



W.P(MD)No.13924 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13924 of 2022

and

W.M.P(MD)No.9907 of 2022

T.Rajendran

... Petitioner

Vs

- 1.The Inspector General of Registration,
O/o. The Inspector General of Registration,
No.100, Santhome High Road,
Mullima Nagar, Mandavelipakkam,
Raja Annamalaipuram, Chennai.
- 2.The Deputy Inspector General of Registration,
O/o.The Deputy Inspector General of Registration,
Tirunelveli District.
- 3.The District Registrar,
O/o.The District Registrar,
Nagercoil, Kanyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of impugned charge memo No.3605/A1/2020-2, dated 02.05.2022 issued by the second respondent against the petitioner and quash the same as illegal further directing the second respondent to provide the consequent retirement benefits.



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For Petitioner : Mr.G.Prabhu Rajadurai
for Mr.S.M.A.Jinnah

For Respondents : Mr.S.R.A.Ramachandran
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2.The writ petitioner joined the Registration Department as Junior Assistant in the year 1983. He was promoted as Assistant in the year 1994. He served as in-charge Sub Registrar of Rajakamangalam in the year 2012. He reached the age of superannuation on 30.05.2022. In the last month of his service, he was issued with the impugned charge memo dated 02.05.2022.

3.The impugned charge memo contains a single article of charge. It alleges that the writ petitioner by registering Document Nos.2824 of 2012, 2387 of 2012 and 2682 of 2012 had caused loss to the tune of Rs.13,72,207/- to the Government. The case of the department is that these documents ought not to have been registered as partition deeds.



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4.The question that arises for consideration is whether disciplinary action can be taken against the petitioner for having done so.

5.The parties to all the three documents were co-owners. They were also members of the very same family. They were siblings/legal heirs of the deceased sibling. Explanation to Article 45 of Schedule I of the Indian Stamp Act, 1899 states that for the purpose of that Article, the word “family” shall have the same meaning as defined in the Explanation to Article 58. In Article 58, the expression family has been defined as meaning father, mother, husband, wife, son, daughter, [grandchild, brother or sister]. The original Explanation did not include “grandchild,brother or sister”. This amendment was brought in vide Act 19 of 2013 w.e.f., 01.10.2013. The registrations made by the petitioner were prior to the amendment. So technically, the parties to the document could not have been called members of the term “family”. But there were circulars treating siblings as members of a family. This issue was referred to the Deputy Inspector General of Registration who vide communication bearing R.C. 21581/A2/2016 dated 05.05.2016 sustained the petitioner's act. The aforesaid communication clearly stated that the parties to the said



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documents would come within the definition of the term 'family'. This clarification ought to have been given a quietus to the issue. However, audit objection was raised. The matter was once again taken up for consideration at the level of the District Registrar, Kanyakumari who also endorsed the stand taken by the Deputy Inspector General of Registration. Yet the impugned charge memo came to be issued.

6.I wanted to know from the Additional Government Pleader as to whether any recovery action was initiated against the executants of the aforesaid documents. The answer is in the negative.

7.Be that as it may, there is an element of adjudication involved in the matter of determination of proper stamp duty chargeable on an instrument. In ***S.P Goel v. Collector of Stamps (1996) 1 SCC 573***, a question arose whether the act of the registering authority in not registering a document or issuing certified copy thereof in spite of full registration charges having been paid would constitute “deficiency of service” so as to maintain an action under the provisions of the Consumer Protection Act, 1986. The Hon'ble Supreme Court held that under the Registration Act as also under the Stamp Act, the officers, apart from performing administrative duties, also, at times, perform quasi-judicial functions. It was observed as follows :



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“28.The registration Act as also the Stamp Act are meant primarily to augment the state revenue by prescribing the stamp duty on various categories of instruments or documents and the procedure for collection of stamp duty through distress or other means including criminal prosecution as non-payment of stamp duty has been constituted as an offence. Payment of registration fee or registration charges including charges for issuing certified copies of the registered documents or fee for the inspection of various registers or documents kept in the Registrars or Sub-Registrars office etc. constitute another component of State revenue.

29.In this situation, therefore, the person who presents for registration and pays the stamp duty on it or the registration fee, does not become a consumer nor do the officers appointed to implement the provisions of the two Acts render any service within the meaning of Consumer Protection Act. They only perform their statutory duties (some of which, as earlier indicated, are judicial or, at least, quasi-judicial in nature) to raise and collect the State revenue which is a part of the sovereign power of the State.”

A learned Judge of this Court in the decision reported in **2010-2-L.W. 964 (B.K.Gunasekaran Vs. State of Tamil Nadu and others)** held that the determination as to whether proper Stamp Duty has been paid under Act is a quasi-judicial function to be exercised by the



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registering authority by going through the contents of the document and by forming an opinion regarding the classification of the document for demanding proper Stamp Duty as per the rates specified in Schedule I to the Act. Thus, there is an element of adjudication involved in the matter for determination of proper Stamp Duty chargeable on an instrument.

