

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.10053 of 2006

S.Packiam

.. Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai - 600 009.

2. The Inspector General of Registration,
Chennai - 600 028.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the records relating to orders in (1) G.O.(D) No.420, Commercial Taxes & Registration (K) Department dated 26.09.2012 of the first respondent (2) Pro.No.55227/R2/2001 dated 21.09.2004 of the second respondent (3) Pro.No.60979/A2/2004 dated 10.09.2009 of the Second Respondent to quash the same and issue consequential directions to the respondents to regularise the period of suspension from 03.02.2003 to 26.09.2004 as duty for all purposes and to give all consequential benefits with interest on delayed payment to the petitioner.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.T.M.Pappiah, (for R1 & R2)
Spl.GP (R)

O R D E R

The instant writ petition is challenging the orders in (1) G.O.(D)No.420, Commercial Taxes & Registration (K) Department dated 26.09.2012, issued by the Secretary to the Government, Commercial Taxes and Registration Department, Chennai, (2) Pro.No.55227/R2/2001 dated 21.09.2004 of the Inspector General of Registration and to issue consequential directions to the respondents to regularize the period of suspension from 03.02.2003 to 26.09.2004 as duty for all purposes and to give all consequential benefits with interest on delayed payment to the petitioner.

2. The petitioner entered the service of the Government as Senior Inspector of Co-op. Societies in August 1974. He cleared the examination conducted by the Tamil Nadu Public Service Commission and was appointed as Sub Registrar, Grade II, in the Registration Department. He was retired on 31.10.2010. Just before his retirement, the petitioner was served with the charge memo. The charges against the petitioner read as under:-

"Statement of charges framed against
Thiru.S.Packiam, Joint Sub Registrar - I, Krishnagiri
(Formerly Joint Sub Registrar I,
Tiruvannamalai)

"While you (Thiru.S.Packiam) were serving as Joint Sub-Registrar I, Tiruvannamalai, you had registered the documents mentioned in the following list, without verifying the remittance challans presented by the individuals for having remitted the amount under Section 41, as to whether the amounts were actually remitted in the Treasury as per the challans and confirming the same, thereby you were responsible for causing revenue loss of stamp duty as stated, in column 5 of the list. You hereby acted without verifying the remittance challans presented under Section 41 of the Indian Stamp Act and also in violation of the circular instructions given in letter No.28219/C2/97-2 dated 13.5.97 of the Inspector General of Registration."

S.No.	Document No. / Year	Stamp Duty payable	Amount remitted	Loss
1.	2.	3.	4.	5.
1.	1471/98	12680	50	12630
2.	585/99	38280	280	38000
		50960	330	50630

Annexure - II

Statement of allegations namely imputation of misconduct or misbehavior in support of the charges framed against Thiru.S.Packiam, Joint Sub Registrar I, Krishnagiri (Formerly Joint Sub Registrar I, Tiruvannamalai).

Since Thiru.S.Packiam while serving as Joint Sub-Registrar-1, Tiruvannamalai, on the basis of challans remitting lesser amount without remitting the proper amount of stamp duty had registered two documents and thereby caused loss of stamp duty to the Government. Under Section 41 of the Indian Stamp Act, if the amount of stamp duty payable had been remitted by the individuals in the bank/Treasury directly and the challan thereon is presented, only after satisfying the amount had been actually remitted the

document should be registered. Further, in this regard the office of the Inspector General of Registration in letter No.28319/C2/97-2 dated 13.5.97 has issued instructions that in cases of remittances of stamp duty by the individuals in the bank/treasury, the Sub-Registrar prior to registration of the document, keep the same pending reconcile whether amount had been remitted actually in the bank/treasury and then only register the document. The delinquent officer, not following the above procedure registered thereby responsible for the loss of Rs.50,630/- incurred to the Government.

