IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.04.2022
PRONOUNCED ON : 06.06.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. NOS.617 OF 2012 & 8833 OF 2013

N.Kulasekaran
... Petitioner in both W.P's

Vs.

1. The Government of Tamil Nadu,
   Rep. by its Secretary to Government,
   Commercial tax and Registration (K) Department,
   Fort St.George, Secretariat,
   Chennai.

2. Inspector General of Registration,
   Office of the Inspector General of Registration,
   No.100, Santhome High Road,
   Chennai – 600 028.

3. The Tamil Nadu Public Service Commission,
   Rep. By its Secretary,
   Commercial Tax Annexe Building,
   No.1, Greams Road,
   Chennai – 600 002.

... Respondents in W.P.No.617 of 2012

1. Principal Accountant General,
   (Accounts & Entitlements),
   Anna Salai, Chennai - 600018.

2. Inspector General of Registration,
   Registration Department,
   Santhome, Chennai – 600028.

3. District Registrar,
   Registration Department,
   Arakkonam, Vellore District

... Respondents in W.P.No.8833 of 2013

PRAYER in W.P.No.617 of 2012:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd Respondent in reference No.18468/A1/2009 dated 22.06.2011 dismissing the Petitioner from service, order dated G.O.(D).No.374, dated 05-12-2011 passed by the 1st Respondent rejecting the appeals dated 24-06-2011 and 13-07-2011 submitted by the Petitioner based on the opinion submitted by the 3rd Respondent in Ref.No.3218/DCD-C2/2011-1, dated 08-11-2011 and quash the same and consequently direct the Respondents 1 & 2 to reinstate the Petitioner in the post of sub-registrar with continuity in service with monetary benefits and grant the consequential promotions.

PRAYER in W.P.No.8833 of 2013:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the Order passed by the 1st Respondent in his proceedings Pr.AG(A&E)/Legal Cell/AN 183 & 187/12-13/1727/179808 dated 11-01-2013 and QUASH the same and direct the Respondents to settle the General Provident Fund account to the petitioner in respect of GPF Account No.7379/Regn., with interest.

For Petitioners
in both W.P's :Mr.S. Vijaya Kumar

For Respondents:Mr.P.Anand Kumar,
Government Advocate
For R1 & R2 in W.P.No.617 of 2012
For R1 to R3 in W.P.No.8833 of 2012

Mr.Karthick Rajan for
R3 in W.P.No.617 of 2012

O R D E R

These Writ petitions have been filed challenging the disciplinary proceedings resulting in the dismissal of services of the petitioner on the premise that while the petitioner was working as Sub-Registrar in Thiruporur District, had undervalued documents resulting in computation of lower stamp duty thereby causing loss to the exchequer to the extent of Rs.45,55,512/-. The same was challenged by way of appeal which stood rejected on the basis of the opinion of TNPSC, the 3rd respondent herein.

2. The following questions may arise for consideration in these Writ Petitions viz.,

a) Whether Sub-Registrar, while registering the document, perform duties, which are quasi-judicial in nature.

b) Whether quasi-judicial authority can be charged with misconduct only on the basis of error of judgment or mistake or negligence.

c) Whether when officers who were charged with similar delinquency have been absolved/exonerated - Onerous punishment being imposed on petitioner would fall foul for Article 14 of the Constitution of India.

3. BRIEF FACTS:

The petitioner was appointed as Junior Assistant and later promoted as Sub-Registrar in the Registration Department, Government of Tamil Nadu. While the petitioner was working as Sub-Registrar, Thiruporur, Chengalpattu District, the 2nd respondent issued charge memo dated 09.07.2008, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The gist of the charge is as follows:

> "The petitioner while working as the Sub-Registrar, Thiruporur, Chengalpet District had undervalued documents in respect of stamp duty and registration charges and caused a loss of Rs.7,36,961/- to the state exchequer. The petitioner's action was in violation of rule 20(1) of the Government Servant Conduct Rules."

