BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 08.08.2017
Pronounced on : 15.12.2017
CORAM :
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.A.(MD)No.623 of 2017
and
C.M.P.(MD) Nos.5190 and 5191 of 2017

S.Indira Gandhi ... Appellants

vs.

1. The Secretary to Government,
   Commercial Tax and Registration Department,
   State of Tamil Nadu,
   Fort St. George,
   Chennai - 600 009.

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

3. The District Registrar,
   Kanniyakumari,
   at Nagercoil. ... Respondents

Prayer : Writ Appeal filed under clause 15 of the Letters Patent, to set aside the order dated 16.03.2017 made in W.P.(MD) No.1396 of 2013 on the file of this Court.

Prayer in WP(MD)No. 1396/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the order passed by the 1st respondent in G.O.Ms.No.430 dated 28.9.2012 confirming the order passed by the 1st respondent in G.O.Ms.No.325 dated 20.10.2011 modifying the order passed by the 2nd respondent inhis proceeding No.46546/R3/2007 dated 7.8.2008 and Quash the same.

For Appellant : Mr.D.Selvavinayagam

For Respondents : Mr.M.Govindan, Spl.G.P.

<u>JUDGMENT</u>

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

Aggrieved by the dismissal of her writ petition, this intra-court appeal has been filed by the writ petitioner.

2.The appellant was working as Assistant in Kottaram Sub Registrar Office. She was holding additional charge as Sub Registrar in February 2003. On 3.2.2003, she had issued encumbrance certificate No.218/2003 in which two entries were left out. This act of hers was construed as a misconduct and a charge memo dated 28.9.2007 was issued.

3.The appellant submitted her explanation denying the charge. An enquiry was conducted and the Enquiry Officer submitted his report holding that the charge stood proved. The Inspector General of Registration after giving opportunity to the appellant to submit her further representation imposed the punishment of stoppage of increment for two years without cumulative effect vide order dated 7.8.2008.

4.The appellant filed an appeal before the government questioning the order passed by the Disciplinary Authority. In her appeal, the appellant pointed out that she was holding the substantive post of Assistant in the office of the Sub Registrar, Kottaram and that on 3.2.2003 the Sub Registrar, Thiru. Ramakrishnan had gone on leave and that therefore she was directed to hold additional charge. On that day, encumbrance application No.218/2003 was filed for a certain property for the period from 1.1.1994 to 2.2.2003. A general search was made by Thiru S.Subramania Pillai, Assistant. The same was verified by Thiru Mani, Assistant. Based on their verification and inspection and search, encumbrance certificate No.218/2003 was issued and counter signed by the appellant. On the same date, the appellant had registered 25 documents and also counter-signed 14 encumbrance certificates besides carrying out several other routine office works attached to the post of Assistant as well as that of the Sub Registrar.

5.The appellant further pointed out in her explanation that the issuance of certificate was based on the data entries made in the computer. The appellant denied that she was responsible for the lapse committed in the issuance of the encumbrance certificate. She also drew the attention of the appellate authority to the observations made in her favour in the enquiry report. In fact, on 25.6.2008 the Enquiry Officer, who submitted the enquiry report against her wrote to the Inspector General of Registration, Chennai 28 that the appellant herein has no direct responsibility in the matter and that therefore the disciplinary action initiated against her may be dropped.

6.The matter was referred to Tamil Nadu Public Service Commission which by communication dated 10.5.2010 recommended reduction of the punishment imposed on the appellant. The Secretary to Government, Commercial Tax and Registration

Department, thereafter issued G.O. (D) No.325 dated 20.10.2011 reducing the punishment to stoppage of increment for one year without cumulative effect. The appellant submitted a review petition. The same was rejected by order dated 28.9.2012 made in G.O.D.No.430.

7.The appellant filed W.P. (MD) No.1396/2013 challenging the same. Before the Learned Judge, the appellant appeared to have laid more stress on the fact that the Assistant who prepared the encumbrance certificate was visited with a lesser punishment of stoppage of increment for a period of 3 months and that therefore there was discrimination in the matter of levying punishment on the appellant.

8.The Learned Judge took note of the fact that the appellant was serving as Sub Registrar on the crucial date when the encumbrance certificate was issued. Therefore even though the charge on the appellant as well as the assistant was one and the same, the Sub Registrar who has to discharge more responsibilities will have to bear more blame and therefore greater punishment. Following the decision of the Hon'ble Supreme Court reported in ***2002(4) AWC 2946 SC [State of UP v. Raj Pal Singh]***, the Learned Judge held that even though the nature of delinquency and the charges are the same, if one of the delinquent is a higher official with more responsibility, the delinquency must be viewed much more seriously. In that view of the matter, the writ petition came to be dismissed.

9.The Learned Counsel appearing for the appellant contended that in a similar case, the Tamil Nadu Public Service Commission opined that the counter signing authority could not be made directly responsible for non-verification of omission of entries in the encumbrance certificate. This opinion was accepted and disciplinary action against one Annamalai was dropped vide G.O.D. No.477 dated 24.10.2010. It was further contended that in this case the entire focus of the Service Commission was only on the quantum of punishment. The Learned Judge also did not consider the submission that the charge framed against the delinquent itself was not maintainable.

10.The Learned Special Government Pleader submitted that the order dismissing the writ petition deserves to be sustained.

11.The issue to be considered is whether the appellant committed any misconduct. It is not the case of the respondents that the appellant transgressed any established and definite rule. It is not even their case that the omission attributed to the appellant was wilful in character. It is not even a case of gross negligence in the discharge of one's duty. The task of searching the entries was done by one official and the task of verification done by another. Since the appellant was holding the post of Sub Registrar in an in charge capacity, she had to sign the encumbrance certificate. There is nothing on record to indicate that the authority issuing the encumbrance certificate will be liable for any omission therein. No such service rule has been brought to our notice. In fact, the Enquiry Officer in the enquiry report has indicated that the explanation offered by the delinquent is acceptable. But after observing so, he held the charge to be proved. Later, he recommended to the Disciplinary Authority for dropping of the proceedings.

12.The Hon'ble Supreme Court in the decision reported in ***[1979] 2 SCC 286 [UOI v. J. Ahmed]*** observed that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct. A disregard of an essential condition of the contract of service may constitute misconduct. Mere negligence or lapse in performance of duty would not constitute misconduct unless the consequences directly attributable to such negligence are serious.

13.Judging by the said yardstick, we are of the view that the charge against the appellant is not made out. In this case, it was Thiru Subramania Pillai who carried out the search and it was Thiru Mani, Assistant who verified. The appellant as in charge Sub Registrar merely affixed her signature. In fact, she was made in charge Sub Registrar only on that date when the encumbrance application was submitted and the certificate was issued. She could not have been held liable for the omission of two entries. We are of the view that the appellant did not commit any misconduct.

14.The order dated 16.3.2017 dismissing W.P.MD.No.1396 of 2013 is set aside. This writ appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

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   Commercial Tax and Registration Department,
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   Chennai - 600 009.

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

3. The District Registrar,
   Kanniyakumari at Nagercoil.

+1cc to Mr.D.Selvavinayagam, Advocate Sr.No.93064
+1cc to Spl.Government Pleader Sr.No.93199

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VB/KK/SAR1/11/01/2018/5P/6C

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and
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