THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

WRIT PETITION No. 26887 OF 2015

O R D E R: ***(per Hon'ble Sri Justice Nooty Ramamohana Rao)***

This Writ Petition is directed against the order passed by the Andhra Pradesh Administrative Tribunal in O.A.No. 2276 of 2011 on 05.12.2013. This Writ Petition, in fact, has been preferred after more than 1 ½ years time after the aforesaid order has been passed by the Tribunal.

The 1st respondent herein retired from the service of the State Government as a Sub-Registrar of Registration and Stamps Department and while he was in service, he was subjected to disciplinary proceedings by the State Government by framing a couple of charges through their orders contained in G.O.Rt.No. 2017, Revenue Department, dated 31.10.2008. The 1st charge sets out that the respondent while working as Joint Sub-Registrar-I of the Registration Office at Karimnagar, during July 2005, registered a document bearing No. 8544 of 2005 on 05.07.2005. The schedule of the property was described in the document as an open plot admeasuring 1423.33 square yards and the market value was adopted at Rs.1100/- per square yard, whereas it is alleged that the market value is around Rs.6,000/- per square yard, which is applicable to immovable properties abutting 100' road. In the process, the revenue of the State has suffered the short collection of stamp duty and registration charges to the tune of Rs.6,62,530/-. The 2nd charge relates to registration of another document bearing No. 8545 of 2005 of the same day namely 05.07.2005. The schedule of the property was described in this document as 1822.97 square yards and even in this regard, the market value was adopted at Rs.1100/- per square yard as against Rs.6,000/- and in the process, the State lost nearly Rs.8,48,545/-. Thus, the State is stated to have suffered loss of revenue to the extent of little more than Rs.15 lacs because of carelessness on the part of the respondent Sub-Registrar.

It is relevant to notice that the audit party of the office of the Accountant General pointed out this mistake when the audit has been undertaken by them for the year 2004-05. Pursuant to the communication from the Accountant General's

Office, dated 30.05.2007, regarding the undervaluation of these two documents, the District Registrar has undertaken post facto inspection and arrived at a finding that the market value at Rs.1100/- per square yard adopted by the Sub-Registrar does appear, in the prevailing fact situation, to be fair and reasonable and that not adopting the market value of Rs. 6,000/- is not an unfair act. During the course of inquiry, it was held established that the lands, with which the aforementioned two documents, which are the subject matter of the charges framed against the respondent employee, are concerned, are, in fact, more proximately close to D.No. 8-6-181/2 of Karimnagar Urban area and the market value fixed against the said door number was only Rs.1100/- per square yard and hence, the conduct of the respondent employee is not without any *bona fides*. It is further brought out that the respondent employee, while working as a Joint Sub-Registrar, has specifically directed the parties to adopt the circular instructions dated 22.01.1998 issued by the Commissioner and Inspector General of Registration and Stamps, Hyderabad and based thereon, to present the documents for registration. It was found out that the parties have adopted the circular instructions of the Commissioner and Inspector General of Registration and Stamps dated 22.01.1998. Only in the event the parties have disagreed to adopt the said circular, perhaps, the Joint Sub-Registrar would have had the occasion to refer fixation of market value under Section 47-A of the Indian Stamp Act, 1899. When the parties adopt the circular instructions, there is no further necessity or obligation on the part of the Joint Sub-Registrar to refer the document for the purpose of fixation of market value under Section 47-A of the Act, but however, the State Government has found the respondent employee guilty of misconduct and since he has retired from service already, imposed the punishment of a cut of pension to the extent of 50%. The Tribunal could not find adequate material available on record to find the respondent employee guilty of charges framed against him and on the other hand, the material would suggest that he is not guilty of the two charges framed against him and his conduct was *bona fide* in adopting the market value at Rs.1100/- per square yard, based upon the proximity of the site in question concerning the document, which is registered to a particular door number for which market value was fixed at Rs.1100/- per square yard. At best, the conduct of the respondent employee could have been found as a result of improper and erroneous judgment but not lacking any *bona fides*. Keeping this factor in mind and also in view of the fact that the employee concerned has already retired from service and put to severe constraint of imposing cut of 50% of his pension and with a view to cut short the litigation, the Tribunal has chosen to exercise the power and substituted the punishment of cut in pension from 50% to 20%. It is this order, which is under challenge before us.

