BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.12.2021
CORAM
THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**
W.P.(MD)No.4971 of 2013

1.M.Seik Dawood (Died)
2.S.Aysha Beevi
3.S.Dhawood Nisha
4.Shahul Arafat
5.Sadham Hussain
6.Sulthan Mydeen ... Petitioners

(Petitioners 2 to 6 substituted for the deceased sole petitioner, vide Court Order, dated 23.02.2018, in W.M.P.(MD)No.11282 of 2017 in W.P.(MD)No.4971 of 2013)

vs.

1.The Government of Tamilnadu,
represented by its Secretary,
Commercial Tax and Registration
(K) Department,
Fort St.George, Chennai.

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

3.The Tamil Nadu Public Service Commission,
represented by its Chairman,
Frazer Bridge Road,
V.O.C.Nagar, Park Town,
Chennai - 600 003. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent pertaining to G.O.(D)No.78, Commercial Taxes and Registration (K) Department, dated 11.02.2013 and quash the same and to direct the respondents to reinstate the first petitioner with all attendant benefits.

For Petitioners : Mr.M.Saravanan

For R-1 and R-2 : Mr.D.Sasi Kumar
Additional Government Pleader

For R-3 : Mr.J.Anandha Kumar

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O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned G.O.(D)No.78, Commercial Taxes and Registration (K) Department, dated 11.02.2013 and to direct the respondents to reinstate the first petitioner with all attendant benefits.

2.The first petitioner was working as Assistant in the Registration Department and attained superannuation on 31.05.2009. The first petitioner was issued with a charge memo, dated 12.09.2006, alleging that the first petitioner did not intimate the purchase of 2 two wheelers within one month. Then, he purchased 50 cents of property with permission and the same was sold without permission. He purchased the house site for 1500 sq. feet and constructed the house. Then his wife was allotted two houses from family partition but along with loan of Rs.1,50,000/-, wherein his wife has no separate income and the petitioner ought to pay loan. The first petitioner submitted an explanation and an enquiry was conducted. In the enquiry, the charges 1 to 4 were proved and the fifth charge was not proved. Finally, the second respondent imposed a punishment, dated 28.05.2009, as removal from service just 3 days prior to the date of retirement.

3.The first petitioner challenged the punishment order by filing an appeal and since there was no order passed in the appeal, the first petitioner filed a Writ Petition in W.P.(MD)No.9610 of 2012 and this Court vide order, dated 26.07.2012, directed the first respondent to dispose of the appeal within a period of six months. The first respondent, vide G.O.Ms.(D)No.78, Commercial Tax and Registration (K) Department, dated 11.02.2013, has passed the order confirming the order of punishment. Aggrieved over the same, present Writ Petition is filed. The respondents did not file counter affidavit.

4.Heard Mr.M.Saravanan, learned Counsel appearing for the petitioners, Mr.D.Sasi Kumar, learned Additional Government Pleader appearing for the first and second respondents and Mr.J.Anandha Kumar, learned Standing Counsel appearing for the third respondent.

5.On perusing the allegation, it is seen that the first petitioner has not obtained prior permission from the department as stated in Rule 7 of Conduct Rules. The Rule states as follows:

> *"No Government servant shall, except after notice to the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift, exchange or otherwise either in his own name or in the name*

of any member of his family."

Therefore, the respondents have initiated action against the first petitioner.

6.When the Writ Petition was taken up for hearing, it was informed that the first petitioner died on 08.04.2017 and the legal heirs are impleaded, vide impleading petition, which was allowed, vide order, dated 23.02.2018.

7. As far as the first charge is concerned, the claim of the first petitioner was that he was only name lender to avail loan, the 2 two wheelers were purchased by his brother-in-law by obtained loan from HDFC Bank and the entire amount was paid by his brother-in-law and the first petitioner has not paid even a single penny from his salary. However, the Enquiry Officer has also held the charge as proved and the respondents had not accepted this explanation and had confirmed the allegation.

8.As far as the second charge is concerned, the first petitioner has obtained permission to purchase 50 cents of land and the land was purchased in the name of his wife. However, the first petitioner did not obtain any permission to sell the land. The deceased employee has submitted an explanation that this was sold without his knowledge by his wife for conducting daughter's marriage. Admittedly, the 50 cents of land were purchased in the name of his wife.

9.As far as the third charge of purchasing 1520 square feet of house site without permission and putting up construction in the house site is concerned, again the delinquent has pleaded that this has happened without his knowledge.

10. As far as the fourth charge, the petitioner has submitted that his wife was allotted two houses from family partition but along with the property loan liability of Rs.1,50,000/- was allotted, wherein his wife has no separate income and the petitioner ought to pay loan.

11. This Court is of the view that the purchase cannot be without his knowledge, but as far as the explanation for second charge that selling was without his knowledge for conducting his daughter’s marriage may be acceptable since the property was in the name of his wife. As far as the 1st charge the explanation that the delinquent was only a name lender may be acceptable. Taking into account that the petitioner / delinquent died and it is only violating the Conduct Rules and there is no loss to the Government and the explanation of the deceased delinquent, this Court is of the view that to meet the ends of justice, the punishment imposed of

dismissal of service may be reduced as compulsory retirement.

12.Therefore, the Writ Petition is disposed of only modifying the punishment of removal from service to that of compulsory retirement. No costs.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Tmg

Note:
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Secretary,
Commercial Tax and Registration
(K) Department,
Government of Tamilnadu,Fort St.George, Chennai.

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

3.The Chairman,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C.Nagar, Park Town,Chennai - 600 003.

+1 CC to M/s.J.ANANDKUMAR, Advocate (SR-37646[F] dated 07/12/2021)
+1 CC to M/s.SPL GP (SR-37933[F] dated 09/12/2021)
+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-37742[F] dated 08/12/2021)

W.P.(MD)No.4971 of 2013
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RD(22.12.2021) 4P 7C