IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24-03-2021

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The Honourable Mr. Justice R. Subbiah
and
The Honourable Mr. Justice Sathi Kumar Sukumara Kurup

Writ Appeal No. 3274 of 2019
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1. The Secretary to Government
   Commercial Taxes and Registration Department
   St. George Fort, Chennai

2. The Inspector General of Registration/
   Chief Controlling Authority
   100, Santhome Road
   Pattinapakkam
   Chennai

3. The Secretary
   Tamil Nadu Public Service Commission
   Commercial Tax Annexe Building
   No.1, Greams Road
   Chennai - 600 006 .. Appellants

Versus

P. Sakthivel .. Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the Order dated 09.07.2018 made in WP No. 11080 of 2012 on the file of this Court.

Prayer in WP.No.11080 of 2012: Petition filed under Article 226 of the constitution of India, praying to issue a writ of certiorarified Mandamus, to call for the records relating to the impugned order made in G.O.Ms.No.153 commercial Taxes and Registration Department dated 09.12.2011 passed by the first respondent and quash the same and consequently direct the respondents to disburse all the terminal benefits payable to the petitioner.

For Appellants : Mr. T.M. Pappiah
Special Government Pleader

For Respondent : Mr. K. Elango

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J)

This intra-court appeal is filed as against the order dated 09.07.2018 passed by the learned single Judge in W.P. No. 11080 of 2012.

2. The said writ petition No. 11080 of 2012 was filed by the respondent herein to quash the order passed by the first appellant herein in G.O. Ms. No.153, Commercial Taxes and Registration Department dated 09.12.2011 and consequently direct the appellants to disburse all the terminal benefits payable to him.

3. The facts, based on which the writ petition was filed by the respondent before the learned single is required to be examined for disposal of this appeal.

4. The respondent herein was appointed as Junior Assistant in the Registration Department. He was promoted to the post of Assistant, as Sub-Registrar and as District Registrar in the Registration Department. While he was working as District Registrar (Audit), the second appellant issued a charge memo dated 14.01.2003. The first charge relates to alleged loss of Rs.22,56,933/- caused to the Government due to registration of 128 documents by the respondent. The second charge is that the respondent had violated Rule 20 (1) of the Tamil Nadu Government Servant Conduct Rules by his negligent discharge of duties. The respondent submitted his reply on 31.03.2005. Not satisfied with the explanation offered, the Assistant Inspector General of Registration of Salem was appointed as Enquiry Officer. In the meantime, by citing the pendency of enquiry proceedings, the respondent was placed under suspension vide G.O. (2D) No. 58, Commercial Taxes and Registration (H1) Department dated 17.03.2009. On 31.03.2009, the respondent attained the age of superannuation but he was not allowed to retire from service by passing an order in G.O. (2D) No. 69, Commercial Taxes and Registration (H1) Department dated 31.03.2009.

5. The enquiry officer appointed by the Government, during the course of enquiry, split the first charge into five parts based on the valuation of the registered documents. After considering the evidence made available, the enquiry officer held that Part two parts of Charge No. 1 are not proved but the other parts are proved. Accepting the report of the enquiry officer and after getting a further explanation from the respondent, the first respondent passed an order in G.O. Ms. No.153, Commercial Taxes and Registration Department dated 09.12.2011 dismissing the respondent from service. Assailing the order of dismissal, the respondent has filed the writ

petition before this Court.

6. The learned single Judge, after hearing the counsel for both sides, concluded that the punishment of dismissal is not the only punishment that could be imposed on the respondent given the nature of charges. Accordingly, by the order dated 18.06.2018, the learned single Judge allowed the writ petition by directing the appellants herein to impose the punishment of compulsory retirement to the respondent with effect from the date when he was dismissed from service and to pay all admissible attendant and monetary benefits payable to him.

7. The learned Special Government Pleader appearing for the appellants would vehemently contend that the charges levelled against the respondent were proved during the course of enquiry. When the order of dismissal was preceded by a valid enquiry, the conclusion reached by the appellants ought not to have been interfered with by the learned single Judge. Though the learned single Judge has concluded that due to the carelessness and negligence of the respondent the exchequer had suffered huge monetary loss, yet, the learned single Judge interfered with the order of dismissal and modified it into one of compulsory retirement. He also contended that judicial review is not permissible in cases of this nature where the appellants have followed all the procedures prior to passing the order of dismissal from service. Above all, the learned Special Government Pleader, by referring to the counter affidavit of the second appellant in the writ petition, pointed out that there are five more disciplinary proceedings pending against the respondent. However, in view of the punishment of dismissal imposed against the respondent based on the charge memo dated 14.01.2003, which is the subject matter of this appeal, the other five disciplinary proceedings initiated against the respondent have not been proceeded with. The learned Special Government Pleader therefore prayed for allowing this writ appeal.

