IN THE H IGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2018

CORAM

THE HONOURABLE Mr. JUSTICE T.RAJA

W.P.No.43016 of 2016

V.Prakash ... Petitioner

Vs.

1.The Principal Secretary to Government,
Commercial Taxes and Registration (K) Dept.,
Government of Tamil Nadu,
Fort St. George, Chennai - 9.

2.The Inspector General of Registration,
Office of Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 28. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records relating to the G.O.(D).No.80, Commercial Taxes and Registration (K) Department, dated 07.03.2016, on the file of the first respondent whereby confirming the punishment of award in proceedings No.9564/V1/2010, dated 26.09.2014 on the file of the second respondent and quash the same.

For Petitioner : Mr.R.Viduthalai, SC
for Mr.D.Veerasekaran

For Respondents : Mr.K.Venkataramani, AAG
Assist. By Mr.RAS.Senthilvel, AGP

ORDER

The present writ petition is directed against the impugned order passed by the first respondent / the Principal Secretary to Government, Commercial Taxes and Registration (K) Department, Chennai, in G.O.(D).No.80, Commercial Taxes and Registration (K) Department, dated 07.03.2016, confirming the award passed by the second respondent / the Inspector General of

Registration, Office of Inspector General of Registration, Chennai, vide his proceedings dated 26.09.2014, imposing a punishment of stoppage of increment for one year without cumulative effect against the petitioner.

2. Learned Senior counsel appearing for the petitioner submitted that the petitioner was appointed as a Trainee Sub-Registrar at Erode on 22.10.2001 and after completion of his two years training period, he was posted as Sub-Registrar in Singampunari at Karaikudi Region in the year 2003-2005. In the year 2008, he was promoted as Sub-Registrar (Grade-I) and after some periodical transfers, he is now presently working as Sub-Registrar at Dindugal.

3. It is further submitted that while the petitioner was working as Sub-Registrar at Palladam, Thiruppur District, a team of official attached to the District Inspection Cell, Coimbatore, along with the Inspector of Vigilance and Anti-corruption Department, Coimbatore, came for a surprise inspection, whereby they have found a sum of Rs.24,000/- lying under the left side floor of the Sub-Registrar's table. Besides, the Inspection Team enquired six independent persons, namely, Selvi.Sampoorna, Selvi.Veena, R.Manonmani, N.Noorjahan, Selvi.Suguna and Selvi.Jamuna and from the enquriy, it is alleged by them that they were working on a daily wage basis for a sum of Rs.100/- per day. Apart from this, two male persons, namely, V.Rajendran and Mayilsamy, were also present. According to the petitioner, these two persons came to the office only for registration of a document with a sum of Rs.13,000/- and Rs.10,000/- respectively, however, the Inspection Team seized the said amount stating that the said sum was intended to give as a bribe to the Sub-Registrar. While the matter stood as above, the second respondent issued a charge memo under Rule 17 (b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, containing the following charges:-

> Charge No.1:
>
> When the petitioner was working as Sub-Registrar, Palladam, Tiruppur District (now transferred as Sub-Registrar, Perambakkam, Kancheepuram District) on 18.02.2010, a surprise check was conducted by the District Inspection Cell along with V&AC Department and recovered Rs.1,500/- from him as unaccounted money which was not recorded in the Cash Register. No explanation was given by him for the said amount. Hence, the petitioner has committed official misconduct by abusing official position under Rule 20 (1) of the Tamil Nadu Government Servants Conduct Rules.

Charge No.2:

When the petitioner was working as Sub-Registrar, Palladam, Tiruppur District (now transferred as Sub-Registrar, Perambakkam, Kancheepuram District) on 18.02.2010, a surprise check was conducted by the District Inspection Cell along with V&AC Department and recovered Rs.24,000/- as unaccounted money on the floor under the table. No explanation was given by him for the said amount. Hence, the petitioner has committed official misconduct by abusing official position under Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules.

