BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.A(MD)No.305 of 2019
and
C.M.P.(MD)No.2453 of 2019

1.The Secretary to Government,
Commercial Taxes and Registration
Department,
Secretariat, Chennai – 600 009.

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

Vs.

S.Senguttuvan,
Sub Registrar (Guideline),
Office of the Deputy Registrar,
Marthandam,
Kanyakumari District. ... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.1031 of 2013, dated 27.02.2017.

For Appellants :Mr.K.S.Selva Ganeshan
Additional Government Pleader
For Respondent :Mr.G.Prabhu Rajadurai
for Mr.S.M.A.Jinnah

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JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

This Writ Appeal is filed challenging the order passed in Writ Petition W.P.(MD)No.1031 of 2013, dated 27.02.2017.

2. The prayer in the writ petition is for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the first respondent in G.O.Ms.(D)No.197, Commercial Tax and Registration (K) Department, dated 18.05.2012, confirming the order passed by the second respondent in his proceedings in No.12431/A1/2002, dated 16.10.2009 and consequently, to direct the respondents to consider the petitioner for promotion to the post of District

Registrar on par with the petitioner's junior within a stipulated period.

3.The brief facts as stated in the affidavit of writ petition are that the petitioner in the writ petition was working as a Sub Registrar (Guidelines) in the office of District Registrar, Tenkasi. Initially, he was appointed as Sub Registrar Grade II on 23.10.1995 and was upgraded as Sub Registrar Grade I in the year 2003. On 20.02.2003, a charge memo was issued under rule 17 (b) of Tamil Nadu civil service (Discipline and Appeal) Rules framing 11 charges and the petitioner had submitted an explanation. Thereafter, an enquiry officer was appointed and the report, dated 11.02.2005, was submitted holding that the charges 3, 5 and 9 were not proved. As far as the charges 4, 6 and 7 the petitioner was already inflicted with punishment. As far as the charges 1, 2, 8, 10 and 11 were held proved. Thereafter, a second show cause notice was issued along with enquiry report and the petitioner had submitted his further explanation. The second respondent was not satisfied with the explanation and vide proceedings, dated 16.10.2009, imposed the punishment of stoppage of increment for a period of 5 years with cumulative effect. Aggrieved over the punishment, the petitioner had preferred an appeal, dated 28.12.2009. Thereafter, the petitioner preferred a writ petition in W.P.(MD)No.12020 of 2011, with a prayer for direction to dispose of the appeal and this Court has directed the respondents to dispose the appeal within a period of 6 weeks. Thereafter the first respondent issued a notice directing the petitioner to appear for personal enquiry and the petitioner had appeared on 02.04.2012. Without considering the submission putforth by the petitioner, the respondent rejected the appeal, vide the impugned order, in G.O.Ms.(D)No.187, Commercial Tax and Registration (K) Department, dated

18.05.2012. Aggrieved over the same, the writ petition was filed.

4. The writ petitioner denies the allegation that he had accepted and tendered an apology as far as the charges 1 and 2 are concerned. The said finding in the impugned order is incorrect and the same is contrary to the real facts and the contention of the petitioner is that he did not accept the said charges as held in the impugned order. The petitioner contended that he had made an attestation within 3 days from the date of registration. Moreover, since the registrations of those documents were in the end of those years, it may be endorsed even after 3 days. However, the said explanation was not taken into consideration either by the disciplinary authority or by the appellate authority. The charge that the petitioner had failed to prepare index of the property details for which the petitioner submitted that preparing the index is

the duty of the Junior Assistant and the petitioner cannot be held responsible for the same and this was also not taken into consideration. The petitioner submitted that as far as the charge No.10 is concerned, the same cannot considered as misconduct since the petitioner has passed orders in exercise of the quasi judicial function. The petitioner has passed the order if the authority is not satisfied with the valuation, the department has every right to prefer an appeal before the competent authority and the same cannot be subjected to departmental proceedings.

