BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving Judgment 12.12.2017	Date of Pronouncing Judgment 12.02.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD).No.2726 of 2014
and
M.P(MD).No.1 of 2014

R.Yahiamian ... Petitioner

Vs.

1. The Inspector General of Registration,
100, Santhom High Road,
Chennai - 28.

2. The State of Tamil Nadu,
Rep.by its Principal Secretary to Government,
Commercial Tax and Registration (H) Department,
Secretariate, Fort St.George,
Chennai - 9. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent relating to the order passed in Government order (D)No.334, Commercial Tax and Registration (H) Department dated 26.06.2013 and in Government order (D)No.356, Commercial Tax and Registration (H) Department dated 11.07.2013, quash the same and direct the respondents to stop the recovery of any amount from pension and DCR gratuity of the petitioner.

For Petitioner : Mr.N.Tamilmani

For Respondents : Mr.V.Muruganantham
Additional Government Pleader

O R D E R

This Writ petition has been filed to call for the records of the second respondent relating to the order passed in Government order (D)No.334, Commercial Tax and Registration (H) Department dated 26.06.2013 and in Government order (D)No.356, Commercial Tax and Registration (H) Department dated 11.07.2013, quash the same and direct the respondents to stop the recovery of any amount from pension and DCR gratuity of the petitioner.

2. The brief facts of the case as per the petitioner's averments is that the petitioner while he was working as District Registrar (Administration) in the cadre of Assistant Inspector General of Registration at Madurai, the first respondent has issued a charge memo dated 01.04.2002 alleging that the petitioner had submitted a report recommending low value for the land relating to a pending Document No.492 of 2000 with an intention of causing revenue loss to the Government. The first respondent has also issued a another charge memo dated 17.05.2002 alleging the similar charge relating to another pending Document No.432 of 2000.

3. The learned counsel for the petitioner submits that after a lapse of 3 years from the charge memo, enquiry report was sent to him on 05.09.2005 and thereafter, on 12.10.2007 i.e., after a lapse of 2 years, the second respondent has sought for explanation from the petitioner. The petitioner has sent a representation on 30.10.2009, meanwhile, the petitioner was permitted to retire on 31.10.2009 without prejudice to the disciplinary proceedings under Rule 17(b) of Tamilnadu Civil Services (Discipline and Appeal) Rules pending against him. After a lapse of 2 years, i.e., on 08.12.2011, the second respondent issued a letter stating that the government has accepted the enquiry report and ordered to recover the loss of revenue of Rs.24,089/- from death cum retirement gratuity and to recover Rs.500/- per month for a period of six moths. The petitioner has sent an objection for the same on 19.01.2012, for which, the second respondent has sent a reply on 02.02.2012 imposing a penalty of Rs.1000/- per month for a period of one year. The petitioner has sent his objection to the said letter also on 12.04.2012.

4. The first respondent has sought for the opinion of TNPSC on 20.05.2012 regarding the disciplinary proceedings initiated against the petitioner. For which, the Secretary of TNPSC has sent a letter on 14.05.2013 to the second respondent expressing their non inclination to interfere in the proposed punishment. Thus, the impugned order dated 26.06.2013 and 11.07.2013 came to be passed by the second respondent and challenging the same, the present Writ petition has been filed by the petitioner.

5. The grounds raised by the petitioner is that there was no loss to the government as the petitioner has only proposed the land value for the said two documents fixing as Rs.3,50,000/- per acre when the first respondent fixed as Rs.2,50,000/- in his Order No.12219/L2/2001, and it is for the first respondent to accept or reject the said value, and further it is stated in the petitioner's ground that when there was no loss to the Government, there cannot be any proceedings against the petitioner that too after a lapse of 8 years when the final order came to be passed and the respondents have failed to note that no document was registered by the petitioner and he has simply submitted his recommendation to the guideline council for 25.99 acres land. It is also stated that the guideline council has every authority to either accept or reject the

recommendation and also in the government order has not clearly explain how the loss has been arrived at.

6. The Inspector General of Registration who is the first respondent herein has filed a detailed counter affidavit on behalf of the respondents denying the allegation made by the petitioner. It is submitted that the petitioner in his counter has categorically stated that the charge memo has been issued for the low value fixed by the petitioner for the Document Nos.492 and 432 of 2000 of Joint 1 Sub Registrar office, Madurai (South), wherein the order of the petitioner was only with an intention to cause loss to the Government, the petitioner has prescribed the land value lower than the guideline value existing at that point of time. Both the values recommended by him have not reflected actual Market value and they were in the nature of causing revenue loss to Government. Hence, proceedings were initiated against him by the first respondent Under Section 17(b) of Tamilnadu Civil Services (Discipline and Appeal) Rules by issuing two charge memos for the above said two documents which were estimated on a lower value than the value existing at that point of time.

