IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.804 of 2013
and M.P.No.1 of 2013

1.The Secretary to Government,
Commercial Taxes and
Registration Department,
Fort St. George, Chennai-9.

2.The Inspector General of Registration,
Registration Department,
Chennai-28. ...Appellants

Vs

S.A.M.Ajaz ...Respondent

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed in W.P.No.5071 of 2008 dated 23.04.2012.

W.P.No.5071 of 2008:

to call for the records of the respondents in connection with the impugned order passed by the Respondents 2 and 1 in Proceedings No. 59177/R2/04 dated 04.12.2007 and G.O.(D) No.431 Commercial Taxes and Registration (H2) Department dated 29.09.2009 respectively and quash the same and further direct the respondents to issue appropriate orders permitting the petitioner to retire from service and disburse all retrial benefits.

For Appellants : Mrs.A.Srijayanthi
Special Government Pleader

For Respondent : Mr.K.Venkataramani
Senior Counsel
for Mr.M.Muthappan

J U D G M E N T
(Judgment of the Court was delivered by
K.K.SASIDHARAN,J.)

This intra court appeal is directed against the order dated 23 April 2012 in W.P.No.5071 of 2008, whereby and where under, the learned single Judge set aside the punishment imposed by the disciplinary authority and issued a clean chit to the respondent.

2. The respondent functioned as a Sub-Registrar in the District Registrar Office, Villupuram. The disciplinary authority initiated disciplinary proceedings against the respondent, invoking Rule 17(b) of the Tamil Nadu Civil Service (D & A) Rules, 1955. The disciplinary authority alleged that the respondent registered several documents without collecting proper stamp duty and thereby caused financial loss to the department. The explanation submitted by the respondent was not found satisfactory. The disciplinary authority after conducting enquiry imposed the punishment of removal from service. The order was challenged before the Writ Court.

3. The learned single Judge scanned the materials available on record and on consideration of each of the charges framed against the respondent arrived at a finding that there were no materials produced by the appellants to substantiate the charge. The punishment was therefore set aside.

4. We have heard the learned Special Government Pleader on behalf of the appellants and the learned Senior Counsel for the respondent.

5. The respondent appears to have registered as many as 136 documents. The audit wing found that proper stamp duty was not collected. The department assessed the loss at Rs.8,84,690/-. The disciplinary authority therefore initiated disciplinary proceedings.

6. The documents were registered over a period of time. There was no action taken by the department immediately after the registration of the documents for scrutiny. It was only when the audit wing considered the entire documents and indicated that there is a revenue loss, the appellants initiated disciplinary proceedings against the respondent.

7. The respondent appears to have collected stamp duty treating the document under a particular classification. The audit wing was of the view that the document should be included under a different classification and a different rate of stamp

duty should have been collected.

8. The District Registrar is empowered to verify the documents for the purpose of satisfying as to whether proper stamp duty was paid. However, no such action was taken in the subject case till the report is submitted by the audit wing. The learned single Judge was therefore correct in his observation that proper enquiry was not conducted to substantiate the charge.

9. The learned single Judge quashed the punishment and directed the appellants to pay the entire benefits to the respondent. We are not in a position to agree with the views expressed by the learned single Judge while setting aside the punishment.

10. This is not a case of no evidence to proceed against the delinquent. The respondent registered as many as 136 documents by accepting the valuation given by the parties. It is true that the respondent exercised quasi judicial function by registering the documents. Even then, the respondent was expected to consider each and every document to satisfy as to whether proper stamp duty has been paid. However, no such effort was taken by the respondent. The respondent committed mistakes on multiple occasions. The delay in initiating action alone cannot be a ground to exonerate the respondent from the charges framed against him. Similarly, the fact that periodical inspection was not conducted by the higher authorities to assess the stamp duty payable on each and every document also cannot be a reason to give chit to the respondent.

11. The learned single Judge re-appreciated the evidence as if the Writ Court is an appellate authority. The jurisdiction of the writ court in a matter of this nature is very limited. It is not open to the Court to analyse the evidence for the purpose of arriving at a different conclusion.

12. The disciplinary authority has given justifiable reasons for arriving at a finding against the respondent. The said finding was set aside by the learned single Judge without any justifiable reason. We are therefore of the view that the learned single Judge was not correct in exonerating the respondent from the misconduct.

13. The next issue is about the proportionality of the punishment. We have considered the entire materials available on record. We are of the view that the punishment was disproportionate to the misconduct. In a case of this nature, ordinarily, we should remand the matter to the disciplinary authority for imposing proper punishment.

14. The matter relates to the year 2007. The punishment of removal from service was set aside by the Writ Court on 23 April 2012. The respondent on attaining the age of superannuation retired from service. In view of the peculiar background facts, we are of the view that there is no justification for remanding the matter to the disciplinary authority for imposing punishment. We are also of the view that punishment of compulsory retirement would meet the ends of justice.

15. The punishment of dismissal imposed by the disciplinary authority is modified into one of compulsory retirement. The respondent would be entitled to all the benefits consequent to the order imposing the punishment of compulsory retirement.

16. The writ appeal is allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

svki
To

1. The Secretary to Government,
   Commercial Taxes and
   Registration Department,
   Fort St. George, Chennai-9.

2. The Inspector General of Registration,
   Registration Department
   Chennai 28.

+1 CC to Mr.M. Muthappan, Advocate sr 21134.
+1 CC to Govt. Pleader sr 21448.

W.A.No.804 of 2013

SVI(CO)
SP(09/05/2018)