IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
01.02.2019	01.03.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.19507 of 2007

R.Mohanam ... Petitioner

Vs

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

2.The Inspector General of Registration,
Chennai.

3.The Commissioner,
Tribunal for Disciplinary Proceedings,
Chennai. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in connection with the proceedings issued in No.64320/Aa1/ 95-1 dated 08.10.2002 passed by the second respondent and G.O.(D) No.495, Commercial Taxes and Registration (H2) Department, dated 03.10.2006 passed by the first respondent and quash the same and consequently direct the respondents to settle the pension and other pensionary benefits admissible to the petitioner with 18% interest.

WEB COPY

http://www.judis.nic.in

For Petitioner : Ms.T.Aananthi

For Respondents 1&2 : Mr.T.M.Pappiah,
Special Government Pleader

O R D E R

The case of the petitioner is that the petitioner joined service in the Registration Department as a Junior Assistant and thereafter rose to the level of Sub-Registrar. When he was working as Sub-Registrar in the Office of the District Registrar, North Madras (Intelligence), a criminal case has been registered by the Vigilance and Anti-Corruption Department based on a complaint given by one Ponnusamy, who was working as Accountant in Madras Mission Traders, Walltax Road. The criminal case was registered in Rc.No.9/AC/92/MC1 under Section 7 of the Prevention of Corruption Act, 1988. The charge against the petitioner is that the owner of Madras Mission Traders purchased a plot for Rs.5,100/- at No.3, Woodward 3rd Street, in the name of his daughter Umadevi, from one Selvaraj. The property was registered on 10.06.1992 in Document No.455/92. Since the petitioner being the Sub-Registrar at the relevant point of time, he has to inspect the spot. The petitioner states that the said complainant met him on 07.12.1992 and asked him to prepare the documents and thereafter, without hearing the petitioner, the complainant rushed to the Vigilance Office

WEB COPY

http://www.judis.nic.in

and gave a complaint that the petitioner had demanded a sum of Rs.400/-. According to the petitioner, the said complaint was given on ulterior motive. Based on the complaint, the petitioner was arrested and released immediately. Thereafter, he was continuously working in the said post till he attained the age of superannuation on 30.06.1997. Later, the matter was referred to the Tribunal for Disciplinary Proceedings, Madras and a case has been registered by the Commissioner of the Tribunal in D.E.No.9/94 in this connection. The Tribunal had also examined the witnesses and had given its findings that the charges against the petitioner are proved. Thereafter, a show cause notice was issued to the petitioner by the Inspector General of Registration on 14.07.1999, for which, the petitioner had also given his reply, pursuant to which, the Inspector General of Registration imposed a punishment of removal from service on the petitioner, by order dated 08.10.2002. The punishment of removal from service was imposed retrospectively from the date of attaining the age of superannuation. The appeal preferred by the petitioner to the Government on 29.11.2002 also ended in rejection, pursuant to which, the Government had passed an order in G.O.(D)No.495, Commercial Taxes and Registration (H2) Department dated 03.10.2006 to that effect.

WEB COPY

http://www.judis.nic.in

2.With the above background, the petitioner has come up with this writ petition challenging the above orders.

3.The learned counsel for the petitioner has submitted that the registration of the property was done on 04.12.1992 and thereafter, even before the inspection and other formalities are completed, the complaint has been given on 07.12.1992 itself, ie., within three days from the date of registration, which itself shows the attitude of the complainant. It is also submitted that the petitioner never demanded a pie from the complainant. It is also submitted that there are no independent witnesses examined by the Tribunal and that there are inconsistencies in the statements given by the complainant before the police authorities and the Inspector General of Registration. Further, there are no eye-witnesses to the occurrence. The learned counsel further submitted that the finding given by the Tribunal is based only on preponderance of probabilities and not otherwise and that the Tribunal had not applied its mind and the order has been passed in a mechanical fashion. It is also submitted that when the petitioner has been allowed to continue till superannuation, the impugned order removing him from service was passed and made effective only from the date of his superannuation, ie., retrospectively, which itself shows

WEB COPY

http://www.judis.nic.in

the intention and attitude of the Disciplinary Authority. The learned counsel further submitted that due to the above act of the authorities, even now the pension and other benefits have not been settled to the petitioner and he has been put to severe mental agony in view of the same. Stating so, she prayed for setting aside the impugned orders and to consequently direct the respondents to settle the pension and other benefits admissible to the petitioner with 18% interest. She relied upon the decision of this Court in Elangovan, M. v. The Trichy District Central Co-op.Bank Ltd., reported in 2006 (2) CTC 635 to state that mental agony and suffering due to protracted disciplinary proceedings would be much more than punishment and that the petitioner should not be made to suffer due to the mistake committed by the Department.

