IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.29855 of 2010
and
MP.No.1 of 2010

M.Arjunan ... Petitioner

Vs.

1.The Secretary to Government,
Commercial Taxes & Registration
Department, Secretariat,
Chennai – 9.

2.The Inspector General of
Registration, Chennai – 28. ... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records of the 2nd respondent in connection with the impugned order passed by him in No.46582/Aa1/05 dated 11.11.2010 and confirmed by the 1st respondent in G.O.(D). No.386 dated 13.12.2011 and quash the same and further direct the respondents to grant all consequential service and monetary benefits within a reasonable time.

(Prayer amended as per order dated 05.08.2014 in MP.No.1 of 2010 in W.P.No.29855 of 2010)

For Petitioner : Mr.S.Sivakumar
for P.Venkatraman

For Respondents
R2 : Mr.B.Kannan
Government Advocate [Registration]
R1 : No Appearance

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O R D E R

The petitioner was working as a Sub Registrar of Senji Registration Office, Tindivanam Taluk. During internal audit, it was found that there is deficit in collection of stamp duty and registration charges. Therefore, a charge memo was issued to him on 03.06.2005 containing 50 counts of deficits. The petitioner submitted his explanation and Enquiry Officer was appointed. He submitted an Enquiry Report on 24.04.2009. On the basis of the report, the disciplinary authority namely the 2nd respondent imposed the punishment of compulsory retirement in proceedings No.46582/Aa1/05 dated 11.11.2010, against which, the petitioner preferred an appeal before the 1st respondent and the same was rejected on 13.12.2011, against which, the petitioner has preferred the above writ petition.

2. The respondent filed a detailed counter affidavit and on the basis of the same, the learned counsel appearing for the respondent would vehemently contend that the punishment imposed on the petitioner is justified legal and does not require any interference.

3. Heard both sides.

4. On the face of it, the charge memo issued to the petitioner appears to be pre-determined. The entire charges were framed on the basis of the internal audit conducted by the department and report of the District Registrar (Audit) dated 27.04.2005 and 12.04.2005. However, there is no explanation as to why the deficit in collecting stamp duty was set out and as to how the petitioner was responsible for the deficit collection of stamp duty is also not explained. The charge by itself is very vague and straight away states that the petitioner is at fault for not collecting Rs.9,17,690/- towards stamp duty and registration charges. Even though the disciplinary authority initiated major penalty proceedings, no personal enquiry was conducted. The Enquiry Officer has submitted his report on the basis of the explanation given by the petitioner. None of the officers of the department would speak about the loss caused by the petitioner by producing details of the documents. Further, the disciplinary authority also reproduced the charge and held that the charge has been proved and that the petitioner shall be imposed with the compulsory retirement. From the pleadings, it is seen that from the beginning the due procedure has not been followed and principles of natural justice were violated. The respondents have failed to explain the finding of the internal audit, what was the value of the property and what was the stamp duty and registration charges and what was the stamp duty or registration charges collected by the petitioner as Sub-Registrar and how he has caused loss to the Government. Nothing is found either in the charge or in the Enquiry Officer's report or in the disciplinary authority's proceedings. Even the Appellate Authority has passed a cryptic order stating that the explanation given by the petitioner is not acceptable and therefore, the finding of the disciplinary authority is confirmed. There is no discussion as to what was the ground raised and as to how the Appellate Authority rejected the same. The order, as such, is a non-speaking

order.

5. Apart from the violation of principle of natural justice, the delay caused in conducting the proceedings also vitiate the proceedings. The charge memo was issued on 03.06.2005 and after a period of four years, an enquiry report came to be filed. In the mean while, the petitioner had approached twice before this Court vide W.P.Nos.7294 of 2005 and 16376 of 2006 and 21281 of 2010 for early completion of the disciplinary proceedings. Despite the direction issued by this Court, the respondents have failed to pass orders on time. The delay is not attributable to the petitioner. Hence, the disciplinary proceedings and the impugned order is liable to be quashed on the ground of delay. As per Section 33 (a) of the Indian Stamp Act, any deficit stamp duty should be collected within a period of three years, whereas there is no explanation as to how the deficit stamp duty was collected or proposed to be collected from the presentant of the document. The respondent without taking any steps to recover the loss caused to the Government after a long period have fixed the liability on the petitioner and made him a culprit. Such conduct shows that inorder to escape from the clutches of law the superior officers caused the charge memo issued against the petitioner, to make him a scape goat.

6. Considering the violation of principle of natural justice and vagueness of the charges and delay caused by the respondents to conclude the proceedings, I find that the entire proceedings stands vitiated. The impugned orders passed by the respondents, do not set out any reasons and as such are non-speaking orders. On this ground also the impugned orders, are liable to be set aside.

7. Accordingly, the order passed by the 1st respondent in proceedings G.O.(D).No.386 dated 13.12.2011 confirming the impugned order passed by the 2nd respondent in proceedings No.46582/Aa/05 dated 11.11.2010 is set aside and a direction is given to the respondents to disburse of all the monetary and attendant benefits to the petitioner within a period of six weeks from the date of receipt of a copy of this order.

8. In the result, the writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(Ccc)

//True Copy//

Sub Assistant Registrar

bri

To

1.The Secretary to Government,
Commercial Taxes & Registration
Department, Secretariat,
Chennai - 9.

2.The Inspector General of
Registration, Chennai - 28.

+1cc to Mr.P.Venkatraman , Advocate SR.No. 7832
+1 cc to Government Pleader Sr.No. 8091

W.P.No.29855 of 2010
and MP.No.1 of 2010

A.SK(09/09/2020)