5. As far as the Charge No.11, another charge memo dated 07.11.2003 was issued containing the very same charge and in the enquiry proceedings, it has been held that the charge was not proved. The second respondent deviated from the report and appointed another enquiry officer, vide

proceedings, dated 31.12.2008 and the second enquiry officer has also held that the charges were not proved. Therefore, the departmental proceedings initiated in pursuant to the charge memo, dated 07.11.2003, was kept in abeyance. Under these circumstances the enquiry officer appointed in respect of charge memo, dated 20.02.2003, has held that the charge No. 11 is proved. Two charge memos are issued and two enquiries were conducted for the same charge and the subsequent charge memo including this charge, which is vitiated by *malafides* and the petitioner contended that charge No.11 ought to be considered as not proved.

6.The contention of the petitioner raised while imposing the punishment has taken into consideration the petitioner's past service but, the respondents have not issued any show cause notice seeking the petitioner's explanation as why the petitioner's past service should not be taken into consideration. Since show cause notice was not issued, the second respondent is not empowered to consider the petitioner's past conduct, which is violative of principles of natural justice. Since the disciplinary authority as well as the appellate authority has not considered the grounds raised by the petitioner, the punishment imposed is disproportionate. Moreover, the appellate authority must deal with the points raised in the appeal and should pass a speaking order. Since the appellate authority failed to pass speaking order, the petitioner challenged the said punishment in the writ petition.

7.The Learned Single Judge has held that the petitioner has not accepted the charges levelled against the petitioner and has refuted the same and the findings rendered by the second respondent as if charges 1 and 2 were not challenged in perverse and contrary to the fact. The learned Single Judge has also held that as far as the charge No.10 is concerned, the disciplinary enquiry cannot be initiated as the petitioner was exercising quasi judicial power and if the department is aggrieved, there is an appeal remedy available to the department. As far as the charge No.11 is concerned, the two charge memos and two disciplinary proceedings were initiated and the same is vitiated by malafides. Moreover, Rule 23 castes upon the appellate authority to consider whether the facts of which the order was passed have been established, whether the facts established offered sufficient ground for taking action, whether the penalty is excessive adequate / inadequate and pass orders. The first respondent has not independently applied his mind while arriving at the conclusion. The learned Single Judge has relied on the judgment rendered in ***Apparel Export Promotion Council v.***

A.K. Chopra, (1991) 1 SCC 759, wherein the Hon'ble Supreme Court has held that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority also has every power/ and jurisdiction to appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities." The learned Single Judge has also relied on another judgment ***Narinder Mohan Arya v. United India Insurance Co Ltd., & Ors., AIR 2006 SC 1748.*** The learned Single Judge has held as follows:

> *"19. In the case on hand, it is not the case of the respondent authorities that the petitioner had acted in a manner to unduly favour a party or had passed an order actuated by corrupt motive. Therefore, initiation of disciplinary action in respect of exercise of quasi judicial function is, in my considered opinion, vitiated. The aforesaid view of this Court is fortified by a decision of a learned Single Judge of this Court in V.Selvakumari v The Inspector General of Registration and others, [Order dated 23.8.2016 in W.P.(MD) No.3853 of 2016].*
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> *20. It is further seen that in respect of single misconduct alleged, two charge memos were issued and two enquiries were conducted against the petitioner. On the first occasion, the charge was held to be not proved, whereas on*

the later occasion, the charge was held proved. However, it is not disputed that the charge is one and the same."

8. The Learned Single Judge has allowed writ petition by setting aside the impugned order. As far as the promotion is concerned, the Learned Single Judge has directed the petitioner to submit fresh representation with all particulars and the respondents were directed to consider the representation for promoting the petitioner as District Registrar and pass orders within 2 weeks. Aggrieved over the said order, the Government has preferred this writ appeal.

9.Heard Mr.K.S.Selva Ganeshan, Additional Government Pleader and Mr.G.Prabhu Rajadurai for Mr.S.M.A.Jinnah for the respondent and perused the order and the records.

10. The appellant has issued charge memo framing 11 charges against the writ petitioner. The enquiry officer has held that the charges 3, 5 and 9 were not proved. As far as the charges 4, 6 and 7 is concerned, already punishment was inflicted on the writ petitioner and he has undergone the punishment. Now, the left-out charges are only 1, 2, 8, 10 and 11.