7. It is further stated in the counter affidavit of the second respondent herein that the petitioner had received a charge memo on 01.04.2002 for the pending Document No.492 of 2000 and subsequently received a another charge memo on 17.05.2002 for the pending Document No.432 of 2000. Thereafter, an Inquiry officer was appointed to inquire into the charge framed against the petitioner and the same has been proved by the said authority. The second respondent concurred with the findings of the Inquiry Officer and thus the petitioner was called upon to submit his further explanation. Though the petitioner received the letter calling for further explanation on 30.04.2003, he has not submitted the same inspite of subsequent repeated reminders dated 10.09.2003, 16.10.2003, 05.09.2005 and 12.10.2007. Meanwhile, the petitioner attained the age of superannuation and was allowed to retire on 31.10.2009 without prejudice to the pending disciplinary proceedings. The charge memo against the petitioner, his defense statement, findings of the Inquiry Officer along with the relevant documents were examined by the second respondent independently and has provisionally decided to recover revenue loss of Rs.24,089/- from his Death Cum Retirement Gratuity and deduct a sum of Rs.500/- per month for a period of six months and Rs.1000/- per month for a period of one year from the pension of the petitioner as a punishment for the proved charge, for the low value fixed by the petitioner for the pending Document Nos.492 and 432 of 2000. Since the petitioner did not agree to the proposed punishment of deduction from pension, the TNPSC had opined their unwillingness and the second respondent herein had advised to confirm the punishment. Thereafter, the second respondent passed impugned proceedings in G.O.D.Nos.334 and 356, dated 20.06.2013 and 11.07.2013 which is under challenge in this writ petition.

8. The first respondent also submitted that the enquiry as well as the disciplinary proceedings were conducted in accordance with the law. Since the petitioner has recommended for a low value as against guideline value for the above said two pending documents, the charges being proved and the order of recovery was ordered as Rs.24089/- from Death Cum Retirement Gratuity and Rs.500/- per month for a period of six months and further a sum of Rs.1000 per month for a period of one year from his pension benefits.

9. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

10. On perusing the entire materials available on record, this Court is of the view that the petitioner has not alleged any irregularities in the disciplinary proceedings initiated against him and he has pleaded only undue delay at each and every proceedings wherein charge memo was issued as early as 2002 and finally, passing the impugned order of recovery was only in 2013. The learned counsel for the petitioner would vehemently argue that the undue delay in passing the final order is detrimental to the petitioner that too when the very first charge memo was issued on 01.04.2002 followed by the second charge memo dated 17.05.2002 for two different charges. The respondent has finally come out with the impugned order of recovery only in the year 2013 which is after a lapse of 9 years.

11. Though the argument of the petitioner's counsel sounds viable regarding delay to be noted, the conduct of the petitioner also while submitting his representation which is also after a lapse of 2 years. When the second respondent called for the petitioner to submit his representations by their letter dated 12.10.2007, the petitioner had sent his representation only on 30.10.2009 that is one day prior to his retirement. The petitioner was permitted to retire on 31.10.2009 without prejudice to the disciplinary proceedings under Rule 17(b) of the Tamilnadu Civil Services (Discipline and Appeal) Rules initiated against him. Hence, the plea of the inordinate delay as against the respondent cannot be accepted by this Court.

12. While perusing the impugned orders, it is very clear that for the charge memo dated 17.05.2002, the petitioner has sent an explanation regarding Document No.432 of 2000. The Inquiry Officer has submitted a report against the petitioner wherein the petitioner had submitted a report of low value for pending Documents. In fact the statement of the petitioner and the enquiry report also concur the same. It is found from the records that though sufficient opportunity was given to the petitioner to send his explanation to the charge memo, the petitioner had not chosen to send the same or give any explanation. During the enquiry he has requested to consider his statement as explanation in his statement and submitted that the area concerned relating to the two pending documents, to which, he has given recommendations of a lower value than the existing government value, during his visit was with coconut trees,

mango, and other trees and the neighboring land are dry lands, he has stated that the concerned surrounding lands were sold at the rate of 7.10 per sq.ft. He has orally inquired the local person and come to the conclusion. However, during the enquiry, the petitioner seems to have stated that the value differ in the words of various person's and market value is different from estimated value and accepts that as per Section 47 of Stamp Act the market value is the price which in the opinion of Collector or Chief Controlling Revenue Authority or the High Court.

13. It could be seen from the impugned orders that the Tamilnadu Public Service Commission has also opined against intervening of the order passed by the second respondent for recovery of loss caused by the petitioner. It is not open to the Court to go into the findings of the Inquiry Officer or the concurrent findings given by the first and second respondent apart from the opinion of the Tamilnadu Public Service Commission, when it is proved beyond doubt by the authorities concerned especially the respondent as well as the Inquiry Officer that too, when the petitioner though being given many opportunities to give explanation to the charge memo, the petitioner kept silent and did not choose to give any explanation to the said charge memo, but however, participated in the enquiry conducted. Thereafter, when the substantial evidence stands against the petitioner for his recommendations of lower value for the two pending documents and the charges having been proved which has been accepted by the authorities, there cannot be any intervention by this Court also, that apart, the petitioner has not made any valid grounds seeking intervention from this Court. Hence, the Writ Petition deserves to be dismissed. The Interim stay already granted by this Court is also to be vacated. No Costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

To
1. The Inspector General of Registration,
100, Santhom High Road, Chennai - 28.
2. The Principal Secretary to Government, State of Tamil Nadu,
Commercial Tax and Registration (H) Department,
Secretariate, Fort St.George, Chennai - 9.
+1CC to Mr.N.Tamil Mani, Advocate, SR.No. 48065

Order in
W.P(MD).No.2726 of 2014
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12.02.2018

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