishment imposed by the 2nd respondent herein.

(A) The facts leading to the filing of this writ petition are as under:-

2. While the petitioner was working as a Deputy Commissioner (GST-Appeal) (FAC) Madurai and Tirunelveli, she was issued with a show cause notice under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 on 13.09.2021. The petitioner has submitted her explanation on 13.07.2022. Not satisfied with the explanation, the 2nd respondent has passed an order on 28.02.2022 imposing a punishment of stoppage of increment for two years with cumulative effect.



W.P.(MD)No.4902 of 2024

WEB COPY

3. The petitioner had challenged the said order before the 1st respondent by way of an appeal dated 23.09.2022. The 1st respondent herein rejected the said appeal by issuing G.O.(D) No.317 Commercial Taxes and Registration (E1) Department dated 18.10.2023 confirming the order of punishment. Challenging the same, the present writ petition has been filed.

(B) Contentions of the learned counsel appearing on either side are as follows:-

4. According to the learned counsel appearing for the writ petitioner, the State Tax Officer Group - V Inspection, Madurai had passed orders for the years 2018-2019 and 2019-2020 dated 14.11.2019 as against M/s.Pugazh Spices at Thevaram. This order was challenged by them in A.Nos.31 & 32 of 2020. The appeal was heard by the writ petitioner as a statutory appellate authority under Section 109 of GST Act. Alleging negligence on the part of the writ petitioner in passing orders in the appeal, the present charge memo has been issued.



W.P.(MD)No.4902 of 2024

WEB COPY

5. The learned counsel appearing for the writ petitioner relying upon various judgements of this Court and the Hon'ble Supreme Court had contended that even assuming that there is any negligence on the part of the writ petitioner, disciplinary proceedings cannot be initiated while the petitioner has exercised powers as a statutory appellate authority. He further contended that the main allegation as against the writ petitioner is that without 11 E way bills generated by the dealers have been cancelled and the cancelled E way bills were not produced by the dealers and therefore, tax was levied by the adjudication officer. The writ petitioner while disposing of the appeal has arrived at a finding that cancelled E way bills were produced by the appellant dealers before him and she has proceeded to impose a meagre penalty for the both assessment years. When it was later verified, the cancelled E way bills were not found in the records produced by the dealers before the appellate authority. Hence, it was alleged that without properly scrutinizing the records, the writ petitioner had arrived at a finding that the cancelled E-way bills were produced and has proceeded to set aside the order of the adjudicating authority and imposed minor penalty.



W.P.(MD)No.4902 of 2024

WEB COPY

6. According to the learned counsel appearing for the writ petitioner though the cancelled E way bills were not available in the appeal files, those cancelled E way bills were available in the master file and they were perused by her and based upon the said availability of the cancelled E way bills, she had proceeded to pass orders, adjudicating the appeal.

7. The learned counsel appearing for the petitioner has further contended that the petitioner in her explanation to the charge memo as well as in the appeal grounds has specifically pointed out that she has gone through the E way bills found in the master file and thereafter, proceeded to pass orders in the appeal. This defense of the writ petitioner was not at all considered either by the Original Authority or by the Appellate Authority. Therefore, he contended that the order of punishment should be set aside.

8. Per contra, learned Additional Government Pleader appearing for the respondents herein contended that the petitioner while functioning as appellate authority had not looked into the appeal files properly. When the cancelled E way bills were not produced before the intelligence authority or



W.P.(MD)No.4902 of 2024

the adjudicating authority or in the appeal filed by the dealers, the petitioner herein has chosen to deliver a finding to the effect that she has gone through the cancelled E way bills and has proceeded to set aside the orders of the adjudicating authority. Therefore, it is clear that the petitioner was grossly negligent in considering the appeal filed by the dealers and has proceeded to impose meagre penalty upon the dealer/appellant.

9. The learned Additional Government Pleader appearing for the respondents has further contended that the petitioner has finalized the appeal without receiving the departmental representatives counter arguments and has not examined the documents for verification with regard to cancellation of E way bills. He further pointed out that incumbent Deputy Commissioner (GST-Appeal) (FAC) Madurai and Tirunelveli has also confirmed that no such documents were available in the appeal files. In case, if such documents were produced before the appellate authority, the same should have been made available to the departmental representatives for verification. However, no opportunity was granted to the departmental representatives to file additional counter or additional written arguments with reference to the filing of cancelled E way bills on which tax relief was granted to the dealers.



W.P.(MD)No.4902 of 2024

WEB COPY

10. When the petitioner has passed orders in the appeal relying upon certain documents which were not filed by the dealers/appellants, certainly it would amount to misconduct and the petitioner is liable to be proceeded with for not following the procedure and for making wrong recordings while disposing of the appeals filed by the dealer.

11. The learned Additional Government Pleader appearing for the respondents relied upon the Judgement of the Hon'ble Supreme Court in **1993 2 SCC 56** especially paragraph 28 and contended that where a quasi-judicial authority had acted negligently or had omitted to follow the prescribed conditions which are essential for exercise of statutory powers, disciplinary proceedings can be initiated. He further contended that there are *prima facie* materials to show recklessness on the part of the writ petitioner in discharging of her official duties. Hence, he prayed for sustaining the order of punishment passed by the respondents.

