IN THE HIGH COURT OF JUDICATURE AT MADRAS

(orders reserved on 02.11.2016)

DATED : 22.12.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.Nos.11288 of 2014

V.Nalini ... Petitioner

Vs.

1.The Government of Tamil Nadu
rep by its Secretary,
Commercial Taxes and Registration Department,
Chennai-9.

2.The Inspector General of Registration,
Chennai-600 028. ... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondents, vide his proceedings in G.O.(2D).No.8, Commercial Taxes and Registration (H) Department, dated 24.02.2014 and to quash the same and consequently, to direct the respondents to forthwith pay all service and terminal benefits with interest.

For Petitioner : Mr.K.Doraisamy, Senior Counsel
for M/s.Muthumani Doraisamy

For respondents : Mr.C.Jagadish, Spl GP

ORDER

The writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondents, vide his proceedings in G.O. (2D).No.8, Commercial Taxes and Registration (H) Department, dated 24.02.2014 and to quash the same and consequently, to direct the respondents to forthwith pay all service and terminal benefits with interest.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner, as follows_

2-1.Initially, the petitioner was appointed as Junior Assistant on 03.08.1977 in the Registration Department and thereafter, she was promoted as Assistant in the year 1980 and then, she was promoted as Sub-Registrar in the year 1993. When the petitioner was working as Sub-Registrar in the office of Joint Sub-Registrar No.2, Namakkal, one Mr.Kandasamy and four others presented a Partition Deed dated 15.05.2006 before her for registration. After verification of the entire documents, the petitioner on bonefide belief thought that it was a Partition Deed and she registered the said Partition Deed and assigned Doc.No.1254/2006. In the year 2007, the audit department raised an objection objecting that she registered the said Doc.No.1254/2006 as a Partition Deed instead of considering it as a Conveyance Deed and therefore, there was loss to the Government by way of under valuation of document.

2-2.The District Registrar, Audit, issued an audit note and called for explanation from the petitioner. The petitioner submitted a detailed explanation dated 21.02.2007 and the same was rejected on 26.03.2007. Immediately, after knowing the audit objection, the petitioner requested the Joint Sub-Registrar No.2, Nakkal to issue a Demand Notice to the concerned persons and recover the amount due as per the audit objection, since the petitioner was already transferred from the post of Join Sub-Registrar No.2, Namakkal. As per the petitioner's request dated 15.02.2007, the then Joint Sub-Registrar No.2, Namakkal issued a Demand Notice dated 22.02.2007 to Mr.Kandasamy and his wife Vasanthi, directing them to pay a sum of Rs.39,92,114/- as difference in stamp duty on the ground that the nature of the Document dated 15.05.2006 should be treated as Conveyance Deed and not as Partition Deed. Challenging the Demand Notice dated 22.02.2007, the said Kandasamy and others filed a writ petition in W.P.No.16013 of 2007 and this Court allowed the said writ petition on the ground that the Join Sub-Registrar has no power to send such Demand Notice. However, once again the Joint Sub-Registrar No.2, Namakkal issued another Demand Notice to the said Kandasamy and three others on 20.02.2008.

2-3.While so, the respondents constituted a Committee consisting of three members to re-audit the Doc.No.1254/2006. After completion of re-audit, the Committee sent a report dated 12.06.2008 to the respondents and also requested them to initiate action against the said Kandasamy and others, who presented the Deed in question and to recover the difference stamp duty under Section 33(A)(1) of the Indian Stamp Act and Section 80(A) of the Indian Registration Act. Though there was a clear finding to recover the difference stamp duty from the said Kandasamy and others by the Three Members Committee, the 2nd respondent issued a Charge-memo dated 19.12.2008 against the petitioner under Section 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. To the said charge-memo, the petitioner submitted explanation dated 04.02.2009.

2-4.However, once again the 2nd respondent issued a revised Charge-memo dated 01.02.2010 under Section 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, containing the very same charge. Again, the petitioner submitted his explanation dated 31.03.2010 to the 2nd respondent. After receiving the petitioner's explanation to the revised charge-memo dated 01.02.2010, once again the 2nd respondent issued second revised charge-memo dated 26.08.2010 with annexures under Section 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, containing the very same charge. The petitioner once again submitted her detailed explanation dated 11.11.2010 to the 2nd respondent.

