BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A.(MD)No.450 of 2019
and
C.M.P.(MD)No.3726 of 2019

1.State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Commercial Taxes and Registration Department,
Fort St. George, Chennai - 600 009.

2.The Inspector General of Registration,
Registration Department,
Chennai - 600 028.

3.The Commissioner for Disciplinary Proceedings
Government of Tamil Nadu,
Tribunal for Disciplinary Proceedings,
5/1842/A, Trichy Road,
Market Committee Complex,
Ramanthapuram,
Coimbatore - 641 045. ... Appellants/Respondents

Vs.

K.Balasubramanian ... Respondent/Petitioner

Prayer : Appeal filed under Clause 15 of the Letters Patent against the order passed by this Court in W.P.(MD)No.2752 of 2014, dated 25.07.2018.

Prayer in WP(MD). 2752 of 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records of the 1st respondent relating to his proceeding in G.O.(2D) No.130 Commercial Tax and Registration (H) Department dated 21.11.2013, quash the same and direct the 1st respondent to permit the petitioner to retire on superannuation with all eligible pensionary benefits .

For Appellants : Mr.K.Sathiya Singh
Additional Government Pleader

For Respondent : Mr.M.Purushothaman

J U D G M E N T

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal has been preferred by the appellants challenging the order of the learned Single Judge, who upon going through the relevant records, was pleased to set aside the Government Order, dismissing the respondent from service, while holding the charges are proved.

2.Charges have been framed against the respondent on the ground that he facilitated collection of money from his subordinate officials apart from having possession of a sum of Rs.25,000/- from his place of residence. On behalf of the Department, 15 witnesses have been examined while marking 6 documents. 10 Material Objects were also marked. The Tribunal held that the charges framed against the respondent were proved. The first appellant concurred with the views of the Tribunal and after following due procedure, passed the impugned Government Order.

3.The learned Single Judge held that there was absolutely no material to implicate the respondent, as witnesses spoke the otherwise. The amount received from the respondent was also taken from his house. Even as per Form-II annexed to Rule 7(3) of the Tamil Nadu Government Servants Conduct Rules, the said amount is permissible in the possession of the delinquent officer. Therefore, this being the case of no evidence, the charges levelled against the respondent, leading to an order of dismissal, cannot be sustained. Incidentally, it was held that though a criminal case was contemplated, the same was not proceeded with the registration of the F.I.R., probably for want of evidence.

4.The learned Additional Government Pleader appearing for the appellants submitted that considering the seriousness involved, the learned Single Judge ought not to have interfered with the impugned order. What is required is a preponderance of probability. The respondent has not accounted for the amount in his custody. This Court cannot act like an appellate authority to interfere with the findings of fact.

5.Mr.M.Purushothaman, learned counsel appearing for the respondent submitted that as rightly held by the learned Single Judge it is a case of no evidence. Duty is enjoined upon the appellants to prove the charges. None other witnesses spoke in tune with the charges framed. Thus, there is no perversity in the order passed by the learned Single Judge, warranting interference.

6.Law it is trite that in a departmental proceedings, it is for the Department to prove the charges. What is required is preponderance of probability. However, all the witnesses examined did not speak in favour of the prosecution. There is absolutely no material to implicate the respondent. The learned Single Judge rightly held that mere possession of Rs.25,000/-, that too, recovered from the residence would not mean to the charges have been proved. The contemplation of a criminal case proposed was also dropped for want of evidence.

7.In such view of the matter, we do not find any reason to interfere with the order passed by the learned Single Judge. Accordingly, this Writ Appeal is dismissed. No costs. Inasmuch as the respondent has reached the age of superannuation, the consequential reliefs will have to be paid within a period of 12 weeks from the date of receipt of a copy of this judgment. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Principal Secretary to Government of Tamil Nadu,
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+1 CC to Mr.M.KANNAN, Advocate (SR-10233[F] dated 11/03/2021)

W.A.(MD)No.450 of 2019
10.03.2021

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