3. He was given a second charge memo No.55227/B5/B7/2001-1 on 03.02.2003, which reads as under:-

"Statement of charges framed against
Thiru.S.Packiam, Joint Sub - Registrar - I, District
Registrar's Office, Krishnagiri

Charge - 1

"While you (Thiru.S.Packiam) were working at Thiruvannamalai District Registrar's office as Joint Sub-Registrar -1, on presentation of sale deed for registration (D.No.585/99) executed on 8.4.99 by Thiru. N. Karthikeyan to Thiru. N. Karunanithi, conveying 2512 Sq. Ft of site in Town Survey No. 1727/2 of 27th block of 4th ward of Thiruvannamalai, you had received Rs. 38,300/- as deficit stamp duty under Section 41 of the Stamp Act, and on 29.4.99 you prepared the challan for Rs. 280/-, obtained the signature of the claimant, remitted the amount of Rs.280 (on 29.4.99) and manipulated the challan as if Rs. 38,280/- was remitted and kept yourself Rs.38,020/- which was owed to the Government. Moreover, in violation of instructions given in the proceedings No. 28219/C2/97-2 of the Inspector General of Registration dated. 13.05.1997, wherein it has been stipulated that in the cases of documents presented for registration along with remittance challan, by the parties, the document to be kept pending and only after verification, the document to be registered; instead registered the above document forthwith without keeping it pending and without verification in violation of the above instructions, thereby failed to maintain integrity and devotion to duty in Government Service and acted against Rule 20(1) of the Government Servants Conduct Rules."

Charge - 2

"While you (Thiru.S.Packiam) were working at Thiruvannamalai District Registrar's office as Joint Sub-Registrar -1, on presentation of the sale deed (D.No.585/99) executed on 08.04.99 by

Thiru.N.Karthikeyan to Thiru.N.Karunanithi, conveying 2512 Sq.Ft of site in Town Survey No.1727/2 of 27th block of 4th ward of Thiruvannamalai, on demand, received a sum of Rs.1000/- as bribe to register the above document, thereby failed to maintain integrity and devotion to duty in Government service and acted against Rule 20(1) of the Government Servants Conduct Rules."

4. The petitioner was placed under suspension. The proceedings under the Tamil Nadu Civil Services (Discipline & Appeal) Rules, were initiated on the basis of charge memo No. 55227/B5/B7/2001-1 dated 03.02.2003. An enquiry officer was appointed and enquiry was conducted. The enquiry officer state that in charge No.1, only part of the charge alone was proved and charge No.2 stands completely proved. Second show-cause notice was issued on 30.01.2004 with the enquiry report and the petitioner asked to submit his response. After considering the charges, enquiry report and explanation of the petitioner, the disciplinary authority by its order dated 21.09.2004, granted punishment of stoppage of increment with cumulative effect for 5 years. The findings of the disciplinary authority reads as under:-

"6. Charges, enquiry report, explanation of the delinquent officer, evidences on hand are considered voluntarily and carefully.

Charge 1

The findings of the Enquiry Officer that on scrutinization of details written in the challan, it was confirmed that the signature found therein was not that of the delinquent officer and hence it was substantiated that the delinquent officer had not filled up the challan and there was no evidence that the delinquent officer had gone to the Treasury and remitted the amount and the finding of the Enquiry Officer that the corrections by way of fraudulent figures had not been carried out by him have been accepted. Further, enquiry in this regard is pending in the criminal investigation department. Moreover, in violation of instructions given in the proceedings No.28219/C2/97-2 of the Inspector General of Registration dated 13.5.97, wherein it has been stipulated that the documents presented along with the challan for payment of deficit stamp duty under Section 41 of the Stamp Act by the claimant directly in the Government Treasury, such documents to be kept pending but directly admitted for registration document No.585/99 pertaining to the charge, without keeping pending, and as such this part of the charge held proved.

Charge 2

The claimant of the document Thiru. N. Karunanithi

in his deposition stated that Thiru.S.Annamalai, document writer told him to give Rs.5,000/- as registration fee for document No.585/99 to the Sub Registrar Thiru.S.Packiam, and he himself directly given Rs.5000/- to the Sub Registrar Thiru.S.Packiam, but on seeing the receipt for payment of registration fee only for Rs.3,715/-, he asked the Sub Registrar Thiru.S.Packiam for having given receipt only for 3,715/- for the amount of Rs.5,000/- paid, Thiru.S.Packiam, Sub Registrar told him as "everything settled". Further, he deposed that the document writer Annamalai, who was present nearby informed that Rs. 1,000/- for Sub Registrar and the remaining Rs.285/- towards other expenses and all these incidents took place in front of Thiru.S.Packiam, Sub Registrar. Furthermore, he deposed that on expiry of nearly six months, letter received from Special Deputy Collector (Stamps), Vellore, to pay deficit stamp duty and he remitted Rs.35,350/-, few days thereafter he came to District Registrar's office and asked Thiru.S.Packiam, to return the document but he asked for payment of deficit stamp duty Rs.3,600/- he remitted Rs.3,600/-, but given receipt only for Rs.3,100/- he asked Sub Registrar for having given the receipt only for Rs.3,100/-, and for this he told "everything settled". In this situation, though the witnesses P.W.2, P.W.3, P.W.4 had not confirmed that the accused officer on demand received Rs.1000 as bribe to register the document No.585/99, as Document Writer Thiru.S.Annamalai intimated that Rs.1000 had to be paid to the Sub Registrar, it is proved that the accused officer had on demand received Rs.1000 through the document writer, on the basis of preponderance of probability.

