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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 13.08.2018
CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.[MD].No.1375 of 2017
and
C.M.P.(MD).No.9820 of 2017

1.The State of Tamil Nadu,
Represented by its Secretary,
Commercial Taxes and Registration Department,
Fort.St.George, Chennai 600 009.

2.The Inspector General of Registration,
100, Santhome High Road,
Pattinapakkam, Chennai 600 028. : Appellants/Respondents

Vs.

S.Asaithambi : Respondent/Appellant

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 19.04.2017 made in W.P.(MD).No.19689 of 2014, on the file of this Court.

Prayer in WP(MD)No. 19689/ 2017 :

Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 2nd respondent herein in Memo No.6627/A2/2011-2012, dated 10/02/2012, Memo No.8468/A2/2012, dated 20/02/2012, Additional Charge Memo No.35764/A2/2012, dated 17/09/2012 and Additional Charge Memo No.9402/A2/2012, dated 03/10/12, quash the same, and further direct the respondents herein to sanction and disburse forthwith the pension and other retiral benefits to the petitioner.

For Appellant : Mr.B.Pugalendhi
Additional Advocate General
Assisted by Mr.VR.Shanmuganathan
Special Government Pleader

For respondents : Mr.E.V.N.Siva

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JUDGMENT

[Judgment of the Court was delivered by M.M.SUNDRESH, J.]

Challenge in this Writ Appeal is to the order dated 19.04.2017 made in W.P.(MD).No.19689 of 2014.

2. Initially, an order of suspension was passed retaining the respondent in service, which was the subject matter of W.P.(MD). No.17069 of 2014, in which, the learned Single Judge of this Court, [as he then was], by order dated 12.07.2012, was pleased to dispose of the Writ Petition, directing the appellants herein to pass final orders on the disciplinary proceedings initiated against the respondent, within a period of six months from the date of receipt of copy of the order.

3. Of the four charges, two of them were framed while the respondent was in service and thereafter, two more charges were framed, after the direction was issued by the learned Single Judge of this Court in W.P.(MD).No.17069 of 2014, dated 12.07.2012, directing the appellants herein to pass final orders on the disciplinary proceedings initiated against the respondent. For better appreciation, all the four charges are extracted hereunder:-

> "Charge No.I
>
> Inspector General of Registration Charge Memo No.6627/A2/2012-2, dated 16.02.2012 - The Delinquent Officer while he was in charge of Papanadu Sub-Registrar's Office was on casual leave on 13.08.2010. In spite of being on leave, he was present at Pappanadu Sub-Registrar Office, where one Junior Assistant, namely, S.Rajakumari was in charge of Sub-Registrar. On that day, one General Power of Attorney Deed has been registered by impersonation, subsequently the finger print obtained with respect to the said registration was also removed from the ledger, the above illegal activities were found by the Deputy Inspector General of Registration, Thanjavur, during his inspection on 07.07.2011. The above delinquency was done in his presence in spite of applying the casual leave.
>
> Charge No.II
>
> Inspector General of Registration Charge Memo No.8469/A2/2012, dated 20.02.2012 - As per internal audit report, the delinquent officer has levied lesser registration fees and caused loss of Rs.26,11,151/- to the Government.
>
> Charge No.III
>
> Inspector General of Registration Additional Charge Memo in No.35764/A2/2012, dated 17.09.2012 - The Director of Income Tax [I&CI], Chennai, has imposed a fine vide his passed a punishment order against this delinquent officer in his proceedings

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F.No.DIT[I&CI]/ CHE/271EA/2011-12, dated 08.12.2011 for his failure to submit the statutory Annual Information Return [AIR] for the financial year 2009 - 2010 within the prescribed time, i.e., 31st August 2010. A show cause notice dated 13.06.2011 was issued to the delinquent officer, by Income Tax Department, as there was no response from his to the final opportunity was given vide letter dated 29.09.2011, since neither this delinquent officer nor any representative has appeared and explained the delay, as per Section 271FA penalty of Rs.100/- was levied for every day during which such failure in furnishing the Annual Information Return continues. Hence, a sum of Rs.23.200/- was levied as fine. Based on this penalty, charge memo was issued.

