IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.936 of 2017
and
C.M.P.No.13021 of 2017

1.The Government of Tamil Nadu,
rep.by its Secretary,
Commercial Taxes and Registration Department,
Chennai-600 009.

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

-Vs-

V.Nalini ... Respondent

Appeal filed filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.No.11288 of 2014.

Prayer in W.P.No.11288 of 2014 is filed under Article 226 of the constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of 1st respondents vide his proceeding in G.O. (2D) No.8 Commercial Taxes and Registion (H) Department dated 24.2.2014 and to quash the same and consequently direct the respondents to forthwith pay all service and terminal benefits with interest.

For Appellants :: Mr.R.Prathapkumar,
Addl.Govt.Pleader
For Respondent :: Mr.Kandhan Duraisami

JUDGMENT
(Judgment of the Court was delivered by
HULUVADI G.RAMESH, J.)

This writ appeal has been filed against the order passed by this Court in W.P.No.11288 of 2014 dated 22.12.2016.

2.The case of the respondent herein is that she was appointed as Junior Assistant on 03.08.1977 in the Registration Department and thereafter promoted as Sub-Registrar in the year

1993. When she was working as Sub-Registrar in the Office of the Joint Sub-Registrar No.2, Namakkal, one Kandasamy and four others presented a Deed dated 15.05.2006 before her, for registration. After verification of the entire documents, the respondent thought that it was a partition deed and hence registered the same as Partition Deed and assigned Doc.No.1254/2006. The Audit Department conducted audit in the year 2007 and objected that she registered the document as a Partition Deed instead of registering it as Conveyance Deed and thus there was a loss to the Government by way of under-valuation of document. The District Registrar, Audit, issued an audit note and called for explanation from the respondent and she also submitted a detailed explanation on 21.02.2007, but the same was rejected.

3.Thereafter, a demand notice was issued to the said Kandasamy directing to pay a sum of Rs.39,92,114/- being the difference in stamp duty, stating that it was registered as Partition Deed instead of Conveyance Deed and the said demand notice was quashed by this Court in a writ petition filed by the said Kandasamy, on the ground that the Joint Sub-Registrar has no power to issue such notice. Finally a Committee was constituted to re-audit the document in question and after completion of re-audit, a report dated 12.06.2008 was sent to the appellants to initiate action against the said Kandasamy and to recover the amount in respect of difference in stamp duty.

4.In these circumstances, the respondent was issued with a charge memo dated 19.12.2008 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the respondent also submitted her explanation to the same. Again a revised charge-memo was issued to the respondent on 01.02.2010 under Rule 17(b), containing the very same charge. One another charge memo was also issued to the respondent. The respondent sent explanations for all the charge memos issued. Thereafter, enquiry was proceeded with and the Enquiry Officer submitted his report dated 28.02.2011 to the appellants stating that the charges were proved. Even though the respondent had given her explanation denying the charges by stating that there was no mala fide intention on her part to do so, the impugned order in G.O.(2D)No.8, Commercial Taxes and Registration (H) Department, dated 28.02.2014 was passed by the first appellant dismissing her from service. Hence, the respondent filed a writ petition before this Court in W.P.No.11288 of 2014 and by order dated 22.12.2016, this Court quashed the impugned order with a direction to the appellants to pay all service and terminal benefits with statutory interest to the respondent, on the ground that the very framing of charge against the respondent is not legally sustainable and hence the respondent cannot be dismissed from service on the basis of such charge-memo, relying upon the judgment of the learned single Judge of this Court in

W.P.No.7294 of 2005 dated 27.09.2007 (A.Shunmugavadivu v. Inspector General of Registration, Chennai), wherein the learned single Judge, by following the decision of the Hon'ble Supreme Court in Zunjarrao Bhikaji Nagarkar v. Union of India and others, reported in (1999) 7 SCC 409, has allowed the said writ petition by quashing the charge memo issued against the petitioner therein.

5.Challenging the order passed in the writ petition, the present writ appeal has been filed by the State.

6.The learned Additional Government Pleader appearing on behalf of the appellants / State, would contend that the respondent should have kept the deed in question pending registration so as to ascertain its nature and chargeability of stamp duty by seeking clarification from the superior officer or should have impounded it, but she has registered the document mechanically and made loss to the Government Exchequer. He further submitted that the learned single Judge has failed to note that though there may not be mala fide intention or corrupt motive, there is negligence, non-application of mind and omission on the part of the respondent to look into the existing departmental orders in classifying the instrument for the purpose of chargeability of stamp duty. He also submitted that the learned single Judge ought to have taken into consideration the fact that the respondent was awarded the punishment of dismissal owing to the huge loss caused to the State. Stating so, he prayed for quashing the order passed by the learned single Judge in the writ petition.

7.The learned counsel for the respondent has submitted that the learned single Judge has dealt with the matter in proper perspective and has passed the impugned order, quashing the order of dismissal passed by the first appellant and hence the same does not require any interference in this appeal.

8.On analysing the facts and circumstances of the case, it appears that the respondent has committed the mistake only by way of negligence. Of course, there is a monetary loss to the State Exchequer to the tune of Rs.39,92,114/- on account of registering the document as Partition Deed instead of Conveyance Deed. In this regard, proceedings have also been initiated against the person by name Kandasamy, who had presented the document in question, for recovery of the amount in respect of difference in the stamp duty. While taking an administrative decision, there seems to be prima facie negligence on the part of the respondent, causing loss of revenue to the State Exchequer.

9.As per Rule 161 of the Registration Rules, which has been approved by the State Government under Section 69 of the

Registration Act, 1908, a registering officer will be held liable for any loss to the 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. Thus, there has to be recovery proceedings for recovery of any loss caused to the Government. Rule 161 contemplates that the liability is on the part of the delinquent official for the negligence. Be that as it may, it is learnt that recovery proceedings has been initiated against the beneficiaries and in this connection a writ petition in W.P.No.8496 of 2012 is pending before this Court, and the issue as to whether the document in question ought to have been registered as Conveyance Deed or not, would be decided in that writ petition.

10.Be that as it may, this Court is of the considered opinion that the very order of removal from service passed by the first appellant, appears to be harsh, as she had put in unblemished service of more than 30 years and at the relevant point of time, she was in the verge of retirement.

11.In the above stated circumstances, this Court deems it fit and proper to modify the impugned order passed by the learned single Judge dated 02.11.2016 in W.P.No.11288 of 2014 to the effect that there shall be a punishment of stoppage of increment for two years with cumulative effect, in lieu of quashing the entire proceedings by the learned single Judge. Accordingly, the impugned order passed by the learned single Judge is modified. However, it is for the appellants / Department to recover the loss caused to the Government, in the manner known to law.

12.The writ appeal is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

KM

To

1.The Secretary to Government,
Government of Tamil Nadu,
Commercial Taxes and Registration Department,
Chennai-600 009.

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

+1 Cc to Govt. Pleader sr 74414.
+1 Cc to Ms. Muthumani Doraisamy, advocate sr 74053.

W.A.No.936 of 2017
and
C.M.P.No.13021 of 2017

PA(CO)
SP(07/11/2017)