IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.09.2016

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

W.P. No.27876 of 2016 and
WMP Nos.24037 to 24039 of 2016

A.Duraisamy .. Petitioner

Vs.

1. The Government of Tamilnadu, rep
by The Secretary,
Commercial Taxes and Registration (H) Department,
Fort St. George, Chennai - 600 009

2. The Inspector General of Registration,
100, Santhome High Road,
Chennai. .. Respondents

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarifed Mandamus by calling for the records of the 2nd respondent in his proceedings No.9430/B3/2007 dated 02.12.2014, and quash the same and consequently direct the respondents to disburse all terminal benefits including Death-cum-retirement gratuity with interest and special provident fund from the date of his retirement.

For Petitioner : Mr.D.Ravindranathan

For Respondents : Mr.S.Gunasekaran
Additional Government Pleader

O R D E R

This Writ Petition has been filed challenging the order dated 02.12.2014, wherein the petitioner's pensionary benefits sought to be withhold by deducting a sum of Rs.15,20,585/- (Rupees Fifteen Lakhs Twenty Thousand and Five Hundred and Eighty Five only) and settlement on the ground that the petitioner has caused loss to the exchequer during the registration of three documents, while he was working in Salem (West).

2. According to the petitioner, he was appointed as Junior Assistant on 12.11.1980 and after completion of the probation satisfactorily, he was promoted and further

promoted as Sub-registrar on 08.05.1993 and posted at Dhadagapatti, Salem District. Thereafter, the petitioner was transferred as Sub-Registrar to Namakkal. The petitioner was placed under suspension alleging that he had caused a loss of Rs.14,76,416/- to the exchequer during registration of three documents, while he was working as Sub-Registrar in Salem (West). Thereafter, domestic enquiry was conducted and the 2nd respondent by an order dated 08.06.2010 had dropped further action and closed the proceedings by stating that the alleged loss has been recovered from the concerned parties by initiating the statutory provisions under Section 47-A(3) proceedings. Subsequently, another charge memo was issued by the 2nd respondent to the petitioner alleging that a loss of Rs.17,17,472/- (Rupees seventeen lakhs seventeen thousand four hundred and seventy two only) has been caused to the exchequer in the registration of seven documents. The enquiry officer, who conducted the enquiry, arrived at a conclusion that a loss of Rs.14,90,762/- (Rupees fourteen lakhs ninety thousand seven hundred and sixty two only) has been caused to the exchequer in the registration of the two documents. On the basis of the findings of the enquiry officer, the 2nd respondent after affording an opportunity of personal hearing to the petitioner, passed an impugned order dated 02.04.2013, to recover the amount with interest at the rate of 1% from the persons liable. Thereafter, the petitioner was allowed to retire from 04.02.2013 by the 2nd respondent by his proceedings no.9430/B3/2007 dated 04.02.2013, but no provisional pension was sanctioned. However, the petitioner was shocked to receive the proceedings no.9430/B3/2007 dated 21.09.2013 from the 2nd respondent, wherein the loss to the exchequer was enhanced to Rs.15,20,585/- though enquiry officer had determined the loss as Rs.14,90,762/-. Since the petitioner has not been given pensionary / retirement benefits, he has come forward with this Writ Petition.

3. The learned counsel for the petitioner submits that the 2nd respondent failed to consider the fact that the 1st respondent in G.O.Nilai No.419 dated 30.12.1993 has passed an order directing the 2nd respondent to consider and pass appropriate orders in respect of the cases in which action has been initiated under Section 47-A(3) of the Indian Stamps Act. He would also contend that in respect of a similarly placed person as that of the petitioner, namely, Angayarkanni, the 1st respondent has passed orders in G.O.No.152 dated 06.05.2010 and in the case of the petitioner, he has been wantonly victimized and discriminated. He further submits that no power is vested on the respondents to initiate disciplinary action against the petitioner, as he has been allowed to retire on 04.02.2013.

4. The learned counsel for the petitioner further submits that under Section 47-A(3) of the Stamps Act, after due enquiry, the entire amount has also been collected from the party, being so, the petitioner being dragged on the ground of the alleged misconduct, is absolutely not correct. In this regard, he would rely upon the decision of the Hon'ble Division Bench of this Court in The Inspector General of Registration, Chennai - 600 028 Vs. A.Shanmugavadivu W.A.(MD) No.93 of 2010 dated 08.07.2010 and the relevant portions of the Judgment is extracted hereunder:-