7. Both the charges upon Sub-registrar Thiru.S.Packiam are proved. For the proven charges stoppage of increment with cumulative effect for five years is ordered as punishment. This will affect his pension.

8. It is informed that if there is any appeal, it can be addressed to the Government in duplicate, with necessary enclosures through proper channel within two months, from the date of receipt of this order. It is requested to acknowledge the receipt of this order on another copy of the same."

5. The petitioner thereafter filed an appeal. In the appeal, the appellate authority found that the punishment given by the disciplinary authority is inadequate taking into account the seriousness of the charges. The appellate authority by invoking its power under Rule 23, Sub rule 1(ii)

of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, issue a notice to the petitioner by enhancing the penalty. The disciplinary authority by the impugned order dated 26.09.2012 in G.O.Ms.No.420, Commercial Tax and Registration (K) Department, enhanced the punishment from stoppage of increment with cumulative effect for five years to the one dismissal from service. It is this order which is under challenge in the present writ petition.

6. The petitioner in the writ petition contended as under:-

a) As regards Charge No.1, the Respondents failed to consider that on the date of alleged occurrence, i.e. on 29.04.1999, the Petitioner was not at Headquarters as Joint Sub RegbTrar I, Tiruvannamalai, and on 28.4.1999 evening itself he had handed over Charge of Joint Sub Registrar I, Tiruvannamalai, to the Superintendent / Sub Registrar Thiru Ramakrishnan, left for Chennai on 29.4.1999 to attend the Office of the Inspector General of Registration for personal hearing as per orders in Ne.Mu.No.78984/Bl/91 dated 16.4.1999 attended the office of the second Respondent and was present there for personal hearing both in the Forenoon and afternoon and returned to Tiruvannamalai, at 10 p.m. in the night of 29.4.1999 and resumed Charge as Joint Sub Registrar I, Tiruvannamalai, on 30.4.1999 FN from Thiru Ramakrishnan and while so the allegations and the oral evidence of P.Ws.1 to 3 before the Enquiry Officer that they met the Petitioner at his office on 29.04.1999 at 10.30 a.m. 11.15 a.m. and 1.00 p.m. is out and out false.

b) In support of his contention, the Petitioner had produced (1) Ex.D1 (Communication dated 16.4.1999 of the second Respondent and Endorsement dated 22.4.1999 of the District Registrar (Admin), Tiruvannamalai thereon directing the Petitioner to attend personal hearing on 29.4.1999 at 11.00 a.m.); (2) Ex.D.2 (Application of the Petitioner to the District Registrar (Admn.) for permission to attend the personal hearing dated 28.04.1999 (3) Ex.D.3 (Order granting permission by the District Registrar (Admn.) dated 28.04.1999 (4) Ex.D.4 (Attendance Certificate issued by 2nd Respondent's Office for having attended personal hearing on 29.4.1999 and (5) Ex.D.5 (Travelling Allowance Bill of the Petitioner for the tour undertaken on 29.4.1999) and the Respondents failed to consider the same. In this connection, the Respondents failed to consider the categorical findings of the Enquiry Officer in this regard that the petitioner had been to Chennai on 29.04.1999.

c) The Respondents failed to consider the further findings of Enquiry Officer that on

verification of Treasury Challan, it is clear that the Petitioner had not filled up the Challan, that the document Writer himself obtained the signature of P.W. 1 in the ^-•Challans, as per evidence of P.Ws. 2 and 3 that there is no basis for the allegation that the Petitioner had gone to Treasury and remitted the amount and the corrections made therein was by the Petitioner and hence there is no basis for the allegation that on 29.4.99, Challan was prepared for the remittance of Rs.280/- and signature of Executants was obtained therein and the amount remitted but the challan was forged as if Rs.38280/- was remitted. Hence, the first part of Charge No.1 cannot be held as proved and the findings to the contra are without basis.