12. I have carefully considered the submissions on either side and perused the materials.



W.P.(MD)No.4902 of 2024

(C) DISCUSSION:-

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13. The petitioner has been issued with a show cause notice under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 on 13.09.2021. A perusal of the said show cause notice points out two lapses on the part of the writ petitioner. The 1st allegation is that without following due procedure and without examining the supporting documents, the petitioner has proceeded to dispose of the appeal. The second allegation relates to the fact that the cancelled E way bills which were not produced by the dealers in the appeal and not found in the appeal files have been relied upon (as if they have been produced) and on the said basis, orders have been passed in the appeal imposing meagre penalty on the dealers.

14. A perusal of the explanation submitted by the writ petitioner on 13.07.2022 reveals that a copy of such cancelled E way bills were available in the master files and they were obtained and she had gone through the same and proceeded to pass orders.



W.P.(MD)No.4902 of 2024

WEB COPY

15. A perusal of the order of the original authority does not reveal any reference about those defense taken by the writ petitioner. Whether the cancelled 11 E way bills were available in the master file or not has not been considered by the Original Authority. The Original Authority has not given any findings that the said cancelled E way bills filed were not found in the master files also. The Original Authority has not given any findings that the Appellate Authority is not supposed to look into the master files before passing orders.

16. The writ petitioner in her grounds of appeal in ground no.7 has taken a specific plea that copies of the cancelled E way bills were available in the master files and orders were passed after verification and on hearing both sides and therefore, there was no deviations on her part from the procedures.

17. A perusal of the order of the Appellate Authority discloses that such a plea raised by the writ petitioner in the grounds of appeal has not at all being considered. The Appellate Authority has proceeded to dismiss the appeal after giving a finding that without actually verifying the cancelled



W.P.(MD)No.4902 of 2024

E way bills, the petitioner has proceeded to pass orders and therefore it shows negligence on the part of the petitioner.

18. The order of the Original Authority as well as the Appellate Authority will clearly establish the fact that both of them have not considered the defense of the writ petitioner that she had called for the master files and she had perused the cancelled E way bills and after being satisfied with the availability of cancelled E way bills, she had passed the said order. Both the authorities have not recorded any finding that the petitioner should pass orders only based upon the appeal files presented by the dealer and should not look into the master file. Therefore, in such circumstances, it is clear that the findings recorded by both the authorities are clearly without any evidence and therefore, they are liable to be set aside.

19. The learned Additional Government Pleader appearing for the respondents had relied upon the judgement of the Hon'ble Supreme Court reported in **1993 2 SCC 56**, wherein the Hon'ble Supreme Court was pleased to hold that, if a quasi judicial authority had acted negligently or he had omitted the prescribed conditions which are essential for the exercise of



W.P.(MD)No.4902 of 2024

statutory powers, disciplinary proceedings can be initiated. However, in the present case, as held by this Court supra, neither the Original Authority nor the Appellate Authority have arrived at any finding that the cancelled E way bills were not found even in the master file. Therefore, the petitioner cannot be found to have acted negligently or omitted to follow prescribed procedures which are essential for the exercise of statutory powers.

20. From the lapses pointed out in the charge memo, it could be seen that there is no allegation touching upon the integrity, good faith, or any act unbecoming of a government servant. There is no allegation as against the writ petitioner that she had acted nor unduly favoured a party.

21. The Hon'ble Supreme Court in a Judgement reported in (1999) 7 SCC 409 between **Zunjarrao Bhikaji Nagarkar vs Union of India and Others** has held as follows:-

"43. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi-judicial authority something more has to be alleged than a mere mistake of law, e.g., in



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the nature of some extraneous consideration influencing the quasi-judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative adjudication whereunder quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.

44. Considering whole aspects of the matter, we are of the view that it was not a case for initiation of any disciplinary proceedings against the appellant. The charge of misconduct against him was not proper. It has to be quashed."

22. The Hon'ble Supreme Court in a Judgement reported in (2019) 10 SCC 640, wherein in paragraph 16 has held as follows:

"16.

One common thread is evident. Unless the official exercising quasijudicial function was actuated by corrupt motive or he acted under extraneous considerations or he was recklessly negligent, he cannot be visited with disciplinary action. In this case, the petitioner had carried out his quasi-judicial duty while registering the documents in question. His decision was endorsed not once but twice. There is no allegation that the petitioner was swayed by any other consideration. The petitioner has not committed any act of misconduct. Even if the petitioner's decision as regards the chargeability of the instrument is held to be incorrect, still, no cause of action had arisen for initiating disciplinary proceedings."



W.P.(MD)No.4902 of 2024

23. In the present case, this Court has arrived at a factual finding that the Disciplinary Authority and the Appellate Authority have not arrived at any finding that the cancelled E way bills were not found in the master file which is said to have been relied upon by the writ petitioner for passing orders in two appeals that were preferred by the dealers. There is no allegation of extraneous consideration in passing the order by the writ petitioner.

(D) CONCLUSION:-

24. In the light of the Judgement of the Hon'ble Supreme Court referred to supra and in the light of the discussions made, this Court is of the considered opinion that the disciplinary proceedings initiated as against the writ petitioner and the punishment imposed therein are liable to be set aside. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

06.02.2025

Neutral Citation: Yes/No
Internet: Yes/No
Speaking/Non-speaking Order
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W.P.(MD)No.4902 of 2024

R.VIJAYAKUMAR, J.

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To

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