11. The contention of the respondent in the writ appeal is that as far as the charge No.1 is concerned, the guidelines are issued directing the Sub Registrar to make attestation within 3 days from the date of registration, but the writ petitioner has not attested within the stipulated period. However, the writ petitioner submitted that the time is extended if the registration is done during end of the year, wherein the endorsement may be affixed after 3 days also. Hence the writ petitioner contended that the very charge is

against the guidelines issued, the charge No.1 cannot be held against the petitioner. On perusing the guideline, it is seen that if the documents are executed during the end of the year, then the Sub Registrar shall affix the signature after three days also and in such circumstances the charge No. 1 is against the guideline, therefore this Court is of the considered opinion that the Charge No. 1 is against the guideline and liable to set aside and it ought to be held that it is not proved.

12. As far as the charge No.2 is concerned, the contention of the writ petitioner is that preparing index of the property details is the work assigned to the Junior Assistant and the writ petitioner cannot be held responsible. The appellant has submitted that the writ petitioner is having supervisory power and has failed to supervise the subordinates. But the charge No. 2 is not stating as submitted

by the appellant and it alleges that the writ petitioner has failed to prepare index of the property details. Therefore, this Court is of the considered opinion that if the work is not assigned, the petitioner cannot be held responsible for not executing the same and the charge No.2 is also not proved.

13. As far as the charge No.10 is concerned, the allegation against the writ petitioner is that the petitioner while registering the document No. 384/2001 the petitioner had fixed the registration fee of Rs.30,000/- and stamp duty of Rs.4950/- but the petitioner ought to have fixed the registration fee of Rs.44,810/- and stamp duty of Rs.8735/-, thereby the department had incurred loss of Rs.18,595/- and the said allegation is proved since subsequently the department had filed petition under section 47A. The petitioner submitted that the registration fees and the stamp

duty was fixed by exercising the quasi judicial power and the appellants cannot initiate any disciplinary proceedings against any quasi judicial function. It is further submitted that if the Department is aggrieved by the quasi judicial order, the department has every right to prefer an appeal under section 47A. The department had preferred an appeal and hence there is no loss to the department. Hence the charge No.10 cannot be held against the petitioner. This Court is of the considered opinion that the writ petitioner is absolutely right in stating that the exercise of quasi judicial power will not attract any disciplinary proceedings and hence the charge No. 10 also is not proved.

14. As far as charge No.11 is concerned, the contention of the writ petitioner is that already a charge memo, dated 07.11.2003 and the enquiry proceedings ended

in favour of the writ petitioner and the report was not served on the writ petitioner. Again for the same charge the appellants vide proceedings dated 30.08.2006 had changed the enquiry officer and the charge was held not proved. The 2nd respondent vide proceedings dated 31.12.2008 appointed another enquiry officer and again the charge was held not proved. Thereafter the proceedings initiated in pursuant to the charge memo dated 07.11.2003 were kept in abeyance. In this circumstances, the enquiry officer who was appointed in respect of charge memo dated 20.02.2003 held that the charge no 11 is proved and imposed punishment. The contention of the writ petitioner is that for single delinquency two charge memos were issued and two enquiries were conducted which is against law and such act is alien to the service jurisprudence. This Court is of the considered opinion that the charge No. 11 cannot be sustained since already the same charge was dealt with, wherein two enquiry officers were appointed and both of them had held that the charge is not proved. In such circumstances the appellant has acted in vindictive manner and the charge No. 11 cannot be sustained.

15. Therefore, only one charge namely charge No.8 alone is proved for which the punishment of stoppage of increment for a period of 5 years with cumulative effect is absolutely disproportionate. Therefore, this court is inclined to modify the punishment.

16. At this stage, the appellants submitted that the case may be remitted back to the authorities, in order to modify the punishment. It is seen from the records that the writ petitioner / respondent has already attained superannuation and if remitted the appellant may prolong the

proceedings. Hence, this Court is not inclined to remit and the punishment is modified as one of stoppage of increment for one year without cumulative effect. As far as the promotion is concerned, the writ petitioner is directed to submit fresh representation with all particulars and the appellants are directed to consider the representation for granting notional promotion to the petitioner as District Registrar and pass orders within 2 weeks.

17. With this modification, the writ appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [S.S.Y., J.]
25.07.2022

Index : Yes / No

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To

1.The Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai – 600 009.

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

S.S.SUNDAR, J.

and

S.SRIMATHY, J.

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