d) As regards second part of Charge No.1, the Enquiry Officer and the Respondents failed to consider the contention of the Petitioner that already disciplinary proceedings under Rule 17(b) of the Rules was initiated in Memo No.54885/B7/2001-7 dated 6.3.2002 with regard to alleged violation of Circular Instructions of the Head of the Department in Letter No.28219/E2/97-2 dated 13.5.1997 in respect of Document No.585/99, and erred in not deleting the second part of Charge No.1. The contention of the Respondents that the Charges framed on 6.3.2002 and 03.02.2003 (second Part of Charge No.1) are different is without basis. It is pertinent to mention that the in the disciplinary proceedings initiated on the same charge, on 6.3.2002, final order has not been passed in the case of the Petitioner though enquiry was completed. Out of 19 officers against whom charges were framed in this regard 11 cases have been disposed of. In this regard it is submitted that the first Respondent Government have withdrawn the Charge Memo dated 6.3.2002 and have issued a fresh Charge Memo dated 18.01.2005 in Supersession of the Charge Memo dated 6.3.2002 and enquiry was over in the revised Charge Memo on ----

e) As regards charge No.2, the Departmental Witnesses Viz.P.Ws.1 (Complainant), 2, 3 and 4 have not deposed in the regular enquiry before the Enquiry Officer that the Petitioner had demanded bribe of Rs.1000/- that it was given to the Petitioner by the Complainant and that he had accepted the same. In fact P.Ws. 2 (Srinivasan) and P.W.3 (Dhandapani) have categorically stated that they did not know as to how much amount the Complainant (Karunanidhi) paid to me and that did not also know as to how much amount he had remitted over and above the Registration Fee and that Karunanidhi had not told them anything about this. In the circumstances, the second Respondent ought to have come to the conclusion that the Charge had not been proved but the second Respondent had

accepted the perverse findings of the Enquiry Officer.

f) While the complainant (PW1) himself had not deposed that he had informed the Document Writer (Thiru Annamalai) that for registering Doc.No.585/1999, the Petitioner had taken Rs.1000/- and retained the balance of Rs.285/- for other expenses, the Enquiry Officer had sought to render perverse findings of those lines and the second Respondent has failed to consider this aspect but has blindly accepted the perverse findings, which are not based on evidence. The inferences drawn by the enquiry officer apparently were not supported by any evidence. It is settled law that conclusions are to be based on evidence and if the enquiry report is based on conjectures and surmises, it cannot be sustained (Roop Singh Negi's Case)- (2009) 2 SCO 570).

g) The Respondents ought to have seen that in the absence of the Document Writer, Thiru Annamalai being examined as a Departmental witness who is a crucial witness, this Charge cannot be held as proved. The Respondents failed to analyse the evidence with reference to the details in the complaint, allegations in the Charge Memo, statement in the preliminary enquiry given by the Complainant and the oral evidence of Departmental Witnesses (PWs.1 to 4). The Respondents failed to consider the explanation, further representation on enquiry report, the contentions of the Petitioner in his appeal and detailed explanation dated 18.04.2012 on this aspect.

h) In the complaint, the basis on which charges were framed, it is stated that on 30.04.1999 that a sum of Rs.38,300/- was paid by the complainant, Karunanidhi and Charge No.1 has been framed as such, but at the regular enquiry it was stated that a sum of Rs.38,280/- was paid and that too on 29.4.1999 and the Respondents failed to consider the contradiction in respect of date of incident as well as the amount. On this ground alone, the respondents ought to have held that the complaint itself is false, fabricated and baseless. The fact remains that the complainant himself had remitted the deficit stamp duty of Rs.38,000/- on 15.5.2009 at Tiruvannamalai and this fact has not been taken in to consideration at all.

i) It is submitted that the 1st Respondent in his Counter Affidavit dated 28.05.2009 (filed in W.P.No. 1673/2007 through the Inspector General of Registration) in the Hon'ble High Court of Madras stated as follows :

Para 6, 11, and 18

"As per directions of the IGR, the Inquiry Officer has submitted his Inquiry Report in letter

No.2235/DIG/03 dated 30.9.03. The Inquiry Officer has submitted his findings as the charges regarding the tampering of challan has not been proved but the demand and acceptance of bribe of Rs.1000/- is proved on the basis of preponderance of probability".

"The findings of the Inquiry Officer was accepted by the IGR and it was decided to call for the further explanation from the petitioner on the findings of the Inquiry Officer".