2-5.Thereafter, the respondents appointed the District Registrar, Salem East (Administration) in the cadre of Assistant Inspector General of Registration as the Enquiry Officer to enquire into the said charge levelled against the petitioner. The Enquiry Officer, after conducting an enquiry, submitted his Enquiry Report dated 28.02.2011 to the respondents, stating that the charges were proved. The petitioner's further explanation was called for by the 1st respondent vide letter dated 18.10.2011. Thereafter, the petitioner submitted her detailed explanation dated 29.05.2012 to the 1st respondent, denying the charges on the ground that as the alleged Partition Deed dated 15.05.2006 was executed between the co-owners, on bonafide belief, the petitioner entertained the same for Registration and assigned Doc.No.1254/2006. There was absolutely no malafide intention or negligence on her part. Without considering the explanations given by the petitioner, the 1st respondent by the impugned order in G.O.(2D).No.8, Commercial Tax-cum-Registration (H) Department, dated 24.02.2014, dismissed the petitioner from service without considering the factual and legal aspects. Hence, challenging the same, the petitioner has come forward with the present writ petition.

3.When the matter was taken up for consideration, the learned senior counsel for the petitioner made a detailed argument by adverting to the averments made in the affidavit. It is the main contention of the learned senior counsel appearing for the petitioner that the disciplinary proceedings were initiated only by the 2nd respondent herein namely the Inspector General of Registration, who is the appointing authority; but, the impugned dismissal order has been passed by the 1st respondent viz., Secretary to Government. Thus, the petitioner was denied an opportunity of filing an appeal. Further, the learned senior counsel for the petitioner by relying upon the judgment delivered by the Hon'ble Supreme Court reported in (1999) 7 SCC 409 [Zunjarrao Bhikaji Nagarkar Vs. Union of India and others] submitted that when there is no allegation to the effect that the petitioner had registered the document as Partition Deed instead of as Conveyance Deed, with malafide intention or with any corrupt motive, there cannot be any charge against the petitioner. Even in the charge-memo issued against the petitioner, there is no allegation to the effect that the petitioner has registered the said document as Partition Deed with malafide intention or with corrupt motive. When that being so, there cannot be any charge-memo. Therefore, the impugned dismissal order passed by the 1st respondent pursuant to the charge-memo dated 01.02.2010, is liable to be quashed.

4.The learned senior counsel for the petitioner has also relied upon the judgment passed by the learned single Judge of this Court, in an identical issue, in the case in W.P.No.7294 of 2005, 27.09.2007, (A.Shunmugavadivu Vs. Inspector General of Registration, Chennai), wherein the learned Single Judge by following the decision of the Hon'ble Supreme Court reported in (1999) 7 SCC 409 [Zunjarrao Bhikaji Nagarkar Vs. Union of India and others], has allowed the writ petition by quashing the the charge-memo issued against the petitioner therein. Thus, the learned senior counsel for the petitioner submitted that by following the above cited decisions, similar order could be passed in the present writ petition also.

5.Per contra, the learned Special Government Pleader by filing a detailed counter would contend that while the petitioner was serving as Joint Sub-Registrar No.II, Namakkal she had admitted for registration a Deed on 15.05.2006 styled as 'Partition' executed between one Kandasamy & his wife Vasanthi, (as one part) by allotting the whole property measuring Acre 6.15 valued at Rs.10 lakhs and Thilagavathi & her minor son Mohan and another viz K.Chellappan (as other part). The petitioner had registered the said Deed based on the nomenclature as 'Partition Deed', without properly reading the document to find out the substance and the intention of the parties. The said Kandasamy & his wife Vasanthi initially purchased 1/30th undivided share out of the total extent of Acre 4.11 belonging to Mrs.Thilagavathi and her minor son Mohan in S.Nos.201/1, 201/3, 202, 201/1 and 1/20th undivided share out of total extent of Acre 2.04 that belonged to one Chellappan in and by Sale Deed registered as Document No.676 of 2006. Subsequent to the said creation of artificial ownership, the remaining undivided share that belonged to Thilagavathi, Mohan and Chellappan were allotted jointly to the aforesaid Kandasamy & his wife Vasanthi in the guise of co-owners even though they have no right in the undivided share retained by Thilagavathi, Mohan and Chellappan. In the departmental audit, an objection was raised that the Deed in question should have been treated as 'Conveyance' chargeable under Article 23 of Schedule-I to the Indian Stamp Act, 1899, since there was no 'co-ownership' between the parties to the document and due to the act of the petitioner there was loss of revenue amounting to Rs.39,92,114/- to the Government. After obtaining explanation from the petitioner, a Committee was formed by the 2nd respondent, Inspector General of Registration vide Letter No.16765/B1/2007, dated 08.08.2007, to decide the nature of the document in question. The Committee reported that the document in question should be treated as 'Conveyance'. Based on the findings of the Committee, charge-memo was issued to the petitioner. On completion of enquiry and after observing all the legal procedures, impugned order of dismissal was passed by the 1st respondent. The learned Special Government Pleader would further contend that the petitioner failed to collect the correct amount of stamp duty and registration fee at the time of registration of the subject document. The petitioner failed to maintain the integrity and deviated from her duty, thereby violated Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules. Hence, disciplinary action was initiated against the petitioner by framing charge under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Therefore, according to the learned Special Government Pleader, there is no infirmity in the impugned order. Thus, he sought for dismissal of the writ petition.