> `` 2.A learned Single Judge of this Court has set aside the charge memo on the ground that the respondent as a Sub Registrar of the Registration Department has carried out his quasi judicial function, and as such, as per the Judgments of the Hon'ble Supreme Court in Zunjarrao Bhikaji Nagarkar v.Union of India reported in 1999(7)SSC 409 and in Ramesh Chawder Singh v. High Court of Allahabad reported in 2007 (4) SCC 247, a wrong exercise of a quasi-judicial authority or mistake of law on wrong interpretation of law cannot be a basis of the initiation of disciplinary proceedings. Aggrieved by the same, this Writ Appeal is filed by the State.
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> 4............ "In zunjarrao Bhikaji Nagarkar v. Union of India this Court held that wrong exercise of jurisdiction by a quasi-judicial authority or mistake of law or wrong interpretation of law cannot be the basis for initiating disciplinary proceeding. Of course, if the judicial officer conducted in a manner as would reflect on his reputation or integrity or good faith or there is a prima facie material to show recklessness or misconduct in discharge of his duties or he had acted in a manner to unduly favour a party or had passed an order actuated by corrupt motive, the High Court by virtue of its power under Article 235 of the Constitution may exercise its supervisory jurisdiction. Nevertheless, under such circumstances it should be kept in mind that the judges at all levels have to administer justice without fear or favour. Fearlessness and maintenance of judicial independence are very essential for an efficacious judicial system. Making adverse comments against subordinate judicial officers and subjecting them to server disciplinary proceedings would ultimately harm the judicial system at the grassroots level.....

5. In addition to the above judgments, the learned counsel for the respondent has relied on an Order of this Court dated 25.02.2010 rendered in W.P.Nos.14682 of 2005 and batche and submitted that any wrong interpretation of law cannot be a ground for misconduct. However, if it is with a wrong motive or to get a wrongful gain, certainly, it can form a base for the disciplinary action. But, according to the learned counsel there is no whisper either with regard to any wrongful gain or any wrongful motive..."

5. Further, the learned counsel for the petitioner relies upon the following Judgments and the relevant portions are extracted hereunder:-

(i) Ramesh Chander Singh Vs. High Court of Allahabad reported in 2007 LawSuit (SC) 224.

(ii) S.Muthuramu Vs. State of Tamilnadu reported in 2008 LawSuit (Mad) 796.

(iii) A.Murugesan Vs. Secretary to Government, Commercial Taxes and Registration Department and Others.

Ramesh Chander Singh Vs. High Court of Allahabad reported in 2007 LawSuit (SC) 224

"12. This Court on several occasions has disapproved the practice of initiation of disciplinary proceedings against officers of the subordinate judiciary merely because the judgments/orders passed by them are wrong. The appellate and revisional courts have been established and given powers to set aside such orders. The higher courts after hearing the appeal may modify or set aside erroneous judgments of the lower courts. While taking disciplinary action based on judicial orders, High Court must take extra care and caution.

13. In Iswar Chandra Jain vs. High Court of Punjab and Haryana, 1988 2 JT 473, this Court observed that while exercising control over subordinate judiciary under Art, 235 of the Constitution of India, the High Court is under a Constitutional obligation to guide and protect subordinate judicial officers. An honest and strict judicial officer is likely to have adversaries. If complaints are entertained in trifling matters and if the High Court encourages anonymous complaints, no judicial officer would feel secure and it would be difficult for him to discharge his duties in an honest and independent manner. It is imperative that the High Court should take steps to protect honest judicial officers by ignoring ill-conceived

or motivated complaints made by unscrupulous lawyers and litigants.

17. In Lunjarrao Bhikaji Nagarkar vs. Union of India, 1999 5 JT 366, this Court held that wrong exercise of jurisdiction by a quasi-judicial authority or mistake of law or wrong interpretation of law cannot be the basis for initiating disciplinary proceeding. Of course, if the Judicial Officer conducted in a manner as would reflect on his reputation or integrity or good faith or there is a prima facie material to show recklessness or misconduct in discharge or his duties or he had acted in a manner to unduly favour a party or had passed an order actuated by corrupt motive, the High Court by virtue of its power under Art, 235 of the Constitution of India may exercise its supervisory jurisdiction."

S.Muthuramu Vs. State of Tamilnadu reported in 2008 LawSuit (Mad) 796

3(b) ....The petitioner discharged his duties as a Quasi Judicial Authority and fixed the market value in terms of the provisions of the Indian Stamp Act.

7(a) In the decision, Zunjarrao Bhikaji Nagarkar vs. Union of India, 2000 (1) LLJ 728 the Supreme Court considered similar issue and held that negligence in exercising quasi-judicial power by mere carelessness or inadvertence or omission is not sufficient to initiate proceedings under misconduct. Unless there is a culpable negligence or ill-motive, no charge could be framed. In paragraphs 43 and 44, the Supreme Court held as follows:

43. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi-judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi-judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge sheet, if sustained, will thus impinge upon the confidence and independent functioning of a

quasi-judicial authority. The entire system of administrative adjudication whereunder quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.