The Hon'ble Justice of the Madras High court in his order dated 03.01.2011 in W.P.No. 1673/2007 observed as follows:

Para 2 : However on 3.2.2003, a charge memo came to be issued against him under Rule 17 B of the Tamil Nadu Government Servants (Discipline and Appeal) Rules with two charges. The Petitioner submitted his explanation for the charges and an enquiry was conducted through an Enquiry Officer. It is seen that the Enquiry Officer accepted the case of the Petitioner and submitted a report to the effect that THE FIRST CHARGE WAS NOT PROVED while stating that the second charge stood proved. After a copy of the report of the Enquiry Officer was furnished, the Petitioner submitted his explanation on the same and thereafter the second respondent passed final orders on 21.09.2004, holding that charge No.1 has not been proved. The Second Respondent further held that the second part of Charge No.1 and the second charge were proved and passed on order of punishment of stoppage of increment for five years with cumulative effect."

It is further submitted that the Hon'ble Justice of the Madras High Court in his order dated 16.03.2012, in Review Application No.21 of 2011 (in W.P.No. 1673 of 2007) held as follows :

"THIS COURT, IN ITS ORDER DATED 3.1.2011, HAVING FOUND THAT THE FIRST PART OF THE CHARGE WAS FOUND TO HAVE BEEN NOT PROVED BY THE ENQUIRY OFFICER, WHILE THE LATTER PORTION OF CHARGE NO.1 AND CHARGE NO.2 HAVING BEEN PROVED"

J) The Respondents failed to follow the General Principles of 'Oral Inquiry' stipulated in Chapter IV - Para I of the Hand Book of Disciplinary Procedures published by Government which is extracted hereunder:-

"The Principle underlying the maxim "Audi Alteram Partem" that no one should be condemned unheard, is incorporated in Article 311 of the Constitution of India. Clause (2) of Article 311 provides that no

person who is a member of the Civil Service of the Union or a State shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of all those charges and where it is proposed after such enquiry, to impose on him any such penalty, such penalty may be imposed on the basis of evidence adduced during such enquiry.

It may be seen that the penalty imposed by the second Respondent/ Disciplinary Authority and the enhanced penalty imposed by first Respondent / Appellate Authority are not based on evidence adduced during the enquiry.

K) That apart the first Respondent as Appellate Authority has failed to scrupulously follow the stipulation in Rule 23(1)(a) of the Tamil Nadu Civil Services (D.&A) Rules as to "whether the facts on which the order was based have been established." Further clause (ii) of the Proviso under Rule 23(1)(c) of the said Rules reads. "If the enhanced penalty which the Appellate Authority proposes to impose is one of the major penalties specified in the said Rules and an enquiry under sub rule (b) of Rule 17 of the said rule has already been held, the Appellate Authority shall, after giving the Appellant a reasonable opportunity of making representation against the penalty proposed on the basis of evidence adduced during the enquiry, make such orders as it may deem fit. The first Respondent / Appellate Authority has failed to scrupulously follow this provision also."

7. The respondents have denied the allegations in the counter.

8. Heard the counsel for the parties.

9. It is the contention of the learned counsel for the petitioner that the charges are completely in vague and no particulars have been given. The learned counsel for the petitioner states that the complaint of the charges do not match with the deposition of the witnesses. He would also argue that other than the complainant, no other witnesses have been examined. The learned counsel for the petitioner also argued that since the credibility of the complainant has not been accepted for the first charge, he could not have been believed the second charge. The learned counsel for the petitioner would also contend that the complaint has been filed after two years of the offence, therefore, the complaint is not maintainable.

10. The first charge against the petitioner is that while working as Joint Sub-Registrar-1, at the office of the District Registrar, Tiruvannamalai, a sale deed was presented before him which was executed by one Mr.N.Karthikeyan to one Mr.N.Karunanithi, conveying 2512 sq.ft of site in Town survey No.1727/2 of 27th block of 4th ward of Thiruvannamalai. On demand, the petitioner has received a sum of Rs. 38,300/- as deficit stamp duty under Section 41 of the Stamp Act. It is alleged that on 29.04.1999, the petitioner prepared the challan for Rs.280/-obtained the signature of the claimant, remitted the amount of Rs.280/-only to the Registry. The petitioner manipulated the challan as if Rs.38,280/- was remitted and kept a sum of Rs. 38,020/- with himself.