8. Per contra, the learned counsel for the respondent would contend that in number of judgments rendered by this Court, it was held that error of judgment on the part of a quasi-judicial authority during the course of discharge of his duties, cannot be the foundation for any charge memorandum. If such error of judgment is taken note of to level a charge against a quasi-judicial authority, then no prudent authority could independently discharge his duties. According to the learned counsel for the respondent, the respondent had discharged his duties to the best of his knowledge and acumen. The respondent had put in 38 years of service in the Registration Department and with such knowledge, he had diligently discharge his duties. Further, the charges were

levelled against the respondent on 14.01.2003 and the enquiry prolonged for a long time and did not conclude even when the respondent reached the age of superannuation on 31.03.2009. Subsequently, on 09.12.2011, the order of dismissal from service was passed by the Government, by depriving the respondent of all the monetary benefits. The order of dismissal dated 09.12.2011 was passed by the Government without taking note of the length of service put in by the respondent. Thus, the respondent had already suffered enough by reason of the prolonged disciplinary proceedings and the mental agony and sufferings undergone by the respondent cannot be gauged. The learned single Judge taking note of the fact that the delinquency committed by the respondent is owing to his careless and negligence and he did not act with any corrupt motive, modified the order of punishment of dismissal from service into one of compulsory service. In any event, the learned single Judge, by taking note of the length of service and the other mitigating circumstances appearing in favour of the respondent, had exercised the discretionary power conferred under Article 226 of The Constitution of India to modify the punishment of dismissal from service into one of compulsory retirement. According to the learned counsel for the respondent, such a well considered order passed by the learned single Judge need not be interfered with by this Court and he prayed for dismissal of the writ appeal.

9. We have heard the learned counsel for both sides and perused the materials placed on record. In connection with undervaluation of 128 documents entertained for registration by the respondent, a charge memo dated 14.01.2003 was issued to him alleging that he had caused monetary loss to the exchequer. After perusing the documents, which were alleged to have been undervalued, the respondent submitted his explanation on 31.03.2005. An enquiry officer was appointed, who split the first charge into five parts. After conducting a full fledged enquiry, the enquiry officer held that part I and II of the charge No.1 are not proved, but the other parts of charge No.1 are proved. Accepting the report of the enquiry officer, the first appellant has passed the order dated 09.02.2011 dismissing the respondent from service.

10. The learned single Judge, considered the fact that due to negligent and careless discharge of duty by the respondent, loss has been caused to the exchequer and it is not preceded by any corrupt act or ill motive on his part to gain personally. This had apparently weighed the mind of the learned single Judge to modify the punishment of dismissal from service into one of compulsory retirement so that the respondent will be in a position to get back the monetary benefits for the services rendered by him. Further, the learned single Judge found that as the respondent reached the age of superannuation long back,

there is no necessity to remit the matter back to the appellant for re-visiting the order of punishment imposed on the respondent.

11. Before us, the learned counsel for the respondent has vehemently contended that the respondent had put in 38 years of service in the Registration Department and such length of service deserves to be taken note of. Further, the charge memo was issued to the respondent on 14.01.2003, the punishment of dismissal from service was imposed on 09.02.2011, which was modified by the learned single Judge on 09.07.2018. He has further submitted that delay in conclusion of the departmental proceedings against the respondent, which stretched even after his retirement, would have caused acute mental strain and disturbance to the respondent and that itself would amount to a punishment imposed on the respondent.

12. We see considerable force in such submission of the counsel for the respondent. The respondent had put in 38 years of service in the Registration Department. There was a delay in conclusion of the departmental proceedings initiated against the respondent. The respondent, even after reaching the age of superannuation, was not allowed to retire from service, thereby all the monetary benefits payable to him have been freezed. Further, we find that the charges levelled against the respondent and proved during the inquiry relates to careless and negligent discharge of his duties and there is no evidence to show that the respondent, with an ill intention or corrupt motive indulged in such delinquency. While so, we are of the view that the 38 years of service rendered by the respondent is bound to be taken note of and it is one of the mitigating factors appearing in his favour. Had the respondent not rendered such long number of years of service, we would have confirmed the order of punishment imposed by the appellants against the respondent and interfered with the order passed by the learned single Judge. Thus, by taking note of the length of service put in by the respondent, we refrain from interfering with the order passed by the learned single Judge. In any event, the learned single Judge, in exercise of his discretionary power conferred under Article 226 of The Constitution, has rightly modified the punishment of dismissal from service into one of compulsory retirement. We are also of the view that this is a fittest case where the punishment of dismissal from service is not warranted, rather, the respondent be imposed with the punishment of compulsory retirement, which will be in consonance with the nature of delinquency committed by him. Accordingly, we are only inclined to confirm the order passed by the learned single Judge.

13. In the result, we confirm the order dated 09.07.2018 passed by the learned single Judge in WP No. 11080 of 2012. The Writ Appeal filed by the appellants is dismissed. No costs. The appellants are directed to pass appropriate orders imposing the punishment of compulsory retirement from service, as directed by the learned single Judge, forthwith.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To
1. The Secretary to Government
   Commercial Taxes and Registration Department
   St. George Fort, Chennai

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   Commercial Tax Annexe Building
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   Chennai - 600 006

+1cc to Mr.K.Elango, Advocate, S.R.No.19887
+1cc to the Government Pleader, S.R.No.19724

WA No. 3274 of 2019

JP-II(CO)
CB(21/04/2021)