4.Denying the averments made by the petitioner, a counter affidavit has been filed on behalf of the respondents 1&2, in which, it is stated that Document No.455/92 of Sub-Registrar Office, Sowcarpet was registered on 10.06.1992; the petitioner inspected the property on 24.07.1992. Even though initially the date has been mentioned as 24.07.1992 in the inspection report, the petitioner had overwritten the date of report as 26.11.1992 later. It is specifically mentioned in the

WEB COPY

http://www.judis.nic.in

counter that though the petitioner had completed inspection on 24.07.1992, the reason to send his inspection report to the Sub-Registrar, Sowcarpet on 26.11.1992 was not explained, which shows the intention of the petitioner to demand and accept illegal gratification. It is further stated that the receipt of report from the Sub-Registrar, Sowcarpet in respect of Document No.455/92 dated 24.07.1992 has not been mentioned in the office record. Further, the date of report as 24.07.1992 which was overwritten by the petitioner as 26.11.1992, has not been attested by the petitioner. Even if the Building Inspection Report was sent to the Sub-Registrar, Sowcarpet on 27.11.1992, the Sub-Registrar would have received on 02.12.1992. Therefore, when the complainant met the petitioner on 04.12.1992, he would have advised the complainant to get back the document from the Sub-Registrar Office, but he has demanded and agreed to receive Rs.400/- and insisted to pay to him on 07.12.1992 at 5.30 p.m. in the office.

5.Reiterating the averments made in the counter, the learned Special Government Pleader appearing for the respondents 1 and 2 has prayed for dismissing the writ petition.

WEB COPY

http://www.judis.nic.in

6.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

7.According to the petitioner, the registration of the property was done on 04.12.1992 and thereafter, even before the inspection and other formalities are completed, the complaint has been given on 07.12.1992 itself, ie., within three days from the date of registration, which itself shows the attitude of the complainant. It is also submitted that the petitioner never demanded a pie from the complainant; that there are no independent witnesses examined by the Tribunal; that there are inconsistencies in the statements given by the complainant before the police authorities and the Inspector General of Registration and there are no eye-witnesses to the occurrence.

8. According to the learned Special Government Pleader appearing for the respondents 1 and 2, though initially the date has been mentioned as 24.07.1992 in the inspection report, the petitioner had overwritten the date of report as 26.11.1992 later; that though the petitioner had completed inspection on 24.07.1992, the reason to send his inspection report to the Sub-Registrar, Sowcarpet on 26.11.1992 was not explained, which shows the intention of the petitioner to

WEB COPY

http://www.judis.nic.in

demand and accept illegal gratification. Further, the petitioner has not made any attestation for the correction made.

9.It is seen from the materials available on record that the petitioner was earlier suspended from service by order dated 09.12.1992 of the Inspector General of Registration, Madras. Challenging the same, the petitioner preferred an application before the Tamil Nadu Administrative Tribunal, Madras in O.A.No.3558 of 1993. The Tamil Nadu Administrative Tribunal passed an order on 22.09.1993 observing that the phenolphthalein test conducted based on the complaint, proved negative and further, no money was recovered from the petitioner based on the complaint and trap. Observing so, the Tribunal stayed the suspension order of the petitioner on the ground of continued suspension and thereafter, final order has been passed on 24.04.1997 revoking the suspension order. Even though suspension has been revoked, subsequently an order has been passed by the Government in G.O.(3D)No.20 Commercial Taxes and Religious Endowments Department dated 30.06.1997 not permitting him to retire from service and further retaining him in service, till the conclusion of the enquiry into the charges made against him and final orders passed by the competent authority. Thereafter,

WEB COPY

http://www.judis.nic.in

based on the report dated 26.10.1998 of the Tribunal for Disciplinary Proceedings, and the explanations given by the petitioner, the impugned order dated 08.10.2002 has been passed.

10.Now, it would be appropriate to look into the evidences adduced by the witnesses before the Tribunal for Disciplinary Proceedings.

11.Ponnusamy, who was working as Accountant in the Madras Mission Traders and examined as P.W.1 before the Tribunal for Disciplinary Proceedings, deposed before the Tribunal that the money was given only on the demand of the petitioner.