11. The second charge is that during the same transaction referred to above, the petitioner received a sum of Rs.1000/- as bribe to register the document and therefore, the petitioner failed to maintain integrity and devotion to duty in the Government service. With regard to the first charge memo, the enquiry officer found that the signature of the challan was not of the petitioner and therefore it was not the petitioner who filled up the challan. Enquiry officer also found that there is no evidence that the petitioner had gone to the treasury to remit the amount. It was also found by the enquiry officer that the corrections made in the challan have not been carried out by the petitioner. The petitioner was therefore exonerated from the major part of the first charge. But the second part of the charge, i.e., he has violated the instructions given in proceedings No.28219/C2/97-2 of the Inspector General of Registration dated 13.05.1997, wherein it has been stipulated that when documents are presented along with the remittance challan for the payment of deficit stamp duty of the Stamp Act, by the Government treasury, such documents have to be kept pending and should be submitted only after verification by the Registrar, had been flouted. The enquiry officer however found that the petitioner had demanded that on the basis of preponderance of probability it could be said that the petitioner had demanded and paid a sum of Rs.1000/- by Mr.Karunanithi who was the prosecution witness.

12. At this juncture, it is pertinent to state that the action of the Government in issuing the show-cause notice for enhancing the punishment was challenged by the petitioner in WP.No.1673 of 2007. This Court by its order dated 03.01.2011, upheld the jurisdiction of the State Government to issue notice to enhancing the punishment. The petitioner filed a review of this said order. The Review petition has also been dismissed by an order dated 16.03.2012. It is pertinent to mention that while issuing a notice for enhancing the punishment, opinion was called for from the Tamil Nadu Public Service Commission. The Tamil Nadu Public Service Commission gave its opinion that in view of the fact that the enquiry officer had found that the charge that the petitioner had received a sum of Rs.1000/- for registering document had been

proved. The penalty imposed for reduction of increment for five years with cumulative effect is highly inadequate.

13. The learned counsel for the petitioner took the Court through the deposition of the complainant to show that the findings are perverse.

14. The Hon'ble Supreme court of India in the case of B.C.Chaturvedi Vs. Union of India & others, reported in (1995) 6 SCC 749, observed as under:-

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict

proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

14. In *Union of India v. S.L. Abbas* [(1993) 4 SCC 357 : 1994 SCC (L&S) 230 : (1993) 25 ATC 844] when the order of transfer was interfered with by the Tribunal, this Court held that the Tribunal was not an appellate authority which could substitute its own judgment to that bona fide order of transfer. The Tribunal could not, in such circumstances, interfere with orders of transfer of a government servant. In *Administrator of Dadra & Nagar Haveli v. H.P. Vora* [1993 Supp (1) SCC 551 : 1993 SCC (L&S) 281 : (1993) 23 ATC 672] it was held that the Administrative Tribunal was not an appellate authority and it could not substitute the role of authorities to clear the efficiency bar of a public servant. Recently, in *State Bank of India v. Samarendra Kishore Endow* [(1994) 2 SCC 537 : 1994 SCC (L&S) 687 : (1994) 27 ATC 149 : JT (1994) 1 SC 217] a Bench of this Court of which two of us (B.P. Jeevan Reddy and B.L. Hansaria, JJ.) were members, considered the order of the Tribunal, which quashed the charges as based on no evidence, went in detail into the question as to whether the Tribunal had power to appreciate the evidence while exercising power of judicial review and held that a tribunal could not appreciate the evidence and substitute its own conclusion to that of the disciplinary authority. It would, therefore, be clear that the Tribunal cannot embark upon appreciation of evidence to substitute its own findings of fact to that of a disciplinary/appellate authority. "

15. In view of the said findings, it will not be appropriate for this Court to analyze the deposition of the complainant. The evidence of complainant has been analyzed by the enquiry officer, disciplinary authority and appellate authority, who have concurred with each other. It is therefore now not open to this Court to once again go through the evidence. Even after looking the evidence, this Court finds that it cannot be said that the findings of the authority below is perverse and the evidence is such that it cannot be accepted at all.

16. It is well settled that the Evidence Act per se is not applicable to the disciplinary proceedings and that is the reason why even on preponderance of probability, charges can be held to be proved and punishment can be imposed on the basis of those findings. The petitioner also taken a plea of alibi that he was not in station on the date of incident, a point which has not been accepted by the authorities below, as stated in the judgment quoted supra, a Writ court can only go into the issue as to whether the decision making process was correct or not. When there is nothing to show that the decision making process was not reasonable or opportunities were not given to defend once case, a Writ court should not interfere with the findings arrived by the authorities only because another view is possible.

