BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.09.2022**

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THE HON'BL MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.10870 of 2015
and
M.P.(MD)No.1 of 2015

N.Chinnaiah ... Petitioner

Vs.

1. The Secretary,
   Commercial Taxes and Registration Department,
   Government of Tamil Nadu,
   Secretariat, Chennai – 9.

2. The Inspector General of Registration,
   Santhome High Road,
   Chennai. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Impugned Order passed by the second respondent bearing No. 14710/Aa3/2010, dated 15.06.2012, confirmed by the first Respondent in G.O.(D).No.8, Commercial Tax and Registration Department, dated 06.01.2015 and quash the same and consequently, direct the respondent to disburse all the consequential benefits.

For Petitioner : Mr.T.Antony Arul Raj

For Respondent : Mr.K.Selvaganesan
Additional Government Pleader

ORDER

This Writ Petition is filed for Writ of Certiorarified Mandamus, to quash the impugned order which was confirmed by the first respondent in G.O.(D).No.8, Commercial Tax and Registration Department, dated 06.01.2015 and consequently prayed to disburse all the consequential benefits.

2. The brief facts of the case is that the petitioner joined the Registration Department in the year 1983 as Junior Assistant. Subsequently, promoted as Assistant in the year 2002 and the petitioner was on the verge of the retirement. The contention of the petitioner is that the respondent, vide communication, dated 07.05.2009 instructed all

the District Registrars not to depute any Assistant who is about to retire as Sub Registrar. Against this instruction, the petitioner was posted as Sub Registrar of Orathanadu. The petitioner has expressed his unwillingness, but still the petitioner was posted under deputation order. During the said period, the petitioner had registered certain documents. The petitioner has contended that he has acted strictly as per law and in terms of the instructions issued by the Inspector General of Registration.

3. The respondents have raised eight Audit Objections in March, 2009 and the petitioner had submitted his explanations. The petitioner was due to retire on 31.03.2010. On 28.03.2010, the petitioner was served with the charge memo, dated 22.03.2010, which alleges that the petitioner was careless in performing his official duties which caused loss of revenue to the tune of Rs.5,64,677/-. The charges further states that when the petitioner was officiating as Sub Registrar, about 14 documents were registered wherein the petitioner had collected less registration fees and stamp duty. The petitioner had submitted his detailed reply, dated 08.04.2010. The charge memo does not allege any

corrupt motive and hence the petitioner claims the impugned disciplinary action is not maintainable and filed a writ petition in W.P.(MD)No.800 of 2011, challenging the said charge memo.

4. In the meanwhile, the respondent had appointed an enquiry officer, wherein, the Enquiry Officer has finally held that the charges are proved. Based on the same, the second show cause notice was issued and the petitioner had submitted an explanation. Without considering the same, the second respondent has passed the impugned order, wherein, compulsory retirement and reduction of 1/3rd of amount from the gratuity was ordered. Hence, the petitioner has filed an Amendment Petition in W.P.(MD)No.800 of 2011 and this Court, vide order, dated 18.06.2014 was pleased to dispose the writ petition with the direction to consider the case of the petitioner in the light of the judgment of the Hon'ble Supreme Court. The respondent without considering the order passed in the aforesaid writ petition had dismissed the appeal filed by the petitioner. The contention of the petitioner is that the first respondent did not consider the order of this Honourable Court, no reason has been assigned

by the first respondent for dismissing the petitioner's appeal. Aggrieved over the punishment order of compulsory retirement and 1/3rd reduction of gratuity amount, the present writ petition has been filed.

5. The second respondent has filed a counter affidavit stating that that the disciplinary proceedings were initiated under Rule 17(b). Challenging the same, the petitioner had filed a writ petition in W.P.(MD)No.800 of 2001 and this Court has directed to consider in the light of Supreme Court judgment. Subsequently, after considering the same, the first respondent has passed an order confirming the compulsory retirement from the 1/3rd amount of gratuity. The respondent has stated that the petitioner has willingly acted as Sub Registrar and also denied the contention of the petitioner that he was deliberately posted as Sub Registrar. The petitioner used to collect the maximum registration fee of Rs.5000/- (Rupees Five Thousand only) while the fee has been enhanced by amendments under Registration Act to the maximum limit of Rs. 10,000/- (Rupees Ten Thousand only). Further the counter affidavit also states that without reference to the guidelines value and copy of parent