Charge No.3:

When the When the petitioner was working as Sub-Registrar, Palladam, Tiruppur District (now transferred as Sub-Registrar, Perambakkam, Kancheepuram District) on 18.02.2010, a surprise check was conducted by the District Inspection Cell along with V&AC Department, Selvi.Sampoorna, Selvi.Veena, Mrs.R.Manonmani, Mrs.N.Noorjahan, Selvi.Suguna and Selvi.Jamuna, the private persons were working on a daily wages of Rs.100/- per day without authority and arbitrarily utilised their service. Hence, the petitioner has committed official misconduct by abusing official position under Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules.

Charge No.4:

When the petitioner was working as Sub-Registrar, Palladam, Tiruppur District (now transferred as Sub-Registrar, Perambakkam, Kancheepuram District) on 18.02.2010, a surprise check was conducted by the District Inspection Cell along with V&AC Department, Rs.13,000/- and Rs.10,000/- recovered from one Rajendran and Mayilsamy respectfully were with intended to pay to him. Hence, the petitioner has committed official misconduct by abusing official position under Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules."

On receipt of the above said charge memo, the petitioner had submitted his explanation dated 27.04.2010 to the Registrar, Kanchipuram, denying the entire charges levelled against him. Subsequently, the second respondent / Disciplinary Authority appointed the District Registrar (Audit), Tiruppur, on 10.06.2010, as Enquiry Officer to inquire into the charges levelled against him.

4. While the matter stood as above, the first respondent, in his letter dated 17.08.2011, directed the Commissioner for Disciplinary Proceedings, Coimbatore, to frame the charge against the petitioner, pending the above said charge memo. Accordingly, the said authority framed a charge against the petitioner in T.D.P. Case No.26/2011, dated 26.10.2012, which is stated below:-

> "While you (A.O.) Thiru V.Pragash were working as Sub-Registrar, Palladam, Tiruppur District, a surprise check conducted on 18.02.2010 between 15.00 hrs. and 17.00 hrs. at your office. At the time of surprise check you (A.O.) Thiru. V.Pragash had unaccounted money of Rs.1500/- in your possession and Rs.24,000/- was found in the Room of Sub-Registrar (AO) were seized. You (AO) could not account for the above said amounts satisfactorily. Besides, a sum of Rs.23,000/- found in possession of two private persons, was also seized as the amount was intended to be paid as bribe to you (AO). Thus, you (AO) have committed official misconduct by abusing your official position. "

The Commissioner of Disciplinary Proceedings, Coimbatore, after examining witnesses and perusing the documents cited before him, forwarded his report to the first respondent for further action and the same is pending. Whileso, all of a sudden, the second respondent, in his proceedings dated 23.12.2011, set aside the charge Nos.1, 2 and 4 of charge memo dated 06.04.2010, framed against him under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, on the ground that the first respondent / the Government appointed the Commissioner for Disciplinary Proceedings, Coimbatore, to enquire in the same incident. Thereafter, charge memo dated 06.04.2010 was cancelled and a fresh charge memo dated 23.12.2011 was issued containing two charges which are stated below:-

"Charge No.1:

When the petitioner was working as Sub-Registrar, Palladam, Tiruppur District on 18.02.2010 at 15.00 hrs., a surprise check was conducted by the District Inspection Cell along with V&AC Department, Selvi.Sampoorna, Selvi.Veena, Mrs.R.Manonmani, Mrs.N.Noorjahan, Selvi.Suguna and Selvi.Jamuna, the private persons were working on a daily wages of Rs.100/- per day without authority and arbitrarily utilised their assistance to the petitioner. Hence, the petitioner has committed official misconduct by abusing official position under Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules.

Charge No.2:

When the petitioner was working as Sub-Registrar, Palladam, Tiruppur District on 18.02.2010 at 15.00 hrs., a surprise check was conducted by the District Inspection Cell along with V&AC Department, he has not deposited the amount of Rs.50,000/- collected from 08.01.2010 to 03.02.2010 for Flag Day as per the advise of the District Registrar, Tiruppur, and the same was to be deposited on or before 03.02.2010."