17. The second charge against the petitioner is quire serious. When allegations are made which amounts to loss of confidence, the Court cannot direct reinstatement. Here the allegations against the petitioner is that he claimed a sum of Rs.1000/- from the complainant. The petitioner is working in the Registration Department which has got public dealings. The department cannot be directed to reinstate the petitioner against whom there is a charge of demand of money which has been established.

18. The Hon'ble Supreme Court, in the case of Divisional Controller, Karnataka State Transport Corporation Vs. M.G.Vittal Rao, (2012) 1 SCC 442, observed as under:-

"25. Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed. [Vide Air India Corpn. v. V.A. Rebellow [(1972) 1 SCC 814 : AIR 1972 SC 1343], Francis Klein & Co. (P) Ltd. v. Workmen [(1972) 4 SCC 569 : AIR 1971 SC 2414] and BHEL v. M. Chandrasekhar Reddy [(2005) 2 SCC 481 : 2005 SCC (L&S) 282 : AIR 2005 SC 2769] .]

26. In Kanhaiyalal Agrawal v. Gwalior Sugar Co. Ltd. [(2001) 9 SCC 609 : 2002 SCC (L&S) 257 : AIR 2001 SC 3645] this Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that, (SCC p. 614, para 9) (i) the workman is holding the position of trust and confidence; (ii) by abusing such position, he commits an act which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security

of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trustworthiness or reliability of the employee, must be alleged and proved. (See also Sudhir Vishnu Panvalkar v. Bank of India [(1997) 6 SCC 271 : 1997 SCC (L&S) 1662 : AIR 1997 SC 2249] .)

27. In SBI v. Bela Bagchi [(2005) 7 SCC 435 : 2005 SCC (L&S) 940 : AIR 2005 SC 3272] this Court repelled the contention that even if by the misconduct of the employee the employer does not suffer any financial loss, he can be removed from service in a case of loss of confidence. While deciding the said case, reliance has been placed upon its earlier judgment in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik [(1996) 9 SCC 69 : 1996 SCC (L&S) 1194] .

28. An employer is not bound to keep an employee in service with whom relations have reached the point of complete loss of confidence/faith between the two. [Vide Binny Ltd. v. Workmen [(1972) 3 SCC 806 : AIR 1972 SC 1975] , Binny Ltd. v. Workmen [(1974) 3 SCC 152 : 1973 SCC (L&S) 444 : AIR 1973 SC 1403] , Anil Kumar Chakraborty v. Saraswatipur Tea Co. Ltd. [(1982) 2 SCC 328 : 1982 SCC (L&S) 249 : AIR 1982 SC 1062] , Chandu Lal v. Pan American World Airways Inc. [(1985) 2 SCC 727 : 1985 SCC (L&S) 535 : AIR 1985 SC 1128] , Kamal Kishore Lakshman v. Pan American World Airways Inc. [(1987) 1 SCC 146 : 1987 SCC (L&S) 25 : AIR 1987 SC 229] and Pearlite Liners (P) Ltd. v. Manorama Sirsi [(2004) 3 SCC 172 : 2004 SCC (L&S) 453 : AIR 2004 SC 1373] .]

29. In Indian Airlines Ltd. v. Prabha D. Kanan [(2006) 11 SCC 67 : (2007) 1 SCC (L&S) 359 : AIR 2007 SC 548] , while dealing with the similar issue this Court held that: (SCC p. 90, para 56)

"56. ...loss of confidence cannot be subjective but there must be objective facts which would lead to a definite inference of apprehension in the mind of the employer regarding trustworthiness of the employee and which must be alleged and proved."

30. In case of theft, the quantum of theft is not important and what is important is the loss of confidence of employer in employee. (Vide A.P. SRTC v. Raghuda Siva Sankar Prasad [(2007) 1 SCC 222 : (2007) 1 SCC (L&S) 151 : AIR 2007 SC 152] .)

32. The domestic enquiry found the delinquent employee guilty of all the charges. The enquiry

report was accepted by the disciplinary authority and there is no grievance on behalf of the respondent workman that statutory provisions/principles of natural justice have not been observed while conducting the enquiry. The disciplinary authority imposed the punishment of dismissal from service which cannot be held to be disproportionate or non-commensurate to the delinquency. The Labour Court after reconsidering the whole case came to the conclusion that the enquiry has been conducted strictly in accordance with law in a fair manner and charges have rightly been proved against the delinquent employee. However, considering the difference in the standard of proof required in domestic enquiry vis-à-vis that applicable to a criminal case, the Labour Court repelled the argument of the respondent workman that once he stood acquitted he was entitled to all reliefs including reinstatement and back wages. The learned Single Judge as well as the Division Bench had simply decided the case taking into consideration the acquittal of the delinquent employee and nothing else.

