

In the High Court of Judicature at Madras

Dated: 30.04.2009

Coram:

The Hon'ble Mr.Justice M.SATHYANARAYANAN

W.P.No.16986 of 2007

E.Rathinasamy

... Petitioner

Versus

1.The Secretary to Government,
Commercial Taxes Department,
Fort St. George, Chennai-9.

2.The Tamil Nadu Public Service Commission,
rep. by its Secretary, Government Estate,
Chennai- 600 002.

3.The Special Commissioner and
Commissioner of Commercial Taxes,
Chepauk, Chennai-5.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of Certiorari to call for the records of the first respondent in letter in No.729/E2/2005-2 dated 20.6.2005, confirming the appeal order dated 17.9.2004 passed by the first respondent in G.O(D) No.394 and quash the same.

For Petitioner .. Mr.A.P.Srinivas

For Respondents .. Mr.Haja Seriff Nazirudeen
Spl. G.P. (Taxes) for R1 & R3
M/s.C.N.G. Ezhilarasi for R2.

ORDER

The petitioner in this writ petition has challenged the impugned orders passed by the first respondent, under which, the punishment of stoppage of one increment without cumulative effect was ordered.

2. The facts which are necessary for the disposal of this writ petition are as follows:-

The petitioner while he was working as Assistant Commissioner (CT), was issued with a charge memo dated 8.4.2002 by the third respondent, alleging that he has failed to make entries in the service register of one Thiru.S.Vijayakumar, Assistant Commercial Tax Officer, regarding the punishment given by the Deputy Commissioner (CT), North vide proceedings dated 13.4.1999 to the said Thiru.S.Vijayakumar and failed to inform the same to the Deputy Commissioner (CT), Enforcement II, Chennai. Since the said punishment was not noted in the Nomination Roll, the Deputy Commissioner (CT) had recommended the name of Thiru.S.Vijayakumar, Assistant Commercial Tax Officer, for promotion to the post of Deputy Commercial Tax Officer on the ground that the said official has not suffered any punishment. Later on it was brought to the notice of the appointing authority about the award of punishment to Thiru.S.Vijayakumar and consequently his name was deleted from the Deputy Commercial Tax Officer's promotion list. Since the petitioner on account of the said lapse caused administrative inconvenience, he was departmentally proceeded by issuing the above said charge memo.

3. The petitioner in response to the said charge memo under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal Rules), has submitted his explanation. In his explanation the petitioner submitted that the punishment orders in respect of Thiru.S.Vijayakumar, Assistant Commercial Tax Officer, was received in the office of the Assistant Commissioner (CT) on 19.4.1999. However, even prior to the receipt of the said communication, the petitioner approved the Nomination Roll in respect of Assistant Commercial Tax Officers due for promotion to the post of Deputy Commercial Tax Officers as early as on 5.4.1999 itself. Therefore, at the time of approval of the Nomination Roll in respect of Thiru.S.Vijayakumar, the petitioner was not aware of the punishment awarded to him by the Deputy Commissioner (CT) North, vide proceedings dated 13.4.1999. Consequently, the punishment awarded to Thiru.S.Vijayakumar was noted in his Nomination. The petitioner, however, has noted the earlier punishment awarded to Thiru.S.Vijayakumar and has also not recommended for promotion to Thiru.S.Vijayakumar to the post of Deputy Commercial Tax Officer, whereas he recommended 11 other Assistant Commercial Tax Officers for promotion to the post of Deputy Commercial Tax Officers. The disciplinary authority not being satisfied with the explanation offered by the petitioner, has imposed punishment.

4. The petitioner challenging the vires of the order of punishment, preferred an appeal and the appeal was also dismissed by the first respondent vide G.O(D) No.394, dated 17.9.2004 and the review filed by him before the first respondent was also dismissed vide order dated 20.6.2005. Hence this writ petition.