Learned Government Pleader for Services (Telangana) would contend that in case the Tribunal had arrived at a finding that the charges framed against the respondent employee are not sustainable, it ought to have remanded the matter back to the disciplinary authority for consideration afresh, but it could not have chosen to interfere with the quantum of punishment straight away. It is further contended by the learned Government Pleader that it is the duty of the Joint Sub-Registrar to ensure that the interests of the State are protected at any cost. He therefore, ought to have adopted the formula of valuation of Rs.6,000/- per square yard and in case the parties have disagreed to adopt such a formula, then, he could have referred the document for fixation of market value by the Collector. Instead, he has chosen to adopt the valuation on the lesser side and hence, the objection raised by the audit party of the Office of the Accountant General is certainly sustainable. The audit party of the Accountant General found loss of revenue to the extent of little more than Rs.15 lacs in the process and for having caused such a huge loss to the exchequer of the State, the respondent employee, if he was in service, would have been inflicted with a major punishment but not a minor punishment. Therefore, according to the learned Government Pleader, the action of the Tribunal in substituting the punishment and modifying it to that of 20% cut in pension, would amount to showing too excessive a lenience towards an employee.

We are not at all impressed by any of these contentions canvassed before us. Firstly, it is not the duty of a Sub-Registrar to go on declining to entertain documents for registration on one pretext or the other, including on the pretext that proper valuation has not been adopted. In the instant case, it has been clearly demonstrated that there are certain circular instructions issued by the Commissioner and Inspector General of Registration and Stamps Department. The respondent employee directed the parties to adopt that circular instructions and then, present the documents for registration. The parties have agreed to do so. In such an event, the question of the Sub-Registrar keeping the document pending registration and then referring it for fixation of the market value by the Collector simply would not arise. A reference under Section 47-A of the Act to the Collector would arise where there is a disagreement by the parties. In the instant case, it was not even suggested that the market value for the immovable property bearing D.No. 8-6-181/2 in Karimnagar Urban area was not fixed as Rs.1100/- per square yard. The inspection by the District Registrar, after the audit party raised objections, clearly disclosed that the site with which the two documents, forming subject matter of the two charges, are concerned, are proximately closely located to this particular door number rather than adjoining the 100' wide road in Karimnagar. In such an event, adopting the market value at Rs.1100/- per square yard by the Sub-Registrar cannot be doubted as an improper conduct on his part. There is a clear distinction between misconduct arising out of a malicious intent on the part of a public servant and an improper act resulting from out of error of judgment on the part of a public servant. If an error of judgment is induced because of availability of the market value of another property, at best, the employee concerned can be found fault with for having not shown a little more care in such a case. Not exhibiting the highest degree of care does not invariably or necessarily lead to the conclusion of an attributable misconduct to the employee.

We are therefore, in agreement with the view expressed by the Tribunal that in the given fact situation prevailing in the case, the employee concerned can, at best, be hauled up for his error of judgment rather than hauled up for a misconduct. As misconduct requires something more than a mere error of judgment, the findings of guilt recorded against the employee are certainly not sustainable.

It is not in doubt that the employee concerned has retired and is therefore, dependent upon the monthly pension payable to him. If the matter is remanded back for consideration afresh to the disciplinary authority by the Tribunal, which should be the normal course liable to be adopted, it would result in prolonging the agony and sufferings of a senior citizen. This factor is one such, which renders the Court to step in and bring a possible end to the litigation and that is what exactly the Tribunal has done in the instant case. It may have been a different matter if the Tribunal had let-off the employee and exonerated him fully of the charges. For the error of judgment, which has got potentiality of causing loss of revenue to the State, the employee concerned has also been penalized by the Tribunal by imposition of a cut in his pension to the extent of 20%. Therefore, the Tribunal has balanced carefully and properly the competing interests of the State on the one hand and the employee on the other. We are in agreement in this regard with the conclusion reached by the Tribunal and hence, we do not find any merit in this Writ Petition.

This apart, there was no explanation offered at all as to why the State has taken more than 1 ½ years' time to prefer this Writ Petition. We are conscious that there could not have been any period of limitation prescribed for preferring a Writ Petition, but however, when the State is the writ petitioner, it ought to have taken steps promptly. Therefore, for this reason also, we do not consider that this is one fit case where the Writ Petition should be granted admission.

Hence, we decline to interfere with the order passed by the Tribunal by dismissing this Writ Petition at the admission stage. No costs.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

ANIS, J

06th November 2015

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