12.But P.W.2-R.Balasubramanian, in his evidence, has stated that he found colour change in the sodium carbonate solutions, but the same was not very prominent and it was very light. Further, in the evidence given before the Tribunal for Disciplinary Proceedings by one Nallamuthu-P.W.9, who was working as District Registrar, Villupuram, it is stated that the Deputy Superintendent of Police arranged for Phenolphthalein Test and in that test, colour change was not visible. P.W.9 also deposed that he was informed by the typist-Meenakshi about the trap incident in the office and he went to that place and he

WEB COPY

http://www.judis.nic.in

found that there was no visible colour change of sodium carbonate solution. P.W.9 has also categorically deposed that he is very familiar with the signature of the petitioner, and the handwriting contained in Ex.P3, which is a piece of paper containing the residential address of the Assessing Officer, is not the handwriting of the Assessing Officer, the petitioner herein. But, whereas there was a denial on the part of P.W.1 in his evidence when he was put a suggestion that Ex.P3 was not given by the Assessing Officer, the petitioner herein.

13.Tmt.Meenakshi, who was examined as D.W.1 on the side of the defence, deposed before the Tribunal during cross examination that the table and chair meant for the petitioner was occupied by documents and he was not having any chair for himself. She also deposed that it is incorrect to state that the petitioner was performing his work by using the table and chair allotted to him.

14.Thus, it is clear from the above evidences that the petitioner was not even having a chair or table to perform his work. He was temporarily sitting in any chair that might have been available at the relevant point of time. This Court is also able to infer from the above evidences that phenolphthalein test proved negative in the trap

WEB COPY

http://www.judis.nic.in

incident that took place on 07.12.1992. This Court is also able to infer that the deposition of the complainant, ie., P.W.1, is not corroborating with the evidences adduced by the other witnesses, in respect of chemical analysis. Only in these circumstances, the Tamil Nadu Administrative Tribunal, set aside the suspension order on 24.04.1997, by giving a finding that phenolphthalein test was not proved and also holding that prolonged suspension is bad in law. This Court is not inclined to deviate from the said finding rendered by the Tamil Nadu Administrative Tribunal.

15. In the above background, the following cases are relied upon for deciding the issue on hand.

16. In the case of **Suraj Mal v. State (Delhi Administration), reported in (1979) 4 SCC 725**, it has been clearly held by the Apex Court that mere recovery of bribe money divorced from the circumstances under which it was paid, is not sufficient to convict when the substantive evidence in the case is not reliable. The relevant portion reads thus:

> "**2....In our opinion, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. Moreover, the appellant in his statement under Section 342 has denied the recovery of the mosey and has stated that he had been**

WEB COPY

http://www.judis.nic.in

falsely implicated. The High Court was wrong in holding that the appellant had admitted either the payment of money or recovery of the same as this fact is specifically denied by the appellant in his statement Under Section 342 Cr. PC Thus mere recovery by itself cannot prove the charge of the prosecution against the appellant, in the absence of any evidence to prove payment of bribe or to show that the appellant voluntarily accepted the money. For these reasons, therefore, we are satisfied that the prosecution has not been able to prove the case against the appellant beyond reasonable doubt. We, therefore, allow the appeal set aside the conviction and sentences passed against the appellant. The appellant will now be discharged from his bail bonds."

17. Adopting the same ratio, the Hon'ble Supreme Court in the case of **C.M.Girish Babu v. CBI,** reported in **(2009) 3 SCC 779,** held that burden of proof on the accused under Section 20 of the Prevention of Corruption Act is not the same as the burden placed on prosecution to prove the case beyond reasonable doubt.

18. Such stand is reiterated by the Apex Court in **M.R.Purushotham v. State of Karnataka [2015(3) SCC 247].**

19. In **State v. K.Narasimhachary** reported in **2005(8) SCC 364,** the Hon'ble Supreme Court held thus:

"**24. Having regard to the facts and circumstances of this case, we are of the opinion that two views are possible and the view of the High Court cannot be said to be wholly improbable; it cannot be said, in view of the discussions made hereinbefore, that the materials brought on record would lead to only one conclusion, i.e., the guilt of the accused. The impugned judgment, therefore, is sustained."**

20. In **Elangovan, M. v. The Trichy District Central Co-op.**

WEB COPY

http://www.judis.nic.in

Bank Ltd., [2006(2) CTC 635], this Court, relying upon the judgment of the Apex Court in **P.V.Mahadevan v. M.D., Tamil Nadu Housing Board [2005(4) CTC 403]**, at Paragraph Nos.14 and 15, observed as follows:

> " **14. It is in this regard, the judgment of the Apex Court is a guiding factor wherein, the Supreme Court has categorically held that keeping an official under charges and disputing integrity would cause unbearable agony and distress to the officer concerned stating that the protracted disciplinary enquiry against the Government employee should be avoided not only in the interest of the employee but also in the interest of inspiring confidence in the minds of the Government employees. Therefore, the Supreme Court heavily came down against the protracted enquiry and put an end to the said enquiry.**
>
> **15. The Supreme Court in this regard for the future guidance states as follows:**
>
> **"14. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a Government employee should, therefore, be avoided not only in the interest of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the Government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the**

http://www.judis.nic.in

disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

21. In **State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede** reported in **2009(15) SCC 200,** the Supreme Court at paragraph No.16, observed thus:

"**Indisputably, the demand of illegal gratification is a sine qua non for constitution of an offence under the provisions of the Act. For arriving at the conclusion as to whether all the ingredients of an offence, viz., demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on the record in their entirety. For the said purpose, indisputably, the presumptive evidence, as is laid down in Section 20 of the Act, must also be taken into consideration but then in respect thereof, it is trite, the standard of burden of proof on the accused vis-`-vis the standard of burden of proof on the prosecution would differ. Before, however, the accused is called upon to explain as to how the amount in question was found in his possession, the foundational facts must be established by the prosecution. Even while invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt.**"

22. The Supreme Court in **Criminal Appeal No.1276 of 2010, dated 09.10.2018 [Dashrath Singh Chauhan v. Central Bureau of Investigation],** at Paragraph No.32, held thus:

"**Since in order to attract the rigors of Sections 7, 13(2) read 13(1)(d) of PC Act, the prosecution was under a legal obligation to prove the twin requirements of "demand and acceptance of bribe**

WEB COPY

http://www.judis.nic.in

money by the accused", the proving of one alone but not the other was not sufficient. The appellant is, therefore, entitled for acquittal from the charges framed against him under the PC Act too. (See para 8 of M.K.Harshan vs. State of Kerala [1996] 11 SCC 720)."

23. The Supreme Court in **Rakesh Kapoor v. State of H.P.** reported in **2012(13) SCC 552,** at Paragraph No.21, observed thus:

"**In para 25, this Court quoted the decision rendered in** C.M. Girish Babu vs. CBI **and held that: (Banarsi Dass case, SCC p.457)**
" **25.....mere recovery of money from the accused by itself is not enough in the absence of substantive evidence of demand and acceptance."**
In the sama para (Banarsi Dass case, SCC p.457, para 25), a reference was also made to Suraj Mal vs. State (Delhi Admn.) (SCC p.727, para 2) wherein this Court took the view that mere recovery of tainted money from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. This Court further held that mere recovery by itself cannot prove the charge of the prosecution against the accused in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe. After underlying the above principles, and noting that two prosecution witnesses turned hostile, while giving the benefit of doubt on technical ground to the accused, this Court set aside the judgment of the High Court and acquitted the accused of both the charges i.e. under Section 161 **IPC and under** Section 5(2) **of the 1947 Act.**

24. The Supreme Court in **B.Jayaraj v. State of A.P. [2014(13) SCC 55],** at Paragraph Nos.7 and 9, held as follows:

"**7. In so far as the offence under** Section 7 **is concerned, it is a settled position in law that demand of illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under**

WEB COPY

http://www.judis.nic.in

> **Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration reference may be made to the decision in C.M. Sharma Vs. State of A.P. and C.M. Girish Babu Vs. C.B.I."**
>
> **"9. In so far as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Section 13(1)(d)(i)(ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."**

25. By the above cited judgments, the Hon'ble Apex Court made it so clear that a mere recovery of money from the accused person may not be the sole ground for punishing the employee. The said judgments are squarely applicable to the present case. Therefore, considering the principles enunciated in the above judgments of the Hon'ble Supreme Court and also the facts and circumstances of the case, this Court finds that the charges against the petitioner are not proved beyond reasonable doubt and hence, has no hesitation to interfere with the impugned orders and accordingly, the impugned orders are set aside and the writ petition is allowed. No costs. In view of setting aside the impugned orders, the respondents are directed to settle the retiral benefits of the petitioner admissible to him, with 6%

WEB COPY

http://www.judis.nic.in

interest, from the date of his superannuation till the date of payment.

Index : Yes/No **01.03.2019**

Internet : Yes/No

KM

To

1.The Secretary to Government,
Commercial Taxes Department,
Government of Tamil Nadu,
Secretariat, Fort St.George
Chennai-600 009.

2.The Inspector General of Registration,
Chennai.

3.The Commissioner,
Tribunal for Disciplinary Proceedings,
Chennai.

WEB COPY

http://www.judis.nic.in

R.MAHADEVAN, J.
KM/SML

Pre-Delivery Order made in
W.P.No.19507 of 2007

01.03.2019

WEB COPY

http://www.judis.nic.in