BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.01.2022

Pronounced on : 23.02.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) No.21291 of 2014 and
M.P(MD).No.2 of 2014

M. Kantharajan :Petitioner

..vs..

1.The State of Tamil Nadu,
Rep. By its Secretary,
Department of commercial and Registration
Secretariat, Chennai -5.

2.The Inspector General of Registration,
Santhome High Road, Chennai – 28.

3.The District Registrar (Administration),
Sivagangai District,
Sivagangai. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of punishment of recovery of the 2nd respondent by his proceedings No.43373/Aa2/2005, dated 30.12.2009 and the consequential rejection order of the first respondent in G.O.(D).No.398, dated 24.10.2014 and quash the same as illegal and consequently direct the respondents to pay the sum of Rs.1,53,983/- which is recovered from 01.01.2010 to 31.05.2012 from the petitioner with 12% rate of interest and to direct the respondents to give promotion to the petitioner's in the cadre of Grade -I, Sub Registrar on the basis of the seniority with all monetary benefits.

For Petitioner : Mr. J. Lawrence

For Respondents : Mr. J.K. Jayaselan
Government Advocate (Civil Side)

O R D E R

The Writ Petition is filed to quash the impugned order of punishment of recovery of the 2nd respondent by his proceedings No.43373/Aa2/2005, dated 30.12.2009 and the consequential rejection order of the first respondent in G.O.(D).No.398, dated 24.10.2014 and consequently direct the respondents to pay the sum of

Rs.1,53,983/- which is recovered from 01.01.2010 to 31.05.2012 from the petitioner with 12% rate of interest and to direct the respondents to give promotion to the petitioner in the cadre of Grade -I, Sub Registrar on the basis of the seniority with all monetary benefits.

2. The petitioner was appointed as Junior Assistant on 10.02.1982 by direct recruitment through TNPSC and was promoted as Assistant on 19.01.1994, then as Sub Registrar Grade -II with effect from 25.05.2001. The second respondent framed charges against the petitioner during the year 2001, 2002 and 2003 while he was working as Sub Registrar, Natham, District Registrar Office, Dindigul thereby, caused revenue loss to the tune of Rs.2,24,479/- by admitting documents for registration without properly fixing the guideline value, which resulted in deficit stamp duty and registration fees. A charge memo dated 03.08.2005 was issued and the petitioner submitted an explanation denying all the charges. An enquiry officer was appointed and the enquiry officer found the charges are proved in respect of 10 items of documents. The enquiry officer has stated that the petitioner has accepted 10 documents for registration without properly valuing the building, without collecting sub division charges and without properly fixing the guideline value and thereby caused loss to the tune of Rs.1,67,679/- by way of deficit stamp duty and registration fees.

3. The contention of the petitioner is originally the respondents have stated that the loss is to the tune of Rs.2,24,479/-. After enquiry, the loss was reduced to the tune of Rs.1,67,769/-, that the Enquiry officer has relied on 11 documents, out of the said 11 documents, 6 documents pertaining to the wrong fixation of Registration Fees and non-collection of stamp duty with regard to the Ratification Deed and non collection of Sub Division fees and the amount alleged as loss under these documents is very meagre and subsequently, the concerned parties have paid the said loss amount and therefore, there is no loss to the Government. The remaining five documents one item of document was admitted by his predecessor in office and subsequently, those documents were referred to Special Deputy Collector (Stamps) under Section 47(A) of the Stamps Act and the alleged loss has been realized. Another one document in which loss was alleged by the enquiry officer to the tune of Rs.1,53,983/- by holding that the petitioner has fixed Rs.30/- per square feet instead of Rs.85.50/- per square feet. There is no materials or guidelines available to fix a sum of Rs.8,250/. But the respondents have alleged the petitioner has not followed the circular passed in this regard. In this case, the said documents were referred to the Special Deputy Collector (Stamps), after elaborate enquiry the said Collector has fixed the value as Rs.30/- per square feet only vide order dated 31.08.2015. However, the respondents have not considered the same. The contention of the petitioner is that the said common circular is no way connected to

this issue therefore, the alleged loss to the tune of Rs.1,53,983/- is imaginary loss. The respondents have agreed to the findings of the Special Deputy Collector (Stamps) and the Department has not preferred appeal and the said order has become finality. Therefore, the alleged loss of Rs.1,53,983/- cannot fasten on the petitioner. Moreover, the Special Deputy Collector (Stamps) vide order dated 31.01.2006 held the petitioner's fixation is correct. The petitioner had submitted that he is discharging the quasi judicial function, even if error of Judgment has allegedly resulted in any loss to the Department, it cannot be a basis for initiation of disciplinary proceedings against him. In support of his contention the petitioner has relied on several judgements.