5. In connection with the above said charge memo, the second respondent / Disciplinary Authority appointed the Enquiry Officer and thereafter, the said Enquiry Officer submitted his enquiry report dated 18.10.2013 holding that the charges levelled against the petitioner as not proved. However, although the second respondent has accepted the findings of the enquiry officer in respect of charge no.2, the said authority has deviated from the finding of the enquiry officer in respect of charge No.1. Thus, it is contended by the learned Senior counsel for the petitioner that the deviation from the findings of the Enquiry Officer against the petitioner is an extraneous material invented by the Disciplinary Authority wantonly with an intention to punish him even though he did not commit any misconduct as per the Tamil nadu Civil Services (Discipline and Appeal) Rules. Therefore, it is contended that the punishment of stoppage of increment for one year without cumulative imposed by the second respondent as confirmed by the first respondent is liable to be set aside.

6. It is further contended by the learned Senior counsel for the petitioner that two parallel disciplinary proceedings initiated against the petitioner for the same incident occurred on 18.02.2010 i.e. disciplinary proceedings by the Commissioner for Disciplinary Proceedings in T.D.P.No.26/2011 and another Disciplinary Proceedings conducted by the second respondent for the same incident, are against the principles of natural justice and therefore, the same has to be set aside as null and void. It is also further contended that the petitioner had joined the said office just six months prior to the date of surprise inspection, whereas those six private individuals were working for the past one year, therefore, the question of payment of Rs.100/- per day to those individuals as well as appointment was made only by the petitioner does not arise. It is also further contended that although the Disciplinary Authority has deviated from the findings of the enquiry officer, no reason whatsoever was given as to why the Disciplinary Authority has giving such a finding holding the petitioner guilty in respect of charge No.1. Again, it is stated that for the one incident happened as pointed out by the District Inspection Cell in the office of the Sub-Registrar, Palladam, two domestic enquiries were conducted against the petitioner, which are in violation of Article 21 of the Constitution of India and therefore, the impugned proceedings dated 07.03.2016 of the first respondent confirming the award dated 26.09.2014 passed by the second respondent imposing a punishment of stoppage of increment for one year without cumulative effect is liable to be set aside.

7. In support of his submissions, learned Senior counsel for the petitioner has relied upon a judgment of the Hon'ble Apex Court in the case of Allahabad Bank and others v. Krishna Narayan Tewari [(2017) 2 SCC 308] for a proposition that where the authority (i) has not applied its mind; or (ii) has not assigned reasons for its conclusions, then the writ courts can interfere with the orders of punishment. Therefore, it is contended that the disciplinary authority, without applying its mind, has deviated with the report of the enquiry officer, that too without giving proper reasoning for such deviation and thereafter, when appeal was preferred, again, the appellate authority instead of recording its own reasons, simply reproduced the findings of the disciplinary authority and therefore, the disciplinary authority and appellate authority have faltered in discharging their duties which resulted in miscarriage of justice. Thus, on this basis, learned Senior counsel prayed for quashing the impugned orders passed by the respondents 1 and 2.

