IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2021

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 21801 of 2010

Sheik Sadhurudeen ... Petitioner

-vs-

1. The Secretary,
   Commercial Tax Department,
   Fort St.George,
   Chennai.

2. The Inspector General of Registration,
   No. 120, Santhome High Road,
   Chennai - 600 004.

3. The Accountant General,
   Teynampet,
   Chennai. ... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Mandamus, directing the second respondent to refund the amount of Rs.91,000/- paid by the petitioner under protest on 05.07.2005 with interest at 12% per annum.

For Petitioner : Mr.V.Raghupathy
For Respondents : Mr.K.Magesh
Spl. Govt. Pleader for R1&R2

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the second respondent to refund the amount of Rs.91,000/- paid by the petitioner under protest on 05.07.2005 with interest at 12% per annum.

2. The petitioner was working as District Registrar at the Registration Department i.e., respondent department and while he was in service, with regard to document i.e., Document No. 1137 of 2019 at the Office of the District Registrar, Ootacamund, there has been a dispute with regard to the payment of stamp duty and in this regard, though some orders have been passed under Section 33(A) of Indian Stamp Act to the document holder and demanded the deficit stamp duty of Rs.49,000/-, subsequently, after several proceedings, the document holder got succeeded in his attempt and filed the Writ Petition before this Court.

3. In view of the said episode, where the involvement of the petitioner who was working at the time of District Registrar, Ootacamund was noticed by the Audit Department, the respondent Department had come to the conclusion that, there has been loss of Rs.91,000/- sustained by the department because of the alleged dereliction of duty on the part of the petitioner.

4. Accordingly, the disciplinary proceedings were initiated against the petitioner under Rule 17(a) of Tamil Nadu Civil Services (Disciplinary and Appeal) by appointing an Enquiry Officer and an enquiry was conducted to that effect.

5. After completing the enquiry, the Enquiry Officer has filed the report, stating that, the charge framed against the petitioner was proved, pursuant to which, it seems that, an option had been given to the petitioner either to pay back the amount to the loss of Rs.91,000/- sustained by the department or facing penalty in this regard on the proven charge.

6. Since the petitioner at that time was about to reach superannuation and to retire, in order to get a peaceful retirement and superannuation, he had chosen to pay back a sum of Rs.91,000/-, which was the alleged loss for the department, on the alleged dereliction of duty of the petitioner, of course under protest.

7. Subsequently, it seems that, by taking into account, the amount paid by the petitioner, the disciplinary authority had decided to drop the proceedings, despite the fact, that the charges framed against the petitioner were proved.

8. Subsequently, the petitioner seems to have asked for return of the said amount, however, the respondent i.e., IG of Registration, vide communication dated 24.11.2005 stated that, in view of the litigation that was pending at the time between the document holder and the department, if that is ended in favour of the department, wherein pursuant to which, if the document holder paid the said amount i.e., loss sustained by the department, only at that juncture, the request of the petitioner for returning back the amount paid by him under protest would be considered.

9. Subsequently, it seems that, the Writ Petition filed by the document holder was allowed and the very order issued against the document holder by the department was quashed.

10. Only in that circumstances, in order to get back the loss of Rs.91,000/- under protest on the alleged loss sustained by the department, the present Writ Petition has been filed with the aforesaid prayer.

11. Heard Mr.V.Raghupathy, learned counsel appearing for the petitioner who would submit that, the issue was ultimately decided by this Court in the Writ Petition filed by the document holder, where the notices or show cause notices or orders passed by the department having been quashed, no blame can be put against the petitioner. Therefore, the question of dereliction of duty on the part of the petitioner did not arise. Hence, the amount of Rs.91,000/- being alleged loss sustained by the department paid by the petitioner under protest should be returned back to the petitioner.

12. However, Mr.K.Magesh, learned Special Government Pleader appearing for the first and second respondents would submit that, if the Writ Petition filed by the document holder was decided against the petitioner and in favour of the department, by thus, the document holder, if had been made to pay the said loss sustained by the department, certainly, liability of the petitioner to pay the said amount, from which, the petitioner cannot be exonerated. However, the Writ Petition went in favour of the document holder and against the department, thereby, what was the loss sustained by the department has been confirmed and unless the same is paid by the petitioner for his dereliction, which was the reason for such loss sustained by the department, the petitioner could not have been exonerated and the proceedings initiated under Rule 17(b) could not have been dropped.

13. The 17(a) proceedings was dropped by the disciplinary authority, only on the reason that, the amount lost by the department has been paid back by the petitioner. Therefore, the said amount cannot be returned to the petitioner, for which, the petitioner is not also entitled to and that the situation which was prevailing, when the Writ Petition was filed and concluded, where the Writ Petition went in favour of the document holder. Therefore, even that chance was also not available for the petitioner, he contended.

14. I have considered the said submissions made by the learned counsel appearing for both parties and have perused the materials placed before this Court.

15. As has been rightly pointed out by the learned Special Government Pleader appearing for the respondents, suppose the document holder, who filed the Writ Petition, lost his case before this Court, pursuant to which, if the responsibility was shifted to the document holder to pay the amount to the department to equalize the loss sustained by the department, certainly the petitioner can be exempted from the responsibility of paying the said amount. Since that situation was not available, as the Writ Petition went in favour of the document holder, therefore, what was the loss sustained by the department was confirmed.

16. In this regard, it is not the mere fixation on the petitioner to pay the amount, this was fixed only pursuant to the disciplinary proceedings initiated against the petitioner, where 17(b) charges were framed and after enquiry, framed charges against the petitioner by the Enquiry Officer were proved.

17. When that being so, at the time of superannuation, the petitioner even though under protest, had paid the amount in entirety of the amount of Rs.91,000/-, only on that basis, that the petitioner has paid the full amount, the disciplinary proceedings was concluded, where the disciplinary authority has decided to drop the proceedings against the petitioner.

18. The said decision taken by the disciplinary authority to close the proceedings against the petitioner is not because, that the charges framed against the petitioner were not proved, but only because, that he has compensated the entire loss to the department.

19. Therefore, the petitioner having enjoyed the dropping of the disciplinary proceedings, exonerated from the charges framed against him which were proved, cannot now turn around and say that, the amount has to be paid back to him, in view of the dropping of the disciplinary proceedings.

20. The said stand taken by the petitioner as projected by the learned counsel appearing for the petitioner is not appealing to this Court, therefore, it is liable to be rejected.

21. In view of the above, the petitioner is not entitled to get the direction by way of mandamus as sought for in this Writ Petition.

22. Accordingly, this Writ Petition fails and hence, it is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vji
To

1. The Secretary,
Commercial Tax Department,
Fort St.George,
Chennai.

2. The Inspector General of Registration,
No. 120, Santhome High Road,
Chennai - 600 004.

3. The Accountant General,
Teynampet,
Chennai.

+1cc to Mr.V.Raghupathi , Advocate SR.No. 9654
+1 cc to Government Pleader Sr.No. 9500

W.P. No. 21801 of 2010

JP II (CO)
A.SK(16.06.2021)