IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.Nos.953 and 954 of 2015
and
M.P.Nos.1 and 1 of 2015

1.The Secretary to Government,
Commercial Taxes and
Registration Department,
Fort St. George,
Chennai-600 009.
2.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai-600 028. .. Appellants in W.A.No.953 of 2015

1.The Secretary to Government,
Commercial Taxes and
Registration Department,
Fort St. George,
Chennai-600 009.
2.The Tribunal for Disciplinary Proceedings,
rep by its Commissioner,
Kuralagam,
Chennai-600 001.
3.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai-600 028. .. Appellants in W.A.No.954 of 2015

Vs.

S.Gurumoorthy .. Respondent in W.A.No.953 of 2015

E.Indira .. Respondent in W.A.No.954 of 2015

Both these writ appeals are preferred under Clause 15 of Letters Patent against the order dated 13.6.2014 passed in W.P.No.4339 of 2014 and the order dated 02.07.2014 passed in W.P.No.881 of 2014, respectively.

Prayer in W.P.No.4339/14(W.A.No.953/2015)

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records relating to the G.O.(D) No.691 Commercial Tax and Registration (H) Department dated 20.12.2013 issued by the first respondent and quash the same and consequently, direct the respondents to give due the promotions.

Prayer in W.P.No.881/14(W.A.No.953/2015)

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, to call for the records relating to communication of the first respondent in its G.O.(D)330 dated 20.10.2011 and order in G.O.(D) 30 dated 09.01.2013 and quash the orders passed therein and consequently direct the respondents 1 and 3 to promote her as Sub-Registrar Gr.I and further as District Registrar by placing her in the appropriate place of seniority.

For Appellants : Mr.P.S.Sivashanmugasundaram, Special Government Pleader

For Respondent : Mr.D.Veerasekaran in WA No.953 / 2915
Mr.Yogesh Kannadasan in W.A.No.954 of 2015

COMMON JUDGMENT

(The Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant appeals are directed against the orders dated 13th June, 2014 passed in W.P.No.4339 of 2014 and 2nd July, 2014 passed in W.P.No.881 of 2014 respectively. The facts and the question of law involved in both appeals are common and as such, both appeals are being taken up together for consideration and disposal.

2 The State Government and the Inspector General of Registration are the appellants in both appeals. Thiru S.Gurumoorthy, the respondent in W.A.No.953 of 2015 was working as Assistant in the office of the Sub Registrar, Ambattur, Chennai North Registration District and one E.Indira, the respondent in W.A.No.954 of 2015 was working as Sub Registrar in the same office at the relevant time when the Deputy Superintendent of Police, Vigilance and Anti Corruption made a surprise raid in the said office on 27th September, 2006. A sum of Rs.74,580/- was found in the corner of the office in between the heap of card board boxes. Based on the said raid, a charge sheet, containing four charges, were framed against both the respondents herein / writ petitioners and one Dakshinamoorthy. The Commissioner for Disciplinary Proceedings initiated enquiry and found charges 1,2 and 4 not proved and charge No.3 proved. Resultantly, the Government

imposed the punishment of stoppage of increment for two years with cumulative effect. Charge No.3 reads as under :

> "Charge No.3:- You (Aos 1 to 3) could not satisfactorily account for an unaccounted cash of Rs.74,850/- which has been recovered from your (Aos 1 to 3) office premises."

3 Thereagainst, both writ petitions were filed separately, as aforestated. The learned Single Judge examined the entire facts and came to the conclusion that the money in question was not recovered either from any one of writ petitioners or from their box or bureau or table. The money was recovered from one corner of the office. One Mr.Krishnakumar (P.W.5) claimed that the said money belonged to him. However, the same was disbelieved. The Enquiry Officer failed to establish the recovery from the possession of the writ petitioners, but on the basis of the recovery from the office, the charge was held as proved against all accused, including both the writ petitioners. The learned Single Judge found that the findings was totally baseless and based on no evidence. Accordingly, it was held that both the petitioners were not guilty of charge No.3. Consequent thereupon the writ petitions were allowed with consequential benefits.

4 Feeling aggrieved, the State is before us in these two appeals. The learned counsel appearing for the appellants would submit that the findings in the departmental enquiry does not require strict proof, but based on preponderance of probabilities. As the said amount was found in the office of the Sub Registrar, all persons working in the said office were rightly held as liable as they failed to satisfactorily account for the said unaccounted cash. The finding was based on evidence and imposition of punishment was on the basis of the enquiry as availability of funds in the office indicates the misconduct on the part of the said government servants.

5 On the other hand, the learned counsel appearing for the respondents herein / writ petitioners would contend that it was for the enquiry officer to find out as to whether there was any connection of the alleged delinquent employees with the said amount. The role of the respondents has been established on the basis of imagination, not on the basis of the facts or evidence and as such, the findings recorded by the learned Single Judge is perfectly valid and just.

6 Heard the learned counsel for the parties, perused the pleadings and documents appended thereto.

7 The charge No.3, on reading itself, appears to be weak and vague. A common charge has been levelled against all the three accused. Finding of unaccounted cash in one corner of the office cannot be attributed to any particular person or to all persons working in the office. The learned Single Judge has rightly come to the conclusion that the said charge was proved on the basis of no

evidence and that the charge was rightly set aside and the writ petitions were allowed.

8 Resultantly, both writ appeals stand dismissed. No costs. Consequently connected miscellaneous petitions stand closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

vvk

To

1.The Secretary to Government,
Commercial Taxes and
Registration Department,
Fort St. George,
Chennai-600 009.
2.The Commissioner,
The Tribunal for Disciplinary Proceedings,
Kuralagam,
Chennai-600 001.
3.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai-600 028.

1 cc to Mr.Yogesh Kannadasan , Advocate Sr.No.38007
1 cc to Mr.D.Veerasekaran, Advocate Sr.No.37581
1 cc to Government Pleader.Sr.No.37624

W.A.Nos.953 and 954 of 2015

RSK(CO)
PMK.10.8.2015