

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.06.2018

Delivered on: 09-07-2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.11080 of 2012

P.Sakthivel

... Petitioner

Vs

1. The Secretary to Government,
Commercial Tax & Registration Department,
St.George Fort,
Chennai.

2. The Inspector General of Registration/
Chief Controlling Revenue Authority,
100, Santhome Road,
Pattinapaakam,
Chennai.

3. The Secretary,
Tamil Nadu Public Service Commission,
Commercial Tax Annexe Building,
No.1, Greams Road,
Chennai-06.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order made in

G.O.Ms.No.153 Commercial Taxes and Registration Department dated 9.12.2011 passed by the first respondent, quash the same and consequently direct the respondents to disburse all the terminal benefits payable to the petitioner.

For Petitioner : Mr. K.Elanngo for
M/s.Palaramasamy

For Respondents : Mr.J.Pothiraj,
Spl.Govt.Pleader for R1&R2
Mr.M.Devendran for R3

ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order made in G.O.Ms.No.153 Commercial Taxes and Registration Department dated 9.12.2011 passed by the first respondent, quash the same and consequently direct the respondents to disburse all the terminal benefits payable to the petitioner.

2. The petitioner originally joined as Junior Assistant in the Registration Department and subsequently, he was

promoted as Assistant and then as Sub Registrar and finally as District Registrar. While he was working as Sub Registrar, a charge memorandum was issued for major penalty proceedings on 14.01.2003 alleging that the petitioner had caused loss of Rs.22,56,933/- to the Government in respect of registration of 128 documents for lower valuation. The transactions which formed the basis of charge memorandum, have been classified into five parts. Later, an enquiry was conducted into the charges and on conclusion of the enquiry, a report was submitted holding that first two parts were held to be not proved while other parts were held to be proved. On the basis of the findings of the enquiry, an explanation was called for and ultimately, first respondent, by G.O.Ms.No.153, dated 9.12.2011, dismissed the petitioner from service. The said dismissal order is put in challenge in the present Writ Petition.

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3. Shri K.Elango, learned counsel appearing for the petitioner, at the out set, would contend that in the absence of any mala fide intention or motive attributed in the charge memorandum, any error of judgment on the part of the

petitioner in discharging of his official duty, cannot be the foundation of the charge memorandum at all. According to the petitioner, this Court has repeatedly held that such error of judgment or incorrect valuation cannot be the subject matter of the charge memorandum. Therefore, he would submit that on this ground, the disciplinary proceedings have to be interfered with. Further, the learned counsel would submit that in respect of part III and part IV of the charge memorandum out of 71 documents (Part III), already correct value in respect of 59 documents has been recovered and as regards the remaining documents, revenue recovery proceedings have been initiated under the Revenue Recovery Act. As regards Part-IV registration of documents, is concerned, correct value for 15 documents has already been recovered. In respect of Part-V is concerned, the petitioner had a valid explanation as to the character of the documents which were presented for registration and in fact, the registration is the subject matter of the litigation before the Court. The learned counsel would therefore submit that the alleged loss as stated in the charge memorandum does not hold good any more in view of the

subsequent action initiated for recovery of deficit stamp duty. According to the learned counsel, in fact, the petitioner discharged his duties to the best of his ability and if at all any error had occurred which resulted in valuation of the documents, the same was due to bona fide inadvertence and the same is not actuated by any corrupt motive or mala fide intention. Although, the petitioner had attained the age of superannuation on 31.3.2009, he was not permitted to retire and ultimately, he was dismissed from service vide impugned proceedings. According to the learned counsel, the petitioner had rendered 38 years of service in the Registration Department and the dismissal order in the circumstances of the case, was excessive and harsh.

4. Upon notice, Mr.J.Pothiraj, learned Special Government Pleader entered appearance for respondents 1 and 2 and Mr.M.Devendran, learned counsel entered appearance for respondent 3. A detailed counter affidavit has been filed on behalf of respondent No.2.

5. In the counter affidavit, it is stated that the petitioner was facing five other different set of charges, however, the same could not be proceeded in view of the dismissal order passed by the Government against the petitioner. As per the counter affidavit, the petitioner was in the habit undervaluing the documents due to his carelessness and lack of devotion to duty. The learned Special Government Pleader would reiterate the averments contained in the counter affidavit and submitted that in the case on hand, the punishment of dismissal from service was commensurate to the gravity of the misconduct committed by the petitioner. Therefore, no indulgence need to be shown to the petitioner.