6.Keeping the submissions made on either side, I have carefully perused the materials available on record.

7.Before entering into the discussion with regard to the submissions made on either side, at the out set this Court is of the opinion that it would be appropriate to see the charge levelled against the petitioner. The charge levelled against the petitioner is as follows_

"When Selvi V.Nalini, Sub-Registrar was serving as Join-II Sub-Registrar at Namakkal District, when the parties of a Deed are not belong to one family she determined the nature wrongly as Partition and registered the Document No.1254/2006 as Partition instead of Conveyance Deed and thereby, caused a loss of revenue to Government amounting to Rs.39,92,114/- and hence, she violated the Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules."

Even as per the charge levelled against the petitioner, as contended by the learned senior counsel for the petitioner, there is no allegation to the effect that the petitioner registered the Document with malafide intention or with corrupt motive. When that being so, only pursuant to the Audit Objection, charge-memo was issued. As contended by the learned senior counsel for the petitioner, when there is no allegation to the effect that the document was registered as Partition Deed instead of as Conveyance Deed with any malafide intention or corrupt motive, then there cannot be any charge-memo and there cannot be any question of dismissing the petitioner from service by the respondents on such charge. The proper remedy for the respondents is only to recover the amount from the concerned parties. In the instant case, recovery proceedings were also initiated. Hence, the impugned order of dismissal is liable to be quashed.

8.In this regard, a reference could be placed in the judgment passed by this learned single Judge of this Court, in an identical issue, in the case in W.P.No.7294 of 2005, 27.09.2007, (A.Shunmugavadivu Vs. Inspector General of Registration, Chennai), wherein the learned Single Judge by following the decision of the Hon'ble Supreme Court in reported in (1999) 7 SCC 409 [Zunjarrao Bhikaji Nagarkar Vs. Union of India and others], has allowed the writ petition by quashing the the charge-memo issued against the petitioner therein. The relevant portion in the order passed by the learned Single Judge reads as follows_

> "7.A perusal of the principles enunciated in these cases of the Hon'ble Supreme Court would make it clear that wrong exercise of a quasi-judicial authority or mistake of law or wrong interpretation of law cannot be the basis for the disciplinary proceedings.
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> 8.Applying the above stated legal principles, if the charge of the petitioner is analysed, there is no allegation that the petitioner registered the documents which are said to be undervalued with any malafide intention or actuated by any corrupt motive. It has also not been stated that the petitioner has exercised his power in a reckless manner. It may be true that his decision in respect of the value of the documents, registered by him have been subsequently found out to be incorrect, but that alone cannot be foundation for a charge against the petitioner.
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> 9.If the legal principle evolved in the judgments of the Hon'ble Supreme Court cited supra, are applied to the facts of the present case also, I have no option but to hold that the charge framed against the petitioner is liable to be quashed as unsustainable."

The dictum laid down in the above cited decision is squarely applicable to the present facts of the case also. When the very framing of charge against the petitioner is not legally sustainable, the petitioner cannot be dismissed from service on the basis of such charge-memo even after conducting an enquiry. Hence, the impugned order is liable to be quashed.

9.Accordingly, the impugned order is quashed and the writ petition is allowed as prayed for, with a direction to the respondents to pay all service and terminal benefits with statutory interest, to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Secretary,
Government of Tamil Nadu
Commercial Taxes and Registration Department,
Chennai-9.

2.The Inspector General of Registration,
Chennai-600 028.

+2cc to Mr.Mushumani durai sami, Advocate, SR.No62307
+1cc to the Government Pleader, Advocate, SR.No.76279

W.P.Nos.11288 of 2014

NRJK(CO)
GN(30/01/2017)