IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.02.2018

Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.14 of 2017
and C.M.P.No.221 of 2017

1.Government of Tamil Nadu
Rep. by its Secretary to Government
Commercial Taxes and Registration Department
Fort St.George
Chennai 600 009.

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

Vs.

E.Sankarammal .. Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order dated 10.12.2014 made in W.P.No.28076 of 2008, on the file of this Court.

Writ Petition under Article 226 of the constitution of India praying to call for the records pertaining to the orders bearing GO (2D) NO. 133 Commercial Taxes and Registration (H2) Department Dated 19.09.2008 of the first respondent confirming the order of removal bearing No. 32709/B1/2006 dated 5.9.2007 of the second respondent and quash the same.

For Appellants : Mrs.A.Sri Jayanthi
Special Government Pleader

For Respondent : Mr.V.Sukumar
for Mr.K.Shanmugam

J U D G M E N T

[Judgment of the Court was delivered by K.K.SASIDHARAN, J.]

The respondent was due for retirement on attaining the age of superannuation on 30 June, 2006. The Inspector General of Registration, on 27 June, 2006 passed an order declining permission to her to retire from service. By way of another dated 27 June, 2006, the respondent was placed under suspension pending initiation of disciplinary proceedings. The enquiry was on the basis of a complaint preferred by one Thiru Natarajan, who was not in good terms with the respondent. The matter was referred to the Tribunal for disciplinary proceedings by the Government. The Tribunal conducted a random survey of the documents registered by the respondent and examined three persons by name Sundaram, Arumugam and David, whose documents were registered long back. Those witnesses have given evidence that the respondent took Rs.500/- for registration about 2 -1/2 years back. However, in the cross-examination, it was stated that they had not preferred any complaint against the respondent at any point of time. The Government, ultimately accepted the findings given by the Tribunal for disciplinary proceedings and dismissed the respondent from service.

2. The learned Single Judge set aside the order passed by the Government dated 19 September, 2008 dismissing the respondent from service with an observation that it was a case of no evidence. Feeling aggrieved, the appellants have come up with this intra court appeal.

3. We have heard the learned Special Government Pleader on behalf of the appellants. There was no argument on the side of the respondent, inasmuch as the learned counsel for the respondent is stated to be out of town.

4. The complaint in the case was originally given by Thiru Natarajan, to the Registration Department. According to the complainant, the respondent has been demanding money for registration of documents. There was no specific instance in which the respondent demanded money from the complainant.

5. The complaint was given long before the date of superannuation of the respondent. The Government referred the matter to the Tribunal for disciplinary proceedings. The Tribunal appears to have taken the details of the registration made by the respondent on a random basis. The Tribunal took the names of three persons whose documents were registered by the Sub-Registrar. The registrations were made in the year 2004. Few witnesses were examined before the Tribunal. During the cross-examination of witnesses, they have clearly stated that complaints were not preferred at all by them against the

respondent. The respondent put a suggestion to the witnesses that they were dancing to the tune of Thiru Natarajan. In fact, P.W.2, in his evidence clearly admitted that Thiru Natarajan, who was a money lender, was not in good terms with the respondent and as such, he has been making complaints against her to the Registration Department.

6. The Tribunal was expected to examine the complainant Thiru Natarajan. However, no such effort was taken. The complaint was also not marked by the Tribunal. In case, Thiru Natarajan was examined by the Tribunal, it would have given an opportunity to the respondent to cross-examine him, inasmuch as it was his complaint which was the basis for taking action against her. Though in the evidence of the witnesses there was a specific reference about the complaint preferred by Thiru Natarajan and the fact that he has been coming to the Registrar's office for registering sale agreements after giving money to the people on interest, no such effort was taken by the Tribunal to examine the complainant.

7. The incident in question took place about 2-1/2 years back. There was no specific complaint preferred against the respondent during the relevant period. The complaint given by Thiru Natarajan in a general manner against the respondent was taken as the basis for initiating enquiry against her and suspending her from service, just three days prior to her date of retirement. The appellants in all fairness should have examined Thiru Natarajan, inasmuch as the genesis of the entire matter started with the complaint preferred by him. The Tribunal believed the evidence of three witnesses whose documents were registered about 2 - 1/2 years back, in spite of the fact that they have not preferred any complaint at any point of time against the respondent. The learned Single Judge was therefore, perfectly correct in his observation that this is a case of no evidence.

8. The appellants waited till the retirement of the respondent for taking action against her. It is matter of record that just three days prior to the date of her retirement only, the respondent was suspended from service on the ground of the proposal for initiation of disciplinary proceedings. In any case, the non-examination of Thiru Natarajan is fatal to the enquiry initiated by the appellants. The evidence given by the three witnesses whose documents were taken on random basis cannot be taken to dismiss the respondent from service, for the simple reason that there was no complaint preferred by those witnesses at any point of time against her.

9. We have perused the entire material papers including the report submitted by the Tribunal for disciplinary proceedings. There is no reference in the report as to whether a written

complaint was given by Natarajan, which according to the appellants was the basis for initiating proceedings against the respondent. There was no criminal case registered against the respondent under the provisions of the Prevention of Corruption Act. We are, therefore, of the view that the appellants miserably failed to prove the misconduct by producing legal evidence.

10. We confirm the order passed by the learned Single Judge.

11. In the upshot, we dismiss the intra court appeal. Consequently, connected miscellaneous petition is closed.

gms

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

To

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

2.The Inspector General of Registration
Chennai 600 028.

+1CC to Mr.Shanmugam, Advocate in SR.NO. 15092

+1CC to Government Pleader in SR.NO. 14790

W.A.No.14 of 2017

MG [CO]
MLT-26/03/2018