6. Learned counsel appearing for the petitioner, in support of his contentions, would place reliance on the following unreported decisions, viz.,

i) Order, dated 27.9.2007 passed in W.P.No.7294 of 2005, wherein, a learned Judge of this Court has allowed

similar claim in respect of registration of documents for low value, by following an order passed by the Hon'ble Supreme Court. He would draw the attention of this Court to paragraphs 2 to 10, which read as under:

"2. A perusal of the impugned charge memo would show that there is a single charge framed against the petitioner. The crux of the charge would be that in an audit conducted at the Office of the District Registrar, Pudukottai, it was found that between the period 2002 and 2004, when the petitioner was working as a Sub Registrar, he had caused loss to the Department to the tune of Rs.3,98,822/- by registering the documents which were under valued.

"3. The contention of the petitioner is that he was a statutory authority, under the Registration Act, and the duties discharged by him were statutory duties, under both the registration act and the stamp act. When a document is presented before him for registration, he has to apply his mind to see whether the document is properly valued or not. On such application, if he judges that the document has been valued properly, he has no option but to register the same. On the contrary, if he concludes that the document has been under valued, then he has to register the document and

then to refer the document to the authority concerned under Section 47A of the Stamp Act. While assessing the document there may happen some error of judgment in respect of the value of the document. Since the function is a quasi-judicial function, even if the error of judgment has allegedly resulted in any loss to the Department, it cannot be a foundation for initiation of disciplinary proceedings against him.

"4. The learned counsel for the petitioner would place strong reliance on the judgments of the Hon'ble Supreme Court in *Zunjarrap Bhikaji Nagarkar Vs. Union of India and Others* (1999 (7) SCC 409), and in *Ramesh Chandar Singh Vs. High Court of Allahabad and another* (2007 (4) SCC 247).

"5. In *Zunjarrap Bhikaji Nagarkar Vs. Union of India and others* (cited supra), in paragraph Nos.40, 41, 42, 43 and 44, the Hon'ble Supreme Court has held as follows:-

"40. A wrong interpretation of law cannot be a ground for misconduct. Of course it is a different matter altogether if it is deliberate and actuated by mala fides. Negligence in quasi-judicial adjudication is not carelessness, inadvertence or omission but a culpable negligence.

41. When penalty is not levied, the assessee certainly benefits. But it cannot be said that by not levying the penalty the officer has favoured the assessee or shown undue favour to him. There has to be some basis for the disciplinary authority to reach such a

conclusion even prima facie. The record in the present case does not show if the disciplinary authority had any information within its possession from where it could form an opinion that the appellant showed "favour" to the assessee by not imposing the penalty. He may have wrongly exercised his jurisdiction. But that wrong can be corrected in appeal. That cannot always form a basis for initiating disciplinary proceedings against an officer while he is acting as a quasi-judicial authority. It must be kept in mind that being a quasi-judicial authority, he is always subject to judicial supervision in appeal.

42. Initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty.

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.

44. Considering whole aspects of the matter, we are of the view that it was not a case for initiation of any disciplinary proceedings against the appellant. The charge of misconduct against him was not proper. It has to be quashed."

"6. In Ramesh Chandar Singh Vs. High Court of Allahabad and another's case, the principles laid down in the Zunjarrap Bhikaji Nagarkar Vs. Union of India and others case have been followed.

"7. A perusal of the principles enunciated in these cases of the Hon'ble Supreme Court would make it clear that wrong exercise of a quasi-judicial authority or mistake of law or wrong interpretation of law cannot be the basis for the disciplinary proceedings.

"8. Applying the above stated legal principle, if the charge of the petitioner is analysed, there is no allegation that the petitioner registered the documents which are said to be under valued with any malafide intention of actuated by any corrupt motive. It has also not been stated that the petitioner has exercised his power in a reckless manner. It may be true that his decision in respect of the value of the documents, registered by him

have been subsequently found out to be incorrect, but that alone cannot be the foundation for a charge against the petitioner.

"9. If the legal principle evolved in the judgments of the Hon'ble Supreme Court, cited supra, are applied to the facts of the present case also, I have no option but to hold that the charge framed against the petitioner is liable to be quashed as un-sustainable.

"10. In the result, the impugned charge memo No.34748/R3/2.7.2005 dated 02.07.2005, issued by the respondent against the petitioner is quashed. The writ petition is allowed. No costs. Consequently, connected W.P.M.P is closed."

ii) Order dated 23.04.2008 in W.P.No.16576 of 2005, wherein, a learned Judge of this Court has followed the above decision and quashed similar charge memorandum, while observing as under:

The Petitioner joined the service in the Registration Department in the year 1977 as Sub Registrar and was promoted as District Registrar in 1993 and the Petitioner is working as District Registrar (Audit) at Chengalput. The

1st Respondent by the proceedings dated 8.12.2003 issued a charge memo under Rule 17(b) of the Tamil Nadu Government Civil Service (Disciplinary and Appeal) Rules, alleging that the Petitioner had under valued the properties during his inspection and caused loss to the Government to an extent of Rs.8,54,455/-. Challenging the same this Writ Petition has been filed.