5. The respondents 1 and 2 had filed common counter affidavit and it is stated among other things that the punishment imposed on Thiru.S.Vijayakumar in the Nomination Roll on 5.4.1999, was received on 19.4.1999 by the office of the petitioner and that the petitioner himself had authenticated the endorsement made on 26.4.1999 in the punishment order and forwarded the same to the individual who was working in his office itself. The petitioner as a responsible head of office, has failed in his duty, as it is his primary duty to inform the higher officers about the punishment awarded to Thiru.S.Vijayakumar, Assistant Commercial Tax Officer for whom Nomination Roll for inclusion in the list of Deputy Commercial Tax Officers has been sent. It is further averred in the counter that the petitioner is very much aware of the said order of punishment, chosen to suppress the same for the reasons best known to him. Basing on the Nomination Roll and details of punishment furnished by the petitioner in his official capacity and after verification of the Service Register, the Deputy Commissioner (CT), Enforcement-II, Chennai, has made his recommendations for promotion to Thiru.S.Vijayakumar, to the Special Commissioner and Commissioner of Commercial Taxes. The said fact would make it clear that the petitioner has miserably failed to inform his higher officers namely the Deputy Commissioner (CT) about the punishment awarded to Thiru.S.Vijayakumar. It is further averred in the counter that the punishment entries pertaining to Thiru.S.Vijayakumar, had been made in the Service Register only on 21.7.1999 and whereas the Nomination Roll, after verification of the Service Register, has been sent to the Special Commissioner of Commercial Taxes by Deputy Commissioner (CT) Enforcement-II on 18.6.1999 itself. It is further stated in the counter that the punishment awarded to Thiru.S.Vijayakumar namely "Censure" was noted in the Nomination Roll sent by the petitioner, but he has not made any remarks as "Not Recommended". The petitioner has sent the Nominal Roll without any remarks. It is also the bounden duty of the officer to send specific remarks as to whether the name of the officer for whom Nomination Roll is sent, is recommended or not recommended, based on the materials available on record.

6. This Court heard the submissions of the learned counsel appearing for the petitioner and the learned Special Government Pleader (Tax) and also perused the materials available on record.

7. The fact remains that at the time of approval of Nomination Roll in respect of Thiru.S.Vijayakumar, the petitioner was not aware of the punishment imposed on him, as he has forwarded the said Nomination Roll on 5.4.1999 itself. As per the counter, the punishment order pertaining to Thiru.S.Vijayakumar was received by the petitioner only on 19.4.1999. The petitioner after becoming aware of the order of punishment, authenticated the endorsement dated 26.4.1999 and also forwarded the same to the individual Thiru.S.Vijayakumar, who is working in the office. As regards the

averment made in the counter that it is the bounden duty of the petitioner to specifically make endorsement as to whether he is recommending the concerned individual for promotion or not, this Court is of the view that while recommending the 11 other Assistant Commercial Tax Officers for promotion, the petitioner has not made any recommendation for promotion to Thiru.S.Vijayakumar, on taking into account the said individual has suffered punishment on an earlier point of time. Therefore, it would clearly imply that the petitioner has not made recommendation for promotion to Thiru.S.Vijayakumar as Deputy Commercial Tax Officer. Therefore, the same cannot be put against the petitioner. In any event, the lapse if any, on the part of the petitioner, can be taken only as an inadvertent in nature and it cannot be stated as deliberate or willful. Therefore, the reasons assigned in the impugned orders on the face of it are unsustainable and therefore, the impugned orders are liable to be quashed.

8. In the result, the writ petition is allowed. The orders passed by the first respondent are quashed. But in the circumstances, there will be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

gr.

To

- 1.The Secretary to Government, Commercial Taxes Department,
Fort St. George, Chennai-9.
2. The Secretary, Tamil Nadu Public Service Commission, Government
Estate, Chennai- 600 002.
3. The Special Commissioner and Commissioner of Commercial Taxes,
Chepauk, Chennai-5.

1 CC to the Spl. Government Pleader, (Taxes) SR NO.20005

2 CC To Mr.A.P.Srinivas, Advocate, SR NO.16986

W.P.NO.16986 of 2007

rsm(co)
pmk.14.5.2009