8.The next question that arises is whether for a mere error committed while exercising this quasi-judicial power, disciplinary action can be taken against the official concerned. The precedential trajectory is quite interesting. In ***Zunjarrao Bhikaji Nagarkar v. Union of India (1999) 7 SCC 409***, it was held that an erroneous exercise of jurisdiction by a quasi-judicial authority cannot result in disciplinary proceedings and that it must be kept in mind that being a quasi-judicial authority, he is always subject to judicial supervision in appeal. It was further observed that if every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers. This decision was by a two judges Bench. It came up for consideration before a Three Judges Bench comprising Their Lordships Ruma Pal, C.K. Thakker and Markandey Katju, JJ. in ***Union of India v. Duli Chand (2006) 5 SCC 680***. The Hon'ble Supreme Court held as follows :



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“5.The law on the subject was considered in extenso in the three judge bench decision of Union of India v. K.K. Dhawan 1993 2 SCC 56 wherein it was noted that the view that no disciplinary action could be initiated against an officer in respect of judicial or quasi-judicial functions was wrong. It was further said that the officer who exercises judicial or quasi-judicial powers acting negligently or recklessly could be proceeded against by way of disciplinary action. The Court listed six instances when such action could be taken:

28. i. where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

ii. if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

iii. if he has acted in a manner which is unbecoming of a government servant;

iv. if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

v. if he had acted in order to unduly favor party;

vi. if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago 'though the bribe may be small, yet the fault is great'.



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6.The Court, however, made it clear that ultimately the matter would have to depend upon the facts of a particular case. The present case would fall squarely within the fourth instance listed above.

7.The decision in K.K. Dhawan case was considered by this Court and followed in Govt. of T.N. v. K.N. Ramamurthy 1997 7 SCC 101 In that case the Tribunal had set aside the order imposing punishment on an officer who had been discharging judicial functions. The Court was of the view that the Tribunal's action was contrary to the several judgments of this Court and the settled law on the question.

8.In 1999 another bench of two judges in Zunjarrao Bhikaji Nagarkar considered and referred to these earlier decisions. However, the Court appears to have reverted back to the earlier view of the matter where disciplinary action could be taken against an officer discharging judicial functions only where there was an element of culpability involved. Since in that particular case there was no evidence whatsoever that the employee had shown any favour to the Assessee to whom refund had been made, it was held that the proceedings against him would not lie. In fact the Court set aside the disciplinary proceedings at the stage of the issuance of charge-sheet to the charged officer.



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9. In our opinion, Nagarkar case was contrary to the view expressed in K.K. Dhawan case. The decision in K.K. Dhawan being that of a larger Bench would prevail. The decision in Nagarkar case therefore does not correctly represent the law. Inasmuch as the impugned orders of the Tribunal and the High Court were passed on the law enunciated in Nagarkar case this appeal must be allowed. The impugned decisions are accordingly set aside and the order of punishment upheld.”

But another Three Judges Bench of the Hon'ble Supreme Court in **Ramesh Chander Singh v. High Court of Allahabad (2007) 4 SCC 247** approvingly referred to **Zunjarrao. Duli Chand** which was decided on 21.04.2006 was not brought to the Hon'ble Bench which decided **Ramesh Chander Singh** on 26.02.2007. In **Inspector Prem Chand v. Govt. of NCT of Delhi (2007) 4 SCC 566**, **Zunjarrao** was relied on. Interestingly, His Lordship Mr. Justice Markandey Katju who was part of the Duli Chand Bench which overruled **Zunjarrao** was part of the Hon'ble Bench which decided **Inspector Prem Chand. Zunjarrao** was followed in **ESI Corpn v. A.K. Abdul Samad (2016) 4 SCC 785**, **Krishna Prasad Verma v. State of Bihar (2019) 10 SCC 640**. In Krishna Prasad Verma it was held as follows :

“16. We would, however, like to make it clear that we are in no manner indicating that if a judicial officer passes



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a wrong order, then no action is to be taken. In case a judicial officer passes orders which are against settled legal norms but there is no allegation of any extraneous influences leading to the passing of such orders then the appropriate action which the High Court should take is to record such material on the administrative side and place it on the service record of the judicial officer concerned. These matters can be taken into consideration while considering career progression of the concerned judicial officer. Once note of the wrong order is taken and they form part of the service record these can be taken into consideration to deny selection grade, promotion etc., and in case there is a continuous flow of wrong or illegal orders then the proper action would be to compulsorily retire the judicial officer, in accordance with the Rules. We again reiterate that unless there are clear-cut allegations of misconduct, extraneous influences, gratification of any kind etc., disciplinary proceedings should not be initiated merely on the basis that a wrong order has been passed by the judicial officer or merely on the ground that the judicial order is incorrect.”

One common thread is evident. Unless the official exercising quasi-judicial function was actuated by corrupt motive or he acted under extraneous considerations or he was recklessly negligent, he cannot be visited with disciplinary action.



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9. Respectfully applying the aforesaid ratio laid down by the Hon'ble Supreme Court to the facts of this case, I hold that the impugned charge memo ought not to have been issued against the writ petitioner for having taken a particular view as regards the chargeability of the instrument under the relevant provisions of the Stamp Act. The impugned charge memo is quashed.

10. This writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

08.09.2022

Index : Yes / No
Internet : Yes/ No
mga/skm

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G.R.SWAMINATHAN, J.

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