8. Per contra, learned Additional Advocate General appearing for the respondents urged this Court to dismiss the

writ petition since the writ petition is not maintainable in law or on the facts. It is further submitted that while the petitioner was working as Sub-Registrar, Palladam, during the year 2010, officials from the District Inspection Cell, Coimbatore, along with the Vigilance and Anti-Corruption Department, Coimbatore, conducted a surprise inspection in the said office on 18.02.2010, whereby, they have seized unaccounted cash of Rs.1500/- and Rs.24,000/- lying under the left side table of the petitioner. Besides, six individuals as stated supra, were working in the said office for a daily wage of Rs.100/- per day for one year prior to the date of surprise inspection. After completion of the surprise inspection, official from the District Inspection Cell, Coimbatore and the Vigilance and Anti-Corruption Department have submitted their report to the second respondent for further action and only thereafter, four charges were framed against the petitioner under Rule 17(b) of the Tamil nadu Civil Services (Discipline and Appeal) Rules against the petitioner vide proceeding dated 06.04.2010. Whileso, as per the direction of the first respondent, the Tribunal, Coimbatore, has framed a charge against the petitioner. Therefore, since, for the same lapses, two parallel enquiries could not be conducted, the charge memo dated 06.04.2010 was cancelled by the second respondent and thereafter, a revised charge memo was issued. It is further stated that no two parallel two enquiries for the same lapses were conducted, as the charges framed against the petitioner by the second respondent on 23.12.2011 do not contain the charges already framed by the Commissioner for Disciplinary Proceedings, Coimbatore, and hence, those two enquiries are mutually exclusive. Besides, the lapses found in the charge memo issued by the second respondent on 23.12.2011 were entirely different from the lapses found in the charge memo framed by the Commissioner for Disciplinary Proceedings, Coimbatore, although both the lapses were found out and reported in the same day by the Vigilance and Anti Corruption Department. Finally, in connection with the revised charge memo dated 23.12.2011, the second respondent appointed one Mr.Sindhanai Selvan, Assistant Inspector General of Registration (Admin.), Tiruppur, as Enquriy Officer, who, in turn, after providing an adequate opportunity to both the parties, submitted his report dated 18.10.2013 holding that the charges levelled against the petitioner as not proved. However, the second respondent has taken a stand to deviate from the report submitted by the Enquiry Officer in respect of Charge No.1 and accepted the findings of the enquiry officer in respect of charge No.2.

9. Explaining the Charge No.1, learned Additional Advocate General submitted that since the charge No.1 was framed against the petitioner for employing private persons to do the work of Sub-Registrar office, that too without any authority,

the second respondent has deviated from the findings of the enquiry officer for the said charge, for, the then Election Tahsildar, Government Independent Witness, deposed that those six private individuals are working in the said office for one year and they are being paid a sum of Rs.100/- per day , besides they have stated that when they entered the said office, those private individuals were seen in computer room and record room. Therefore, on scrutinising the above said report of the Vigilance Department, the Disciplinary Authority has rightly deviated from the report of the enquiry officer and has come to the conclusion that the petitioner was responsible for continuing the services of those six individuals, which is unbecoming of a Government servant, therefore, learned AAG pleaded, no interference is called for.

10. Moreover, it is contended, when the findings of the Disciplinary Authority was confirmed by the Appellate Authority, this Court, sitting under Article 226 of the Constitution of India, cannot conduct a roving enquiry by appreciating the various evidences. Thus, on this basis, learned AAG prayed for dismissal of the writ petition.

11. I fully agree with the above said submissions of the learned Additional Advocate General for the respondents. Firstly, it may be mentioned herein that there are no two parallel inquiries for the same lapses. Charges framed by the second respondent on 23.12.2011 do not contain the charges already framed by the Commissioner for Disciplinary Proceedings, Coimbatore. The lapses found in the charge memo dated 23.12.2011 issued by the second respondent was entirely different from the lapses found in the charge memo framed by the Commissioner for Disciplinary Proceedings, Coimbatore, although both the lapses were found out and reported on the same day by the Vigilance and Anti Corruption Department and therefore, both are mutually exclusive and different in nature, thus, the contention of the learned Senior counsel for the petitioner that two parallel proceedings initiated against the petitioner are in violation of the principles of natural justice cannot stand to legal scrutiny.

12. Further, the basis for imposition of the impugned punishment is charge No.1 of the revised charge memo dated 23.12.2011 issued by the second respondent cancelling the earlier charge memo dated 06.04.2010. At the risk of repetition, the said charge alone is extracted below:-

> "Charge No.1:
> When the petitioner was working as Sub-Registrar, Palladam, Tiruppur District on

18.02.2010 at 15.00 hrs., a surprise check was conducted by the District Inspection Cell along with V&AC Department, Selvi.Sampoorna, Selvi.Veena, Mrs.R.Manonmani,Mrs.N.Noorjahan, Selvi.Suguna and Selvi.Jamuna, the private persons were working on a daily wages of Rs.100/- per day without authority and arbitrarily utilised their assistance to the petitioner. Hence, the petitioner has committed official misconduct by abusing official position under Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules."