2. The learned counsel for the Petitioner has submitted that the Madurai Bench of this Court, in similar circumstances, passed an order dated 27.9.2007 in WP.No.7294/2005, quashing the charge memo, wherein it was held as under:-

"7. A perusal of the principles enunciated in these cases of the Hon'ble Supreme Court would make it clear that wrong exercise of a quasi-judicial Authority or mistake of law or wrong interpretation of law cannot be the basis for the disciplinary proceedings.

8. Applying the above state legal principle, if the charge of the Petitioner is analysed, there is no allegation that the Petitioner registered the documents which are said to be under valued with any mala fide intention or actuated by any corrupt motive. It has also not

been stated that the Petitioner has exercised his power in a reckless manner. It maybe true that his decision in respect of the value of the documents, registered by him have been subsequently found out to be incorrect, but that alone cannot be the foundation for a charge against the Petitioner.

9. If the legal principle evolved in the judgements of the Hon'ble Supreme Court, cited supra, are applied to the facts of the present case also, I have no option but to hold that the charge framed against the Petitioner is liable to be quashed as unsustainable.

10. In the result, the impugned charge memo No.34748/R3/2.7.2005 dated 2.7.2005 issued by the Respondent against the Petitioner is quashed. The Writ Petition is allowed. No costs. Consequently, the connected WPMP is closed.

and prayed this court to pass similar orders in this Writ Petition.

3. On the above said contentions, this court heard the learned Additional Government Pleader for the Respondents.

4. Following the said order dated 27.9.2007 made in WP.No.7294/2005 by the Madurai Bench of this court, the impugned charge memo dated 8.12.2003 is quashed and this Writ Petition is allowed, as prayed for. No

costs. Consequently, the connected MP is closed."

iii) Order of this Court in W.P.No.21992 of 2008 dated 13.10.2009 (MANU/TN/3008/2009), wherein, a learned Judge of this Court has observed in paragraph-9 as follows:

"9. In my considered opinion, a perusal of the records would not go to show that the petitioner registered the document categorizing the same as the release deed not for extraneous consideration. Obviously, it is an error of judgment. Even now it cannot be clearly stated that the conclusion arrived at by the petitioner categorizing the document as release deed is a wrong conclusion. However, by means of subsequent proceedings, the further stamp duty and registration fee have been collected. Therefore, applying the principles stated in the above two judgments, since it is not stated before this Court that the petitioner's action is tainted by malafide or for extraneous consideration or the same is tainted with any motive, I am of the view that the impugned punishment is not sustainable and therefore the same is quashed."

iv) Order of this Court in W.P.(MD).No.3853 of 2016 dated 23.08.2016 wherein, a learned Judge of this Court has frowned upon initiation of disciplinary action in respect of duty discharged by the quasi judicial authority, on the basis of the legal principle enunciated by the Hon'ble Supreme Court of India. The view of the learned Judge expressed by the learned Judge as found in paragraphs 6 to 8, is reproduced herein below:

"6. A close reading of the above judgment of the Apex Court shows that negligence in exercising quasi-judicial power by mere carelessness or inadvertence or omission, is not sufficient to initiate proceedings under misconduct, therefore, unless there is a culpable negligence or ill motive, no charge could be framed. Yet another observation of the Apex Court holding that the entire system of administrative adjudication whereunder quasi-judicial powers are conferred on the 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. Almost in a similar circumstance, an identical issue came up before the Apex Court, whether disciplinary proceedings can be initiated against a judicial officer, who granted bail exercising discretion while discharging the the judicial function and the Apex Court while dealing with the said issue in Ramesh Chander Singh vs. High Court of Allahabad and another, reported in 2007 (4) SCC 247, held that on several occasions, the Apex Court 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, since appellate and revisional courts have been established and given power to set aside such orders. The higher courts after hearing the appeal may modify or set aside erroneous judgments of the lower courts. The above observation squarely applies to the case on hand.

"8. In view of the above, this Court finds no impediment to allow this writ petition. Accordingly, the writ petition is allowed and the impugned order is set aside. No costs. W.M.P(MD)No.3457 of 2016 is closed."

7. The learned Judge would therefore submit that the petitioner, while discharging duties, had committed certain errors in evaluating the documents which were presented for registration and that alone cannot be the basis for framing the charge memorandum. Even assuming there was negligence on his part while making the evaluation, it cannot attract the extreme penalty of dismissal from service, particularly, in view of the fact that the petitioner had rendered 38 years of service in the Registration Department and his past conduct was not questioned. Therefore, the learned counsel would passionately appeal this Court to atleast interfere with the quantum of punishment.