An Enquiry Officer was appointed and during the course of the enquiry, the petitioner submitted his reply inter alia stating that there was no loss caused to the exchequer as alleged and proceedings under Section 47-A(3) of the Indian Stamp Act and Section 80 (A) of the Registration Act was initiated by the petitioner to recover the differential duty, if any, due. The petitioner was thereafter transferred and was served with three other Charge Memos dated 17.11.2008, 09.03.2009 and 11.05.2009. However, for the purpose of the disposing of the present Writ Petitions, it may not be necessary to refer to those charge memo or any of those proceedings, inasmuch the subsequent three charge memos have been kept in abeyance in view of the fact that the petitioner was dismissed from service by order dated 05.07.2011 issued by the 2nd respondent pursuant to the charge memo dated 09.07.2008. The

Enquiry Officer held that the charges against the petitioner were not proved. However, the 2nd respondent deviated from the report of the Enquiry Officer and proceeded to hold that the petitioner failed to see that the lands which were conveyed, ought to have been classified as housing sites/plots, but instead disclosed as agricultural lands and the petitioner failed to take into account the sale deeds registered in respect of the adjacent land which he ought to have taken into account thereby has caused loss to the exchequer to the extent of Rs.45,55,512/-.

4. Aggrieved by the above Order of dismissal, the petitioner referred an appeal before the 1st respondent, who on the basis of the opinion given by the Tamil Nadu Public Service Commission/3rd respondent herein had rejected the appeal on the following premise:-

> "(i) As the buyer of the property is a plot & Housing Pvt. Ltd., the Sub-Registrar should have a suspicion about the nature of land transacted.
> (ii) While the Sub-Registrar went on site inspection, he should have detected the classification of land.
> (iii) He should have inspected the earlier registered documents with relevance to the same survey number in his own Sub-Registrar Office in the month of April, May & June, 2006.
> (iv) He should have inspected the relevant records in the DTP officer or in the Thirupporur Panchayat Office."

It is against the above order of appeal, confirming the Order of dismissal, that the petitioner has filed these Writ Petitions inter alia challenging the same on the following grounds:-

a) That the disciplinary authority failed to see that the enquiry report found that the charges of undervaluation/misclassification and consequent/resultant loss to the exchequer was not proved.

b) The disciplinary authority erred in departing from the enquiry report without any basis and in imposing punishment of dismissal of service without cogent or valid reasons.

c) That the petitioner is discharging quasi-judicial functions while registering the documents and thus cannot be charged with mis-conduct, unless it is demonstrated/proved that there were extraneous considerations which influenced the quasi-judicial order.

d) That as a matter of fact, proceedings under Section 47 -

A (3) of Indian Stamp Act has culminated, whereby the lands in question have been treated and classified as agricultural land and an amount of Rs.4,920/- has also been accepted as difference of stamp duty due, thus the allegation of loss to the exchequer is misplaced and unsustainable

e) With regard to the allegation of failure to scrutinize the previous transactions, which the petitioner was alleged to have not examined is baseless inasmuch as all the documents viz., 830/2006, 3919/2006, 3929/2006 and 9383/2006 were registered and classified as agricultural lands and none of the above documents were registered as housing plots in the said survey Nos. That the amounts disclosed in the sale deed which were registered were much higher than the guideline value and thus the petitioner cannot be found fault with for accepting the same.

5. To the contrary, it was submitted by the respondent that the property has been purchased by a Housing Cooperative Society and a sanction has been obtained for framing lay out and thus value on Sq.ft basis should have been adopted by fixing the value for those properties which the petitioner has failed to, resulting in loss to the exchequer to the tune of Rs.45,55,512/-. That Section 47 - A(3) of Indian Stamp Act cannot be proceeded in the absence of the original instrument by the Collector. Thus, the submissions that proceedings under Section 47 - A(3) of the Indian Stamp Act has been initiated, cannot be a factor which would exonerate the petitioner. Further, the lands in question ought to have been treated as housing sites in as much DTCP approval has been obtained and portions of the land have been set apart for roads and parks in between the plots and parks had been gifted to the local bodies by way of document No.3926 of 2006. Consequently, the classification of the land ought to have been housing sites and not agricultural land, the petitioner ought to have exercised his discretion under Section 47 - A (1) and the proceedings under Section 47 - A (3) may not safe guard the interest of the revenue adequately. In view of the above reasons it was be submitted that the Writ Petitions ought to fail.