Charge No.IV

Inspector General of Registration Additional Charge Memo No.9402/A2/2012, dated 03.10.2012 - Various dereliction in duty such as registering Marriages beyond his jurisdiction, fixing the stamp duty when there is no guideline value etc., and also causing loss to the Government by levying lesser registration fees".

4. The enquiry was started against the respondent in the year 2013 with respect to all the four charges. He participated in the enquiry and gave his statements. The enquiries were accordingly concluded starting from 30.09.2013 to 01.12.2015, covering all the four charges. Except charge No.1, other charges were found to be proved. Further, explanations were called for separately for each charge, starting from 20.03.2014 onwards and ending with 28.07.2015. In the meanwhile, the respondent filed another W.P.(MD).No.19689 of 2014, inter alia, alleging that the charges cannot be maintained, as the time limit fixed by the learned Single Judge had expired. The learned Single Judge, while concurring with the submissions made by the learned counsel appearing for the respondent, quashed the charge memos issued against the respondent. Challenging the same, the appellants are now before this Court with this Writ Appeal.

5. Mr.B.Pugalendhi, learned Additional Advocate General, would submit that delay per se cannot be a ground to set aside the charges framed against the respondent. It was a case, where the respondent did participate in the enquiry, even after the time limit had expired. Though the explanations were called for in the year 2014, time was sought for on the ground of pendency of the said Writ Petition, against which the present Writ Appeal has been filed and in any case, the replies were given only on 30.08.2016 for all the four charges. Thus, the respondent has committed fault in delaying the matter. Therefore, the order of the learned Single Judge with respect to delay is not correct.

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6. Insofar as the charges framed on the exercise of power by the respondent as a quasi judicial authority is concerned, the Judgment relied upon by the learned Single Judge in Zunjarrao Bhikaji Nagarkar Vs. Union of India, reported in 1999 (7) SCC 409, was found to be no longer good law, in view of the decision of a Larger Bench of the Hon'ble Apex Court in Union of India and others Vs. Duli Chand reported in 2006 (5) SCC 680. Thus, according to the learned Additional Advocate General, the order passed by the learned Single Judge is liable to be set aside and the appellants would pass final orders on consideration of the representation already given by the respondent, within a period of six weeks.

7. Mr.E.V.N.Siva, learned counsel appearing for the respondent, on the other hand, would submit that it is a case of continued inaction attributable to the appellants. When a direction was issued by this Court, the appellants are duty bound to comply with the same and the respondent has been languishing for more than six years. The learned counsel for the respondent has made reliance upon the Judgment of a Division Bench of this Court in State of Tamil Nadu Vs. T.Ranganathan, reported in 2010 (3) MLJ 625, to buttresses his submission.

8. We have considered the above submissions made by the learned counsel on either side and perused the materials carefully.

9. In the case on hand, there were only two charges pending at the time of passing the order by the learned Single Judge in W.P (MD).No.17069 of 2014, dated 12.07.2012. Altogether, four charges were framed. The respondent did participate in the enquiry even after the lapse of six months time fixed by the learned Single Judge, by order dated 12.07.2012. Therefore, it is not open to the respondent to take a plea that the charges would lapse for non-compliance. The Judgment, referred to by the learned counsel appearing for the respondent in T.Ranganathan's case, cited supra, was considered by the subsequent Division Bench holding that mere non-compliance per se will not enable the delinquent officer to seek and obtain a clean chit from the charges framed against him. Secondly, it has to be seen as to whether at whose instance the delay has occurred. If the delinquent officer himself is responsible for such delay, then, it is not open to him to contend to the contrary and seek a relief on the ground of non-compliance of the outer time limit fixed by the learned Single Judge. In the case on hand, as stated above, there are other charges as well. Thus, we are of the considered view, the order passed by the learned Single Judge is liable to be set aside, inasmuch as the respondent did participate in the enquiry, even after conclusion of six months period. Therefore, the doctrine of acquiescence also would come into play. We are dealing with a case, where the respondent has given reply to the charges framed against him. Therefore, what is required to be done by the appellants is to pass final orders on consideration of the representation made by the respondent. This aspect of the matter has not been considered by the learned Single Judge, while quashing the charges framed against the respondent.