8. This Court has considered the submissions of the learned counsel appearing for the petitioner and the learned Special Government Pleader for respondents and perused the pleadings and materials placed on record.

9. At the out set, having gone through the citations (cited

supra) relied upon by the learned counsel for the petitioner, this Court is in agreement with the law laid down in the citations and that the ratio of the same can be aptly applied to the factual matrix of the present case. However, in this case, it appears that the petitioner has been consistently negligent and careless in discharging his duties, therefore, instead of setting aside the disciplinary action, this Court has to see whether the punishment of dismissal from service imposed on the petitioner, can said to be proportionate to the gravity of the charge framed against him?

10. Although the facts as presented would disclose that the petitioner had been consistently careless and negligent in discharge of his duties when he was working as Sub Registrar. It appears that subsequently, the Department has initiated the recovery proceedings and recovered major portion of the so-called loss sustained by the Government. Therefore, the original charge of causing loss of Rs.22,56,933/- had been drastically reduced in view of the subsequent action taken by the Department. Even otherwise, it appears that in the enquiry

findings, the petitioner had been absolved from the charges in respect of first two parts and in respect of Part III and IV, substantial recovery had been made, which fact has not been disputed. In respect of Part V, the same cannot be the subject matter of the charge memorandum, since it was entirely fell within the view of the petitioner and the character of the document was decided with reference to the provisions of the Stamp Act. Even if there is marginal error of judgment in regard to classification of the document, the petitioner cannot be proceeded since it was a bona fide error of judgment, which cannot certainly be the basis of the charge memorandum.

11. As rightly held by this Court in number of decisions that the error of judgment on the part of a quasi-judicial authority, cannot be the foundation for any charge memorandum and if such charge memorandum is to be allowed, then it will completely impinge upon the confidence and independent function of a quasi-judicial authority. In fact, the learned counsel appearing for the petitioner would submit

that the Government issued advisory as early as on 5.10.1994 to the Inspector General of Registration in regard to certain places for dual valuation and how such situation has to be handled by the Sub Registrars concerned. From the advisory, it is possible that there can be a bona fide error of valuation and it is also possible to rectify such error by resorting to the provisions of the Stamp Act, particularly, under Section 47(A) of the Act and recover the deficit stamp duty from the persons who got their documents registered. When such is the case, this Court does not see any kind of justification for taking extreme action against the petitioner by dismissing him from service.

12. Although the fact that the Department has framed five set of charges against the petitioner in relation to the same issue of undervaluation and for other act of misconduct, however, this Court is only concerned with the present charge memorandum and the findings rendered thereon. In fact, the charge memorandum contains only one charge, namely, loss caused to the Government and such loss has been

substantially recovered by the Government. Therefore, the charge as it framed did lose its severity and grave nature. Even in the counter affidavit, it is not the case of the respondents that the petitioner had acted by ill or corrupt motive for undervaluing the documents. At best, it can be seen that the petitioner had been in the habit of discharging his duties casually and carelessly. Therefore, the petitioner has to be dealt with sternly for his consistent act of careless and negligent attitude. Be that as it may, this Court finds that the punishment of dismissal is not the only answer for such conduct. At the same time, this Court does not wish to take any lenient view because the documents registered by the petitioner were very large in number which disclose the careless and negligent conduct of the petitioner while discharging his important function as Sub Registrar.

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13. As stated above, the petitioner had already attained the age of superannuation on 31.3.2009 and hence, no purpose would be served by remanding the matter back to the authority for reconsideration in regard to imposition of any

other penalty other than dismissal. This Court, time and again has held that in exceptional circumstances, in order to render justice to the parties, this Court has power to substitute the penalty. This is the fit case where this Court can modify the penalty of dismissal from service into one of compulsory retirement. Needless to mention that punishment of compulsory retirement is also one of the major penalties and this Court is of the view that imposing compulsory retirement on the petitioner for careless and negligent misconduct committed by him in discharging his duties which was proved, would be proportionate to the gravity of the charge.

14. Accordingly, the first respondent is directed to pass orders, imposing punishment of compulsory retirement with effect from the date when he was dismissed from service. On such modified order being passed, the petitioner shall be paid all admissible attendant and monetary benefits. The first respondent is directed to comply this order within a period of 12 weeks from the date of receipt of a copy of this order.

15. The Writ Petition is disposed of on the above terms.

No costs.

09-07-2018

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To

1. The Secretary to Government,
Commercial Tax & Registration Department,
St.George Fort,
Chennai.
2. The Inspector General of Registration/
Chief Controlling Revenue Authority,
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Pattinapaakam,
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