IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2019

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.12467 of 2018

T.K.Jagadeesan .. Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by the Principal Secretary,
Department of Commercial
Taxes and Registration(K)
Department,
Fort St. George,
Chennai-600 009

2.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai-600 028 ..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 pertaining to the impugned order of the first respondent in G.O.(D) No.219 dated 18.05.2017, disposing the appeal by confirming the punishment of recovery of amount of Rs.1,55,980/- from the gratuity imposed by the second respondent in his proceedings No.45433/B1/2013 dated 28.10.2013 and to quash the same and direct the first respondent to issue an order refunding the amount of Rs.1,55,980/-(deducted from petitioner's gratuity) alongwith interest at 7% from the date of petitioner's superannuation i.e., on 30.04.2014 till date.

For Petitioner : Mr.R.Rajendran

For Respondents : Mr.T.M.Pappiah, Spl GP

ORDER

This writ petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of the first respondent in G.O. (D) No.219, Commercial Taxes and Registration Department dated 18.05.2017, disposing the appeal by confirming the punishment of recovery of amount of Rs.1,55,980/- imposed by the second respondent in his proceedings No.45433/B1/2013 dated 28.10.2013 from the gratuity amount of the petitioner, to quash the same and direct the first respondent to issue an order refunding the amount of Rs.1,55,980/-(deducted from petitioner's gratuity) alongwith interest at 7% from the date of petitioner's superannuation i.e., on 30.04.2014 till date.

2. What to put to challenge in this writ petition is the order passed by the Government vide G.O.(D) No.219, Commercial Taxes and Registration Department dated 18.05.2017 ordering recovery of an amount of Rs.1,55,980/- from the Gratuity amount payable to the petitioner. According to the Government, that the petitioner while working as Joint Sub-Registrar II, Central Chennai has caused revenue loss to the Government under one transaction wherein, the grand-daughter executed a settlement deed in favour of her grand-mother. According to the Government, that the stamp duty is liable to be paid under Article 58(A)(ii) of Schedule to the Indian Stamp Act but not under Article 58(A)(i) of Schedule -1. According to Article 58 A (i), there is lesser stamp value required to be paid in respect of the transaction between close family members. However, execution of settlement deed by grand-daughter in favour of her grandmother is not included in the definition of the family. Therefore, the action of the petitioner in valuing this settlement deed which is applicable to the family members was found to be in contravention of the provisions of the Stamp Act and therefore, disciplinary action was initiated against the petitioner. On conclusion of the disciplinary proceedings, the impugned order came to be passed deducting a sum of Rs.1,55,980/- from the Gratuity amount payable to the petitioner. In fact, earlier, the petitioner was charged with 12 items of under valuation causing loss to the tune of several lakhs of rupees to the Government. However, except the present one, other 11 items were not proved and therefore, the execution of settlement deed between the grand-daughter and the grandmother was alone the subject matter of final orders passed by the Government which is impugned in the writ petition.

3. The learned counsel for the petitioner would submit that the issue involved in the Writ Petition, is directly covered by the decision rendered by a Division Bench of this Court in the case of “The Inspector General of Registration and Chief Revenue Controlling Authority, Chennai-28 and another Vs.R.Santhosh and another” vide order dated 23.10.2017 in W.A.No.85 of 2015. The learned counsel for the petitioner would draw the attention of this Court to the observation of the Division Bench in the said judgment as found in paragraph no.5, which is extracted hereunder:

> 5. The learned single judge after hearing the arguments of both sides, allowed the writ petition

filed by the respondents/petitioners, while concluding the order the learned single judge observed as follows:-

> "11. If a grandchild is included within the definition of the expression "family" I do not know how a grandmother or grandfather will stand excluded. There can be no quarrel about the proposition that if person executes settlement in favour of his grandchild, the case will be covered by Article 58(a). But to hold that the converse cannot be accepted, would militate against the very purpose of the provision. A settlement need not flow in a hierarchal fashion of the provision. A settlement need not flow in a hierarchal fashion from the elders to the younger ones. It can also flow in the reverse direction. If a gift in favour of a grandchild is covered by Article 58(a), the gift in favour of the grandparent should be equally covered as a corollary. Therefore, the writ petition is allowed. The impugned order is set aside. The respondents are directed to register the sale deed by treating as one filing under Article 58(a). No costs. Consequently, MP.Nos.1 of 2013 and 1 of 2014 are closed."

Therefore, he would submit that the action of the petitioner in discharging of duties is perfectly in order and the stamp duty payable was correctly valued. Therefore, the disciplinary action initiated on this count, is patently an error and hence, the impugned order of recovery by the Government is unsustainable in law and the same is liable to be interfered with.

4. Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondents would not dispute the above facts.

5. From the above narrative, it is clear that the petitioner cannot be faulted with his valuation in respect of subject transaction and therefore, the impugned order passed ordering recovery of Rs.1,55,980/- from the Gratuity payable to the petitioner, cannot be countenanced both in law or on facts. When the action of the petitioner towards valuation of the stamp duty in respect of the subject transaction was found to be in consonance with the legal principles laid down by this Court, there cannot be any disciplinary action which can be maintained

against the petitioner on that count and more particularly, punishment cannot be imposed on the basis of such valuation. Once the valuation done by the petitioner was found to be in order, the punishment imposed by the Government, namely recovery of an amount of Rs.1,55,980/- from the Gratuity amount payable to the petitioner cannot stand to the test of judicial scrutiny.

6. In view of the above, the impugned Government order in G.O.(D) No.219, Commercial Taxes and Registration Department dated 18.05.2017 is hereby quashed. The respondents are directed to refund the amount of Rs.1,55,980/- payable to the petitioner along with 7% interest from the date of superannuation of the petitioner on 30.04.2014 till the date of actual payment. The refund shall be made to the petitioner by the respondents within a period of four weeks from the date of receipt of a copy of this order. No costs.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To
1.The Principal Secretary,
State of Tamil Nadu
Department of Commercial
Taxes and Registration(K)
Department,
Fort St. George,
Chennai-600 009

2.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai-600 028

+1 CC to Govt. Pleader sr 66726.
+1 CC to Mr.R.Rajendran, Advocate sr 66090.

W.P.No.12467 of 2018

SV(CO)
SP(13/09/2019)