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10. On the second issue, as rightly pointed out by the learned Additional Advocate General, the Judgment in Zunjarrao Bhikaji Nagarkar's case was found to be no longer good law by the subsequent decision of Larger Bench of the Hon'ble Apex Court in Duli Chand's case, referred to supra. For better appreciation, Paragraph Nos.5 to 9 read as follows:-

> 5. The law on the subject was considered in extenso in the three-Judge Bench decision of Union of India v. K.K Dhawan, 1993 2 SCC 56 wherein it was noted that the view that no disciplinary action could be initiated against an officer in respect of judicial or quasi-judicial functions was wrong. It was further said that the officer who exercises judicial or quasi-judicial powers acting negligently or recklessly could be proceeded against by way of disciplinary action. The Court listed six instances when such action could be taken: (SCC p. 67, para 28)
>
> > "28. (i) where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
> >
> > (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
> >
> > (iii) if he has acted in a manner which is unbecoming of a government servant;
> >
> > (iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
> >
> > (v) if he had acted in order to unduly favour a party;
> >
> > (vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago 'though the bribe may be small, yet the fault is great'."
>
> 6. The Court, however, made it clear that ultimately the matter would have to depend upon the facts of a particular case. The present case would fall squarely within the fourth instance listed above.
>
> 7. The decision in K.K Dhawan case was considered by this Court and followed in Govt. Of T.N v. K.N Ramamurthy. 1997 7 SCC 101. In that case the Tribunal had set aside the order imposing punishment on an

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officer who had been discharging judicial functions. The Court was of the view that the Tribunal's action was contrary to the several judgments of this Court and the settled law on the question.

8. In 1999 another Bench of two Judges in Zunjarrao Bhikaji Nagarkar considered and referred to these earlier decisions. However, the Court appears to have reverted back to the earlier view of the matter where disciplinary action could be taken against an officer discharging judicial functions only where there was an element of culpability involved. Since in that particular case there was no evidence whatsoever that the employee had shown any favour to the assessee to whom refund had been made, it was held that the proceedings against him would not lie. In fact the Court set aside the disciplinary proceedings at the stage of the issuance of charge-sheet to the charged officer.

9. In our opinion, Nagarkar case was contrary to the view expressed in K.K Dhawan case. The decision in K.K Dhawan being that of a larger Bench would prevail. The decision in Nagarkar case therefore does not correctly represent the law. Inasmuch as the impugned orders of the Tribunal and the High Court were passed on the law enunciated in Nagarkar case this appeal must be allowed. The impugned decisions are accordingly set aside and the order of punishment upheld. There will be no order as to costs.

11. Thus, the reasons assigned by the learned Single on the second issue also cannot be sustained in the eye of law. The other decisions relied upon by the learned Single Judge of this Court are also cannot be taken note of, in view of the categorical pronouncement of the Hon'ble Apex Court in Duli Chand's case, referred to supra, which governs the issue as-on-today. Thus, we are constrained to quash the order passed by the learned Single Judge.

12. At the risk of repetition, we have to state that the very fact that the reply was given on 30.08.2016 itself is a material ground to non-suit the respondent with respect to the non-compliance of the earlier order. In this case, though the explanation was called for from 20.03.2014 onwards, the respondent did not give any reply immediately. Therefore, for his own fault, the respondent cannot take advantage of the situation.

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13. In the result, the order dated 19.04.2017 made in W.P.(MD). No.19689 of 2014, shall stand set aside and the Writ Appeal is allowed. Taking note of the fact that what is required to be passed is a final order, as the respondent/Writ Petitioner has given reply to the charges framed against him, we direct the appellants to pass final orders within a period of six weeks from the date of receipt of a copy of this Judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1.The Secretary to Government,
Commercial Taxes and Registration Department,
Fort.St.George, Chennai 600 009.

2.The Inspector General of Registration,
100, Santhome High Road,
Pattinapakkam, Chennai 600 028.

+1CC to Mr.E.V.N.SIVA, Advocate, SR.No. 78691
+1CC to the Special Government Pleader SR.No. 78562

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13.08.2018

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ES/SKN/RSK/SAR 4/31.08.2018/7P/5C

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