IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.2.2016

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Appeal Nos.659 & 660 of 2014
and
M.P.Nos.1, 1 and 2 of 2014

1. State of Tamil Nadu,
rep. by Principal Secretary to Government,
Commercial Taxes & Registration (H1)
Department,
Fort St. George, Chennai 600 009.

2. Inspector General of Registration,
Santhome High Road, Chennai 600 028. ...Appellants

Versus

V.Mohan ...Respondent

Prayer: Writ Appeals under clause 15 of Letters Patent against the order dated 13.3.2013 made in W.P.Nos.3244 and 3245 of 2010.

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the concerned records relating to the Charge sheet dated 20.1.2010 bearing reference No. 1491/V 3/2010 issued by the 2nd respondent and the consequential order of suspension and not permitting the petitioner to retire issued by the 1st respondent vide G.O. (2D) No.8 dated 30.1.2010 and G.O. (2D) No.9 dated. 30.1.2010 Commercial Taxes and Registration (H 1) Department and quash the same as being illegal arbitrary vindictive and consequently direct the respondents 1 and 2 to settle all the terminal benefits due to the petitioner together with 18% interest per annum from 31.1.2010 the date I attained the age of superannuation till the date of the actual payment award costs.

For Appellants	:	Mr.P..Aravind Pandian, Additional Advocate General assisted by Mr.R.Ravichandran, AGP & Mr.P.Karthikeyan, Govt. Advocate
For Respondent	:	N.G.R.Prasad

COMMON JUDGMENT

(Judgment of the court was delivered by V.RAMASUBRAMANIAN, J.)

The State has come up with the above writ appeals questioning a common order passed by the learned Judge in two writ petitions filed by the respondent, quashing two charge memos and directing the State to allow the respondent to retire peacefully.

2. Heard Mr.P.H.Aravind Pandian, learned Additional Advocate General appearing for the appellant-State and Mr.N.G.R.Prasad, learned counsel appearing for the respondent.

3. The respondent was appointed as a Junior Assistant in the Department of Registration on 31.7.1972. He was promoted to the posts of Assistant, Sub-Registrar, Sub-Registrar Grade I and as Registrar respectively in the years 1977, 1992, 1997 and 2009. The respondent was to reach the age of superannuation in January 2010 and as per FR 56, he was to retire on 31.1.2010.

4. Just ten days before the intended date of retirement, the respondent was served with two charge memos, one dated 20.1.2010 and another dated 21.1.2010. The only charge framed in the first charge memo was that when the respondent was functioning as Sub-Registrar at Kudavasal, he registered a document which had been undervalued, resulting in an audit objection about the alleged loss of revenue to the tune of Rs.9768/-. Similarly, the only charge framed under the second charge memo dated 21.1.2010 was that there was an audit objection relating to certain documents registered by the respondent during the period of 13 years from 1996 to 2009 causing monetary loss to the Government to the total extent of Rs.8,79,506.10.

5. On account of the issuance of two charge memos under Rule 17(b) of the Tamil Nadu Civil Services (Discipline) and Appeal

Rules, the respondent was placed under suspension, by G.O.(2D) No.8 Commercial Taxes & Registration Department (H1) dated 30.1.2010. By a subsequent order, he was not permitted to retire, but, retained in service till the enquiry into the charges were concluded and final orders were passed. This was done in exercise of power under FR 56(1)(c).

6. Aggrieved by the charge memos and the orders of retention and suspension, the respondent filed two writ petitions in W.P.Nos.3244 and 3245 of 2010. Both the writ petitions were allowed by the learned Judge by an order dated 13.3.2013. Aggrieved by the said order, the State has come up with the above appeals.

7. The main crux of the arguments of Mr.P.H.Aravind Pandian, learned Additional Advocate General is that the learned Judge has failed to take note of Rule 161 of the Registration Rules, which reads as follows:-

> "A registering officer will be held liable for any loss to Government which may arise from neglect on his part in the registration of a document, the making of a search or the grant of a copy of a document."

8. But, a close look at the charge memos dated 20.1.2010 and 21.1.2010 would reveal that there is no concrete allegation of any misconduct, against the respondent. Both the charge memos are based upon the audit objections alleging that the revenue loss had occasioned on account of valuation of certain documents presented for registration. The first charge memo was in respect of a deed of mortgage presented for registration in the year 2006. The mortgage deed contained a clause enabling the mortgagee to take action, for recovery of possession in the event of default. Unfortunately, the document was construed wrongly by the audit as a deed of mortgage with possession. It shows lack of knowledge about the kind of document that was presented for registration. Therefore, the first charge memo, which was based upon an audit objection, on a wrong understanding of law, was obviously liable to be quashed and the learned Judge was right in quashing the same.

9. Insofar as the second charge memo is concerned, the only charge framed against the respondent is, again, on the basis of audit objection relating to certain documents registered way back in the year 1983. The charge memo was issued in the year 2010 on the basis of audit report of the year 2009. This audit report is related to the audit period of March 1996. Therefore, the very initiation of proceedings on the basis of registration

of certain documents in the year 1983, which were taken to be undervalued by the audit in March 1996 but, which was taken note of in 2009, cannot be sustained.

10. Insofar the valuation of documents is concerned, the Registering officer has multiple duties, some of which are Ministerial in nature, some are administrative in nature and some are quasi-judicial in nature. Therefore, the learned Judge was right in quashing the charges.

11. The charge memos issued by the appellants with a long delay, especially at the verge of retirement, were rightly set aside by the learned Judge.

12. Insofar as the reliance upon Rule 161 is concerned, the appellants are on a wrong wicket. The initiation of disciplinary proceedings and order not permitting a person to retire are completely different from the recovery of actual loss sustained. In many cases, audit objections are closed upon satisfactory replies being furnished by the officials. The audit objections could be either on actual loss or upon notional loss. Without finding whether there was actual loss, Rule 161 cannot be invoked. Hence, the appeals are devoid of merits. Therefore, they are dismissed. No costs. The connected miscellaneous petitions are also dismissed. The appellants shall settle the terminal benefits within a period of six weeks. List the case after six weeks for reporting compliance.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Secretary to Government,
State of TamilNadu,
Commercial Taxes and Registration(H1),
Department, fort St. George,
Chennai-600 009.

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

+1cc to Mr.K.Raja sekaran, Advocate sr.12046

W.A. Nos.659 & 660 of 2014

ad(CO)
srg(14/03/2016)