IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2018

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Writ Appeal No.979 of 2014
and
M.P.No.1 of 2014

1.Inspector General of Registration
Chennai - 600 028.

2.District Registrar (Audit)
Chennai South, Chennai- 15. ...Appellants

Vs.

Thiru K.M.Thiyagaraj @ Henry Mani ...Respondent

Prayer : Appeal filed under Clause 15 of the Letters Patent against the order of dated 13.08.2012 made in W.P.No.6698 of 2009.

WP.NO.6698/2009:

Petition presented to this court to issue a Writ of Certiorarified mandamus calling for the records of the 1st respondent in (1) 62628/B2/2008-1 dt 28.12.2008 (chargememo); (2) 62628/B2/2008 dt 30.12.2008 (order of suspension) and (3) 62628/B2/2008 dt 30.12.2008 (order not permitting to retire) quash the same and issue consequential directions to the respondents to permit the petitioner to peacefully retire from his services on 31.12.2008 A.N. and grant him all retirement and pensionary benefits with 18% interest on the delayed payment within a limited time frame

For Appellant : Ms.A.Srijayanthi
Spl.Govt.Pleader

For Respondents : Mr.M.Ravi

J U D G M E N T

(made by K.K.SASIDHARAN,J.)

The appellants on the eve of retirement of the respondent issued a charge memo and placed him under suspension. He was not permitted to retire. The charge memo dated 28 December 2008, the suspension order dated 28 December 2008 and the order dated 30 December 2008 not permitting him to retire from service were challenged before the Writ Court in W.P.No.6698 of 2009. The writ petition was allowed by the learned single judge. The said order is under challenge in this intra court appeal.

2. The learned Special Government Pleader contended that after taking time for submitting explanation, the respondent filed the writ petition challenging the charge memo. According to the learned Special Government Pleader, the Government would complete the enquiry within a reasonable period.

3. The learned counsel for the respondent by placing reliance on the order in W.P.No.8612 of 2009, the appellate order passed in W.A.No.2313 of 2013 and the order passed by the Hon'ble Supreme Court in S.L.P.No.17822 of 2015 dated 3 April 2017 contended that the subsequent charge memo issued to the respondent for a similar charge on 19 February 2009 was quashed by the learned single Judge. The order was upheld by the Division Bench. The Special Leave Petition was dismissed by the Hon'ble Supreme Court. Since the facts are identical, no interference is called for in the order passed by the learned Single Judge.

4. We have perused the proceedings impugned in the writ petition in W.P.No.6698 of 2009 and the charge memo dated 19 February 2009, which was challenged in W.P.No.8612 of 2009.

5. In both the proceedings, the genesis of the matter was the report submitted by the Audit Wing indicating that the respondent failed to collect proper stamp duty. There is nothing on record to show that on receipt of the audit report, opportunity was given to the respondent to submit his views by issuing a show cause notice. The appellants waited till the retirement of the respondent and in fact, charge memo was issued just two days prior to the retirement. Thereafter, another charge memo was issued on 19 February 2009. The said charge memo also relates to an audit objection, in which, it was alleged that the respondent failed to collect proper stamp duty.

6. Since both the charge memos are identical, we are of the view that benefit given to the respondent in the connected writ petition in W.P.No.8612 of 2009 and the related appeal in W.A.No.2313 of 2013 should be extended in this matter. Since a coordinate Bench has already confirmed the order passed by the learned single Judge quashing the charge memo dated 19 February 2009 and the same having been confirmed by the Hon'ble Supreme Court, we are constrained to confirm the order dated 13 August 2012 in W.P.No.6698 of 2009.

7.We make it clear that we have not considered the legality and correctness of the charge memo issued in this matter, in view of the judgment of the coordinate Bench dismissing the appeal filed against the order passed by the learned single Judge dated 13 August 2012 in W.P.No.8612 of 2009.

8. The intra court appeal is dismissed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

svki/maya

TO:

1.Inspector General of Registration
Chennai - 600 028.

2.District Registrar (Audit)
Chennai South, Chennai- 15.

+ 1 cc to Mr.M.Ravi, Advocate,SR.10147
+ 1 cc to The Govt.Pleader, SR.10266

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nr 12/03/2018