7(b) Whether the disciplinary proceedings can be initiated against a judicial officer, who granted bail discretion while discharging the judicial function, was considered by the Supreme Court in the decision, Ramesh Chander Singh v. High Court of Allahabad, 2007(2) SCC (Cri) 266. In paragraph 12, the Supreme Court held as follows:

12. This Court on several occasions has disapproved the practice of initiation of disciplinary proceedings against officers of the subordinate judiciary merely because the Judgments/orders passed by them are wrong. The appellate and revisional courts have been established and given powers to set aside such orders. The higher courts after hearing the appeal may modify or set aside erroneous judgments of the lower courts. While taking disciplinary action based on judicial orders, the High Court must take extra care and caution.

12(d) A Divisional Bench of this Court in the decision, A.M.Sankaran v. The Registrar, High Court, Madras, 1999 (2) LW 174 quashed an order of compulsory retirement passed against the judicial officer for destroying the seized spirit without examining or recording any evidence regarding the inflammable nature of the spirit. This Court held that the said order having been passed during discharge of the function as judicial officer, framing such charge without any allegation or recklessness or abuse of power, cannot be sustained.

8. Applying the principles laid down in the above decisions to the facts of this case, particularly when there is no motive or recklessness attributed against the petitioner and no misconduct is committed by the petitioner, I hold, the charge as framed is not maintainable against the petitioner, who is a quasi-judicial authority. The impugned order is set aside and the writ petition is allowed. No costs. Connected miscellaneous petitions are closed.

A.Murugesan Vs. Secretary to Government, Commercial Taxes and Registration Department and Others

7. The learned counsel appearing for the petitioner contended that the impugned order is opposed to the principles of law and in total violation of principles of natural justice. It is further contended that the nature of duties and responsibility discharged by the petitioner while in service, is quasi-judicial in nature and therefore, in the absence of any bad intention, no charge memo can be framed against such quasi-judicial action.

10. The first issue which falls for consideration is as to whether the petitioner who while functioning as Sub-Registrar of Assurances from the period 1992 to 2002 in the process of exercising his powers under the Stamp Act and Rules framed thereunder, which are quasi-judicial in nature could be penalised by issuing a charge memo under Rule 17(b) of the Rules for exercise of such quasi-judicial power solely based on audit objections raised after a long lapse of time that to by the Office of the Accountant General. This question is no longer res integra and has been considered by several decisions of this Court, which have been followed in a decision rendered by this Court in the case of B.K.Gunasekaran vs . State of Tamil Nadu, 2010 (7) MadlJ 161.

6. The learned Additional Government pleader appearing for the respondents would submit that the respondents have already filed a revision application before the Hon'ble Supreme Court in S.L.P.No.17822 of 2015 as against the Judgment of the Division Bench of this Court and the same is pending.

7. Heard the submissions on either side and perused the documents available on record.

8. On a careful consideration of the entire episode, one thing is clear that by the Judgment of the Hon'ble Division Bench of this Court in the case of The Inspector General of Registration, Chennai - 600 028 Vs. A.Shanmugavadivu W.A. (MD) No.93 of 2010 dated 08.07.2010, if there is no prima facie case or evidence to show that officer has recklessly has passed an order, authority cannot be punished for that. Here, it is a case, where the petitioner is a Sub-Registrar and was served with a charge memo on the ground that a loss has been caused to the exchequer in registration of two documents. It is the case of the petitioner that both the documents were referred under Section 47-A(3) of the Indian

Stamp Act and the stamp amount has been recovered from the party, therefore, there is no loss to Government and hence, the impugned order passed against the petitioner is erroneous.

9. Unless it is clearly proved that the petitioner has acted for the reasons or for consideration in the impugned order or in the charge memo, the retirement benefits of the petitioner cannot be withhold. But, nowhere it is explained or clearly stated that with mala-fide intention, the petitioner has caused loss to the exchequer during the registration of the said documents. In fact, the petitioner has given a detailed reply and the reply has not been properly considered. Now, the petitioner has retired and he has not received any pensionary benefits / settlement.

10. At this juncture, this Court worth recalls the decision of the Hon'ble Apex Court as well as the Hon'ble Division Bench of this Court wherein it has categorically stated that "a wrong exercise of a quasi-judicial authority or mistake of law on wrong interpretation of law cannot be a basis of the initiation of disciplinary proceedings".

11. It is also brought to the notice of this Court that in respect of a similarly placed person, namely, Angayarkanni, the Department in G.O.D.No.152 dated 06.05.2010 has taken a modified view and set aside the punishment imposed on her. In such a view, the impugned order dated 02.12.2014 is set aside and the matter is remanded back to the 2nd respondent and the said authority shall disburse the entire payment of the retirement benefits to the petitioner in accordance with law as expeditiously as possible preferably within a period of three months from the date of receipt of copy of this order.

With the above direction, this Writ Petition is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

ssd

To

1. The Secretary
Government of Tamilnadu,
Commercial Taxes and Registration (H) Department,
Fort St. George, Chennai - 600 009

2. The Inspector General of Registration,
100, Santhome High Road,
Chennai.

1 cc to Government Pleader, Sr. 50198

W.P. No.27876 of 2016 and
WMP Nos.24037 to 24039 of 2016

KSJ (CO)
kk 26/10