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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A(MD)No.1164 of 2025
and
C.M.P(MD)No.7279 of 2025

1.The Secretary to the
Government of Tamil Nadu,
Commercial Taxes and
Registration Department,
Secretariat, Chennai – 600 009.

2.The Special Commissioner and
Commissioner of Commercial Taxes,
Office of the Commissioner of
Commercial Taxes,
Chepauk, Chennai – 600 005. ... Appellants / Respondents

Vs.

P.Mathivanan ... Respondent / Writ Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to allow the above Writ Appeal and set aside the order dated 16.12.2022 in W.P(MD)No. 3611 of 2014 passed by this Court.

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For Appellants : Mr.R.Suresh Kumar
Additional Government Pleader

For Respondent : Mr.R.R.Kannan

JUDGMENT

(By G.R.SWAMINATHAN, J.)

Heard both sides.

2.The Government is on appeal challenging the order dated 16.12.2022 passed by the learned single Judge modifying the punishment imposed on the writ petitioner.

3.The writ petitioner was working as Assistant Commercial Tax Officer during the year 2004. A charge memo dated 10.01.2005 was issued to him. The charges read as follows:

> *"Charge No.I*
>
> *That the said Thiru.P.Mathivanan, ACTO now under suspension, while functioning as ACTO, Roving squad, Pollachi, for the period from 30.01.2004 to 15.12.2004, along with DCTO, Roving squad, Pollachi intercepted a goods vehicle TATA 407, laden with single Jersy Machine-Centre Bed (30 Dia) Monarch model FXC-Z/4S,*

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belonging to one Thiru.K.Kondaswamy, 51, Valayankadu Main Road, Tiruppur, on 29.10.2004 at 7.30 p.m. at Ammapalayam, Tiruppur, actuated by corrupt motive, demanded the sum of Rs.15,000/-, as illegal gratification for the release of goods without booking a case of offence.

Charge No.II

That the said Thiru.P.Mathivanan, ACTO (under suspension) while functioning in the aforesaid office, during the aforesaid period, had failed to register a case of offence, relating to the goods belonging to one Thiru.K.Kondaswamy, 51, Valayankadu, Main Road, Tiruppur transported on 29.10.2004, intercepted by him on 29.10.2004 at about 7.30 p.m. at Ammapalayam, Tiruppur.

Charge No.III

That the said Thiru.P.Mathivanan, ACTO (under suspension) while functioning in the aforesaid office, during the aforesaid period has failed to issue cash receipts for Rs.15,000/- received from Thiru.K.Kondaswamy, 51, Valayankadu Main Road, Tiruppur, for releasing the goods vehicle transporting knitting machinery, on 29.10.2004, itself, but directed him to come to his office, on 30.10.2004, to collect the receipt, which he had not issued on 30.10.2004 also.

Charge No.IV

That the said Thiru.P.Mathivanan, ACTO (under suspension) while functioning in the aforesaid office,

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during the aforesaid period, had fabricated the Government records to that extent, to make it appear that he had booked two offence cases, for transportation of Ready made cloths (instead of machinery), under O.R.No.2154/2004-2005 and O.R.No.2155/2004-05 on 1.11.2004 and issued receipts for Rs. 3000/- and Rs.2000/- respectively.

Charge No.V

That the said Thiru.P.Mathivanan, ACTO (under suspension) while functioning in the aforesaid office, during the aforesaid period, had failed to issue any copies of offence records to ThiruK.Kondaswamy, towards the sum of Rs.15,000/- received from him, for transporting the knitting machinery on 29.10.2004.

Charge No.VI

That the said Thiru.P.Mathivanan, Assistant Commercial Tax Officer (under suspension) while functioning in the aforesaid office, during the aforesaid period, actuated by corrupt motive, and in active connivance with Thiru.L.Ramachandran, Deputy Commercial Tax Officer, Roving Squad, Pollachi, by committing all the above irregularities, acted in a manner unbecoming of a Government servant and failed to discharge his duties, as Assistant Commercial Tax Officer, Roving Squad, Pollachi, with due devotion, utmost sincerity and failed to maintain absolute integrity, violating Rule 20(1) of Tamil Nadu Government Servants' Conduct Rules, 1973."