33. In view of the aforesaid settled legal propositions that there is no finding by the High Court that the charges levelled in the domestic enquiry had been the same which were in the criminal trial; the witnesses had been the same; there were no additional or extra witnesses; and without considering the gravity of the charge, we are of the view that the award of the Labour Court did not warrant any interference. Be that as it may, the learned Single Judge had granted relief to the delinquent employee which was not challenged by the present appellant by filing writ appeal. Therefore, the delinquent employee is entitled to the said relief."

19. In view of the above judgment, the claim of the petitioner for reduction in punishment cannot be accepted. The argument of the petitioner that the charges are vague also cannot be accepted. The charges are well defined and clear. Enquiry has been initiated on the basis of second charge dated 30.01.2004. The fact that the petitioner has given earlier charge memo dated 03.02.2003 is of no consequence, because the petitioner has not been put to any prejudice. The proceedings initiated only against the second charge memo. The fact that the enquiry has been initiated after two years also would not take the case of the petitioner further, because the petitioner has not shown, what is the prejudice caused to him by delaying the charge sheet.

20. In view of the above, the writ petition is dismissed.
No Costs.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

Pkn.

To

1. The Secretary,
Government of Tamil Nadu,
Commercial Taxes and Registration Department,
Secretariat, Chennai - 600 009.

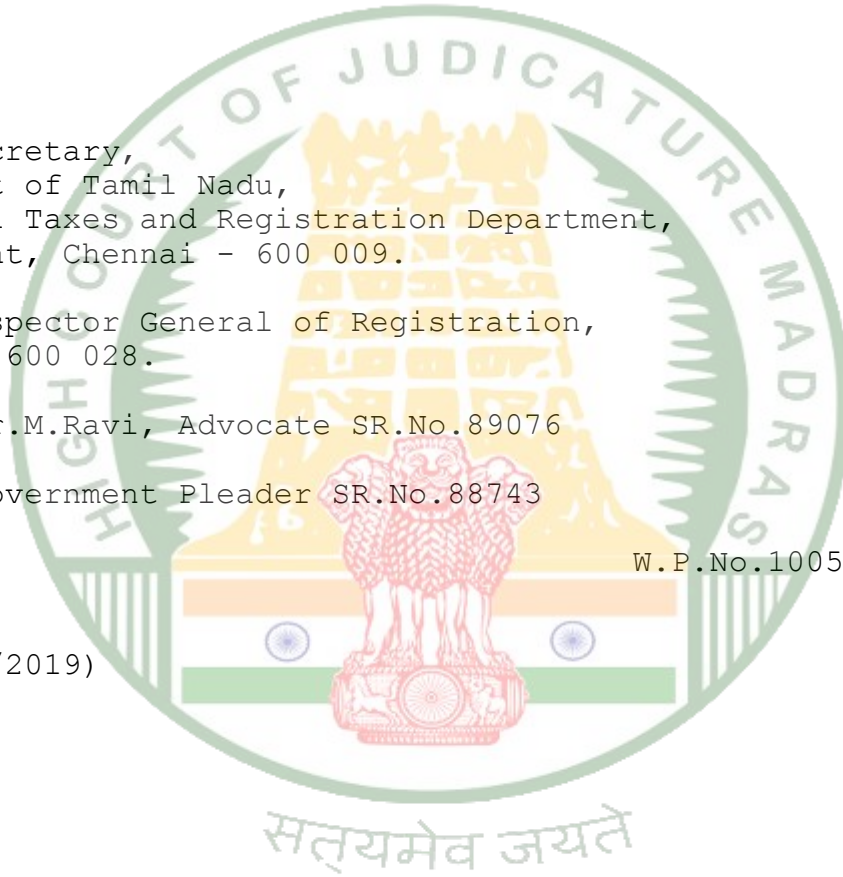
2. The Inspector General of Registration,
Chennai - 600 028.

+1cc to Mr.M.Ravi, Advocate SR.No.89076

+2cc to Government Pleader SR.No.88743

W.P.No.10053 of 2013

NMI (CO)
GMY (21/11/2019)



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