6. Heard both sides and perused the materials available on record.

7. This Court is of the view that the above Writ Petitions may have to succeed for the following reasons:-

a. Sub-Registrar exercises quasi-judicial power in determining valuation of land:

The power of the Sub-Registrar in determining stamp duty is quasi-judicial in nature. The question as to whether the Sub-Registrar in determining proper stamp duty exercises or discharges quasi judicial power/function is no longer res-integra. It has been held that quasi-judicial power/function is exercised by the registering authorities while examining the document and in arriving at a conclusion as to the classification of the property and in determining appropriate stamp duty with regard to a particular document/ insrument. In this regard, it may be relevant to refer to the following judgments:-

i) D.T. Boopathy Vs Principal Secretary to Government and Others reported in 2019 SCC online Mad 7605 wherein it has been held as under:

> "10....The petitioner, being the Sub Registrar is only exercising a quasi judicial power while determining the stamp duty payable on any instrument under The Indian Stamp Act and he is only adjudicating the issue involved in the determination of proper stamp duty payable on the instrument. Mere carelessness or inadvertence or omission, while exercising the quasi judicial power is not sufficient to initiate disciplinary proceedings for misconduct unless it has been established or alleged that the delinquent officer has acted with culpable negligence or ill-motive or on some extraneous consideration.... "
>
> (emphasis supplied)

ii) B.K. Gunasekaran Vs. The State of Tamil Nadu Rep. by the Secretary to Government, Commercial Tax and Registration Department, Secretariat Chennai-600 009 reported in 2010 SCC online 2113 wherein it has been held as under:

> "14. ...The determination as to whether proper Stamp Duty has been paid under Act is a quasi-judicial function to be exercised by the registering authority by going through the contention of the document and coming to an opinion as to what the document could be classified for demanding proper Stamp Duty as per the rates specified in Schedule I to the Act.
> Therefore, there is an element of adjudication involved in the matter for determination of proper Stamp Duty chargeable on an instrument — The power of the Sub-Registrar is a quasi-judicial power in determining the Stamp Duty — Likewise, the officer in the position of the petitioner is required to render a quasi-judicial findings before issuing a certificate for recovery that the document in question was not sufficiently Stamped — This finding cannot be done without an enquiry to the aggrieved person."
>
> (emphasis supplied)

It is thus clear that a sub-registrar exercises quasi-judicial function in the valuation of document for determining the appropriate stamp duty.

b) Mere Errors in discharging quasi judicial function would not constitute misconduct:

Every error in discharging quasi-judicial functions may not constitute charge of misconduct and having found that the Sub-Registrar is exercising quasi-judicial functions in valuing the documents, mere error of judgment cannot by itself constitute misconduct. Importantly, in the present case at no point commencing from the charge memo, disciplinary proceedings and the proceeding before appellate authority, it was found that the action of the petitioner was motivated by extraneous consideration or malice. In the absence of even an allegation, that the decision was motivated by extraneous considerations which influenced the quasi-judicial proceeding, assuming that there was an error in valuation such error by itself may not constitute misconduct. In this regard, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in Zunjarrao Bhikaji Nagarkar v. Union of India, reported in 1999 7 SCC 409 wherein it was held reads as under :-

> "43. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi-judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi-judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative adjudication whereunder quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.
>
> 44. Considering whole aspects of the matter, we are of the view that it was not a case for initiation of any

disciplinary proceedings against the appellant. The charge of misconduct against him was not proper. It has to be quashed.”

(emphasis supplied)

c. Proceeding under section 47A(3)- Property in question - Agricultural land:

During the course of the hearing, it was submitted by the petitioner that the proceedings under Section 47 – A(3) Indian Stamp Act has culminated by arriving at the difference of the stamp duty paid and that which ought to have been charged as Rs.4,920/- the same has also been duly recovered on 14.06.2019, as would be evident from the letter dated 29.08.2020.

Thus the allegation of loss to the exchequer to the tune of Rs.45,55,512/- is clearly unsustainable. In any view, the proceedings under Section 47 – A (3) would show that the valuation by the petitioner cannot be found fault with.

d. Exercise of due diligence- by Guideline Value followed:

It also appears to us that the petitioner has exercised due diligence while fixing the classification as agricultural land and in arriving at value of the land for the purpose of calculating/computing the stamp duty as would be evident from the following:-

a) The previous transaction Viz. 830/2006, 3919/2006, 3929/2006 and 9383/2006 have also been registered as agricultural lands.
b) The patta continues to show the lands in question as agricultural lands.