13. It is contended by the learned Senior counsel for the petitioner that the petitioner had joined the said Sub-Registrar office only just six months prior to the date of surprise inspection and therefore, the petitioner cannot be held responsible for those private individuals who were working for the past one year. Indeed, the petitioner had joined the Sub-Registrar Office, Palladam, just six months prior to the surprise inspection and it is also admitted fact that those six private individuals have been working in the said office for the past one year, therefore, in my view, as a responsible officer, after he joined the duty he should have taken action against those six private individuals for their continuance in the said office, but, he has not done so. Moreover, the above said six private individuals deposed that they were all paid by the petitioner on a daily wage basis and that the documents so produced before this Court would clearly show that they were paid a sum of Rs.100/- per day on daily wage basis during the tenure of the petitioner, therefore, it is clear that the petitioner has allowed them to continue their services on daily wages basis. Thus, considering all these facts, the disciplinary authority has rightly deviated from the report of the enquiry officer with regard to the charge No.1 i.e., employing private persons to do the work of Sub-Registrar Office.

14. It is settled law that if the disciplinary authority disagrees with the enquiry authority on any charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give an opportunity to the delinquent officer to represent before it. Following the said principles, in the present case, in view of the different stand taken by the disciplinary authority in respect of charge No.1, the petitioner was given one more opportunity for making further representation. It is also an

admitted fact that pursuant to intimation of the disciplinary authority, the petitioner has made his further representation dated 25.06.2014 and therefore, the stand of the petitioner that in violation of the principles of natural justice he was issued with the impugned punishment does not hold good.

15. Learned Senior counsel for the petitioner relied upon a judgment of the Hon'ble Apex Court in the case of A.L.Kalra v. Project and Equipment Corporation of India Ltd. (1987 (3) SCC 316) for a proposition that failure to keep high standard of moral or ethical befitting an officer of the Company by itself cannot be construed as a misconduct unless the specific conduct rules to such effect. Rule 20(1) of the Tamil Nadu Government Servants' Conduct Rules, 1973 says that every member of the service shall at all times maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the service. In the present case, as stated above, at the time of joining of the petitioner in the Sub-Registrar Office, Palladam, there were six private individuals working on daily wage basis. Therefore, atleast after his entry into the said office, it is not known why he has availed the services of such persons without any authority of law. Hence, such conduct of the petitioner itself is a clear violation of Rule 20(1) of the Tamil Nadu Government Servant's Conduct Rules, 1973. Thus, the aforesaid judgment cannot be made applicable to the facts of the present case.

16. Another judgment relied upon by the learned Senior counsel for the petitioner in Krishnan's case (cited supra) also deals with the power of the High Court for judicial review against the findings given by the lower authority. In the present case, the Enquiry Officer has completely overlooked the charges framed against the petitioner and simply exonerated him from all the charges. Such a finding given by the Enquiry Officer, that too without any documentary evidence, was rightly deviated by the Disciplinary Authority and finally, it has awarded a simple punishment of stoppage of increment for one year without cumulative effect. Moreover, in the above said judgment, it is held by the Apex Court that the High Court was right in interfering with the orders passed by the Disciplinary Authority and the Appellate Authority, when they failed to appreciate the evidences placed before it. Therefore, in my view, in the case on hand also, in view of the aforesaid reasons, the Disciplinary Authority has rightly appreciated the evidence on record and the same was also affirmed by the Appellate Authority. Therefore, the aforesaid judgment, in my view, cannot lend any support to the case of the petitioner.

17. In fine, for the reasons stated above, the writ petition fails and it is dismissed as devoid of any merit. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

rkm

To

1. The Principal Secretary to Government,
   Commercial Taxes and Registration (K) Dept.,
   Government of Tamil Nadu,
   Fort St. George, Chennai - 9.

2. The Inspector General of Registration,
   Office of Inspector General of Registration,
   No.100, Santhome High Road,
   Chennai - 28.

+1 CC to Mr.D. Veerasekaran, Advocate sr 2502.
+1 CC to Govt. Pleader sr 3309.

W.P.No.43016 of 2016

DR(CO)
kas(03/02/2018)