deeds to ascertain the nature of property, the petitioner registered the sale deeds on the value set forth in the documents which were undervalued. The respondent has further stated that the petitioner had admitted in paragraph 2 of the affidavit that he had offered his reply to the order. Therefore, the petitioner cannot retract that he is unaware of the nature of charges. The petitioner has carelessly left out the amendment which was brought in, wherein, the fees were increased to Rs.10,000/- (Rupees Ten Thousand only). Moreover, the petitioner has not invoked Section 47-A(1) of the Indian Stamp Act and referred the documents to the Sub-Collector(Stamps) for fixation of market value of the property. The petitioner has caused loss while registering documents in a perfunctory and negligent manner neglecting the existing orders. Also without adhering to the table of fees under Registration Act, 1908 and without reference to the previous registration properties. The respondent has submitted that to recover the deficit stamp duty for the undervalued documents, action can be taken by referring the matter to the Collector under Section 47-A(3) of the Indian Stamp Act, 1899. It is submitted that this section is only a remedial measure and it will not absolve the petitioner from the delinquencies committed by him. Therefore, the respondent prayed to dismiss the writ petition.

6. Heard, Mr.T.Antony Arulraj, learned Counsel appearing for the petitioner and Mr.K.Selvaganesan, learned Counsel appearing for the respondents and perused the records.

7. The petitioner was directed to serve as Sub Registrar, but the petitioner was on the verge of retirement and had requested to retain in the earlier post rather than posting as Sub Registrar. But the respondents had posted the petitioner against his request.

8. The learned Counsel appearing for the petitioner submitted that the petitioner was performing quasi-judicial power and the registration fees and the stamp duty was fixed by exercising the quasi-judicial power and hence the respondents cannot initiate any disciplinary proceedings against any quasi-judicial function. And 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 cannot be held against the petitioner. However, the respondents submitted that section 47A is only a remedial measure and it will not absolve the petitioner from the delinquencies committed by him. The issue of quasi judicial power was dealt with in a decision of this Court rendered in V. Selvakumari Vs. Inspector General of Registration reported in 2016-7-MLJ-751, wherein it is held that initiation of disciplinary proceedings against an Officer for any carelessness, inadvertence or omission in exercising quasi-judicial powers, is not legally permissible as he is always subject to judicial supervision in appeal. In other words, negligence in exercising quasi-judicial power by mere carelessness, inadvertence or omission is not sufficient to initiate proceedings under misconduct. This ratio was also rendered by the Hon'ble High Court in ***B.K. Gunasekaran Vs. State of Tamil Nadu reported in (2010) 7 MLJ 32***. Therefore, this Court is of the considered opinion that the respondents reasoning is erroneous, the very initiation of disciplinary proceedings itself in on the wrong understanding of the provisions. The writ petitioner is absolutely right in stating that the exercise of quasi- judicial power will not attract any disciplinary proceedings at all and hence the charge cannot be held as proved.

9. The Learned Counsel for the petitioner further submitted that the enquiry report also states that in certain area there was no guideline values. The contention of the respondents is that the land in question is housing plots and the petitioner ought to have levied the fees applicable to the housing plots. But the contention of the petitioner is that it is only an agricultural land and hence the fees applicable to the agricultural land was fixed and, in such circumstances the respondents cannot fix liability on the petitioner. When there is a dispute whether the land is an agriculture land or housing plots, then it has appellate remedy under section 47A. Moreover, the charge only states that the petitioner has acted in a careless way and as held supra, mere carelessness cannot be ground for initiation of disciplinary proceedings.

10. Therefore, the impugned order needs to be interfered and the impugned order is set aside. The respondents are directed to pay the entire terminal benefits to the petitioner within a period of four weeks from the date of receipt of the copy of the order.

11. With the above direction, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

20.09.2022

Index : Yes / No
Internet : Yes / No
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To

1. The Secretary,
   Commercial Taxes and Registration Department,
   Government of Tamil Nadu,
   Secretariat, Chennai – 9.

2. The Inspector General of Registration,
   Santhome High Road,
   Chennai.

S.SRIMATHY, J

jbr

Order made in
W.P.(MD)No.10870 of 2015

20.09.2022