In any view, the reading of G.O.Ms. No. 419 dated 30.12.1993 would show if the documents is registered for higher value and such higher value is not recorded in the guideline register, subsequent documents registered for lesser value on the basis of the guideline value cannot be found fault with. In any view in such case the Sub-Registrar who is responsible is the one, who had not recorded the higher value in the guideline register and the subsequent Sub-Registrar cannot be charged with dereliction of duty. The petitioner was apparently handicapped in view of the fact that the previous Sub-Registrar has failed to discharge his obligations and the petitioner had adopted the guideline value and registered the document only after examining and on the basis the guideline register. It thus appears that the petitioner has acted with due diligence and thus charges of dereliction of duty or negligence is unjustified.

d. Article 14 vis- a- vis punishment and disciplinary proceedings:

The submission of the petitioner that totally 10 sale deeds were executed between 03.04.2006 and 09.02.2007 wherein 30.75 acres of land in Thiruporur Village was conveyed to M/s. Jubilee Plot and Housing Pvt. Limited. In respect of all the 10 sale deeds, charges were framed and enquiry was conducted against the petitioner and 3 other Sub-Registrars. The petitioner was charged since he had registered the document in 9383/2006. With regard to the registration of the documents in Nos.9854/2006, 733/2007 and 1246/2007, similar charges were framed against Mr.Chandra Kumar, Mr.Ramalingam and Mr.Paneerselvam who were the other Sub-Registrars at different points in time. The loss alleged in the aforesaid 3 documents was to the tune of Rs.92 lakhs, Rs.37 lakhs and Rs.45 lakhs respectively. It is submitted that Mr.Chandra Kumar, Mr.Ramalingam and Mr.Paneerselvam who registered the documents were also issued similar charge memos and were inquired by the same Enquiry Officer on the very same day, when the petitioner was also inquired. The Enquiry Officer in his report dated 29.03.2010 had held that the charges against Mr.Chandra Kumar, Mr.Ramalingam and Mr.Paneerselvam was not proved. The 2nd respondent accepted the report of the Enquiry Officer and dropped the charges against Mr.Chandra Kumar, Mr.Ramalingam and Mr.Paneerselvam. In the case of the petitioner, the Enquiry Officer in his report dated 29.03.2010 had held that the loss of Rs.45,55,512/- was not proved against the petitioner. However the 2nd respondent chose to deviate from the Enquiry Officer's report and imposed the punishment of dismissal from service as against the petitioner. The petitioner has been discriminated vis-a-vis Mr.Chandra Kumar, Mr.Ramalingam and Mr.Paneerselvam who are similarly placed like the Petitioner. The action of the respondents is violative of Article 14 and 16 of the Constitution of India.

8. The above submission has merit inasmuch as it has been consistently held that the Article 14 would apply to punishment imposed in disciplinary proceedings. In this regard, it may be relevant to refer to the following judgments.

a. Rajendra Yadav v. State of M.P. Reported in (2013) 3 SCC 73 : (2013) :

> "... this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit."

> ".... that the action of the disciplinary authority imposing a comparatively lighter punishment on the co-delinquent Arjun Pathak and at the same time, harsher punishment on the appellant cannot be

permitted in law, since they were all involved in the same incident ..."

"... Parity among co-delinquents has also to be maintained when punishment is being imposed... "

Thus the impugned proceeding is also bad and falls foul of Article 14 inasmuch as there is disparity in treatment of similarly placed delinquents which is impermissible. In any view, I have already held that the charges against the petitioner is unsustainable even dehors the last reason.

9. For all the above reasons, the writ petitions are allowed and the order of the Labour Court is set-aside as the petitioner has attained superannuation, question of reinstatement does not arise. The petitioner shall however be entitled to the benefit of continuity of service from the date of termination till the date of superannuation and consequential terminal benefits. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

smn/mpl

To:

1. The Secretary to Government,
   Commercial tax and Registration (K) Department,
   Fort St.George,
   Secretariat,Chennai.

2. Inspector General of Registration,
   Office of the Inspector General of Registration,
   No.100, Santhome High Road,
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3. The Secretary,
   Tamil Nadu Public Service Commission,
   Commercial Tax Annexe Building,
   No.1, Greams Road,
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4. The Principal Accountant General,
   (Accounts & Entitlements),
   Anna Salai, Chennai - 600018.

5. The District Registrar,
Registration Department,
Arakkonam,
Vellore District.

+2ccs to Mr.S.Vijaya Kumar, Advocate, S.R.No.32237, 33865
+1cc to the Government Pleader, S.R.No.32534, 32535

W.P. Nos.617 of 2012 & 8833 of 2013

RSD(CO)
PM/27/06/2022