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4.Enquiry was conducted and the Enquiry Officer concluded that the charges framed against the writ petitioner stood established. The disciplinary authority imposed the punishment of stoppage of increment for three years with cumulative effect. Aggrieved by the same, the delinquent filed an appeal. The appellate authority confirmed the punishment. Challenging the same, W.P(MD)No.3611 of 2014 was filed. The learned single Judge disposed of the writ petition in the following terms:

> *"2. The petitioner was serving as Assistant Commercial Tax Officer. A disciplinary proceedings was initiated against the petitioner and imposed with a punishment of stoppage of increment for 3 years with cumulative effect. The petitioner filed appeal and the same was dismissed against which the present Writ Petition is filed. The allegations against the petitioner is while he was working as Assistant Commercial Tax Officer, he intercepted a goods vehicle TATA 407, Laden with single Jersy Machine belonging to one K.Kandaswamy at about 7.30 p.m. and with corrupt motive, he demanded a sum of Rs.15,000/-. The petitioner has failed to register a case of offence but he has received Rs.15,000/-. After receiving Rs. 15,000/-, the petitioner has not issued cash receipt for the aforesaid amount. Therefore, the disciplinary proceedings were initiated and the punishment was inflicted.*

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3. The learned counsel appearing for the respondents submitted that for the same cause of action, disciplinary proceedings were initiated against 3 delinquents. The petitioner was inflicted with a punishment of stoppage of increment for 3 years with cumulative effect. For another co-delinquent, namely Ramachandran, who was working as Deputy Commercial Tax Officer, where the punishment imposed was cut in pension at the rate of Rs.500/- per month for 3 years. Against one Selvaraj, who worked as Driver, the punishment of stoppage of increment for one year with cumulative effect was imposed. The contention of the petitioner is that since the co-delinquents were imposed lesser punishment and hence the petitioner prays to impose a lesser punishment, since it is affecting his terminal benefits as well as the pensionary benefits.

4. In several cases, this Court has held that if a lesser punishment is imposed on the co-delinquent, then there cannot be any discrimination for imposing punishment for same offences. Since in the present case it is affecting the petitioner terminal benefits, hence this Court is inclined to interfere in the punishment.

5. For the reasons stated above, this Court is modifying the punishment as stoppage of increment for 2 years without cumulative effect. The respondents are directed to impose a punishment of stoppage of increment

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> *for 2 years without cumulative effect and shall grant consequential effect of monetary pensionary benefits to the petitioner. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order."*

Aggrieved by the same, the State has filed this Writ Appeal.

5.It is true that the delinquent did not singly commit the act of delinquency. He jointly with his immediate superior, namely, Deputy Commercial Tax Officer committed the act. It is true that the Deputy Commercial Tax Officer appears to have been let off very lightly. The question is whether this leniency shown to the co-delinquent should lead to a modification of the punishment imposed on the appellant.

6.The learned Additional Government Pleader relied on the decision of the Hon'ble Supreme Court of India reported in ***(2020) 9 SCC 471 (Pravin Kumar Vs Union of India & Others).*** The Hon'ble Supreme Court had held that when the charges is one of corruption, the punishment should be dismissal from service. The delinquent was hugely lucky and got away lightly. He must thank his stars. Of course, the department was not as indulgent to the writ petitioner as it was with the Deputy Commercial Tax Officer. But this could not

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have been a ground for modifying the punishment imposed on the writ petitioner. The order passed by the learned single Judge is set aside.

7.This Writ Appeal is allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[G.R.S., J.] **[K.R.S., J.]**
29.07.2025

NCC : Yes / No
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<u>and</u>

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MGA

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