

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.5383 of 2018
(Through Video Conferencing)

S.Shanmugam ... Petitioner

Vs

1.Government of Tamil Nadu,
Represented by its Additional Chief Secretary,
Commercial Taxes and Registration Department,
Fort St. George,
Chennai - 600 009.

2.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 004. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the entire records relating to the order passed in G.O.(D) No.358, Commercial Taxes and Registration (K) Department dated 20.09.2017, on the file of the first respondent confirming the order bearing Ref.No.15098/V2/2010-2 dated 25.01.2017 on the file of the second respondent and quash both the orders and consequently direct the respondents to confer all consequential service and monetary benefits.

For Petitioner : Mr.P.Ganesan

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate

ORDER

The petitioner has challenged the order passed by the Appellate Authority dated 20.09.2017 upholding the punishment awarded on the petitioner by the Disciplinary Authority on 25.01.2017.

2. It is the case of the petitioner that the petitioner was transferred as an Assistant No.2 from the office of the Sub-Registrar, Joint II, Kancheepuram District to the office of the

Sub-Registrar, Walajabad, Kancheepuram District vide order dated 10.03.2010. It is further case of the petitioner that he joined duty only on 12.03.2010 which was Friday and thereafter there were two days holidays i.e., Saturday and Sunday 13.03.2010 and 14.03.2010, he was worked only for a total of five days in the office of the Sub-Registrar, Walajabad, Kancheepuram District. During the aforesaid week, when a surprise visit was made by the officers of the Directorate of Vigilance and Anti-Corruption on 19.03.2010, the officers found that there was an unaccounted cash of Rs.7,930/- in the record room.

3. It is the case of the petitioner that the petitioner was not involved in the aforesaid collection of the amount or stashing of the aforesaid cash in the record room and he had recently joined in the office and was unaware of the fact that the amount has been collected some of the other persons. The disciplinary authority has held that the Sub Registrar and the petitioner i.e., A1 and A2 are responsible for the unaccounted cash of Rs.7,930/-.

4. The learned counsel for the petitioner submits that there is no basis on which, such a punishment can be awarded, even based on preponderance of probability. It is submitted that the petitioner cannot be held responsible for the unaccounted cash found in the record room. It is submitted that only the record clerk is answerable. He further submits that the Disciplinary Authority has exonerated the Record Clerk and the Office Assistant on the ground that they were junior persons. He therefore submits that the order passed by the Disciplinary Authority as affirmed by the Appellate Authority is liable to be interfered with.

5. Defending the impugned punishment awarded on the petitioner, the learned Government Advocate for the respondents submits that the scope of judicial review against an order passed by the Disciplinary Authority or Appellate Authority is limited. He submits that this is not a case for interfering with the punishment awarded on the petitioner. It is further submitted that it was the duty of the petitioner to have properly explained the circumstances surrounding the unaccounted cash in the record room and therefore the petitioner was suspended from service as he failed come forward to give clear statement before the Directorate of Vigilance and Anti-corruption or before the Tribunal. It is therefore submitted that the petitioner is not entitled to challenge the punishment awarded by the Disciplinary Authority as upheld by the Appellate Authority.

6. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

7. There are totally 7 charges framed against the petitioner in the disciplinary proceedings. Charge No.6 is against the petitioner. It pertains to unaccounted money of Rs.7,930/- seized from the record room of Walajabad Sub Registry. The Disciplinary Authority and the Appellate Authority have concluded that the petitioner was responsible for the unaccounted cash in the record room without any direct or indirect evidence to uphold the same.

8. The fact that the petitioner was transferred by an order dated 10.03.2010 from the Sub-Registrar Office, Joint II, Kancheepuram District to the Sub-Registrar Office, Walajabad, Kancheepuram District and had worked only about five effective days. It indicates that the petitioner may not be fully aware of the functioning of the office at the new office.

9. The onus was on the Disciplinary Authority and the Directorate of Vigilance and Anti-Corruption to find out who had collected the aforesaid amount of Rs.7,930/- and had kept it in the record room. Incidentally, this Court has also interfered the punishment awarded under a similar circumstances in A.Subramani Vs Principal Secretary to Government, Chennai and another in W.P.No.11146 of 2011 vide order dated 21.01.2013. This order was also followed by this Court in W.P.No.23414 of 2008 vide order dated 19.11.2018.

10. As the record room is primarily under the control of the record clerk, the finding awarded by the Disciplinary Authority that the petitioner was responsible for the aforesaid cash, fails the test of preponderance of probability. Therefore, the dismissal/removal of the petitioner from service is liable to be interfered.

11. In the light of the above, this Writ Petition stands allowed with consequential relief to the petitioner. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

arb

To

1.The Additional Chief Secretary,
Government of Tamil Nadu,
Commercial Taxes and Registration Department,
Fort St. George, Chennai - 600 009.

2.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 004.

Copy to:

1.The Director,
O/o The Directorate of Vigilance
and Anti-Corruption,
Kancheepuram Unit,
Kancheepuram District.

2.The District Inspection Cell,
Vellore.

+1cc to Mr.P.Ganesan, Advocate, S.R.No.41874
+1cc to the Government Pleader, S.R.No.42040

W.P.No.5383 of 2018

PMK(CO)
CB(21/09/2021)