4. The respondents have filed detailed counter and agreed that initially the proceedings were initiated for revenue loss to the tune of Rs. 2,24,479/- but after detailed enquiry the loss found to be Rs.1,67,679/-. The respondents have submitted under Rule 161 of the Registration Rules, the Registering Officer will be held liable for loss to the Government, which may arise from neglect on his part in the registration of a document, the making of a search or the grant of copy of a document. The enquiry officer has scrutinized item wise and the enquiry officer's report is in the light of the circulars and the orders of the Department determined the actual loss. Since the appeal has no merits, the original order was confirmed in the appeal vide G.O. (D). No. 398, Commercial Taxes and Registration Department, dated 24.10.2014. The petitioner has neglected the instructions issued by the second respondent regarding the fixation of house site value or adoption of incorrect guideline value are major constituents for the loss. The petitioner's negligent act has caused revenue loss and the hence, he cannot claim protection under the guise of quasi-judicial function. It is clear from the records that the petitioner has not followed the instructions issued by the Inspector General of Registration and therefore, the order of punishment of recovery of loss from the salary of the petitioner is in order and legally sustainable. However, the respondents have submitted as per the Tamil Nadu Public Service Commission Rules, 1954, the views of the Tamil Nadu Public Service Commission can be sought for by the Government in the appeal against the punishment imposed by the disciplinary authority. The averments that copy of the communication made by the Tamil Nadu Public Service Commission incorporating its opinion was not supplied to the petitioner cannot be accepted as the petitioner has not so far requested a copy of the view of the Tamil Nadu Public Service Commission. Since the petitioner has been awarded a punishment of the recovery of a loss to Government for the proven charges cannot claim promotion as Grade-I Sub Registrar. Therefore, the said punishment is legally valid and sustainable in law and prayed to dismiss the writ petition.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. It is seen from the materials placed on record that the allegation against the petitioner is that the petitioner has caused a loss to the tune of Rs.2,24,479/- in respect of imposing of stamp duty for 11 documents. After detailed enquiry, the enquiry officer has reduced the amount to the tune of Rs.1,67,679/-. The contention of the petitioner is out of the 11 documents, 6 documents pursuance to the wrong fixation of Registration fees and not collecting of Sub Division fees. Subsequently, the concerned parties have paid the said loss and therefore, there is no question of loss to the Government at all. The respondents also agreed that the original amount was reduced in the enquiry report. Therefore, this Court is of the considered opinion that out of the 11 charges 6 charges can be safely set aside.

7. Remaining 5 documents where the alleged loss is to the tune of Rs.1,53,983/-, by holding the petitioner has fixed Rs.30/- per sq. feet instead of Rs.85.50/- per sq. feet. It is seen in the appeal to the Deputy Collector of Stamps under Section 47(A) the Special Deputy Collector has fixed Rs.30/- per sq. feet which means the petitioner is right is fixing Rs.30/- per sq. feet. Therefore, the alleged loss of Rs.1,53,983/- is incorrect and the same ought to be deducted from Rs.1,67,679/-. The petitioner has contended that for one document his predecessor has admitted the document and the said delinquency cannot be put against the petitioner. The petitioner has clearly explained regarding 9 documents, by taking the submissions stated supra, this Court is of the considered opinion that the alleged loss of Rs.1,67,679/- is erroneous. As rightly pointed out by the petitioner, the petitioner is exercising the quasi judicial function and even if the petitioner has fixed it wrongly, the remedy is to challenge before the Special Deputy Collector (Stamps). It is seen from the records that the said documents were presented before the Deputy Collector (Stamps) and all the cases ended in favour of the petitioner. The petitioner relied on the Judgment of this Court reported in ***2010 (7) MLJ 32 (B.K. Gunasekaran Vs. State of Tamil Nadu rep. by the Secretary to Government, Commercial Tax and Registration Department, Secretariat, Chennai and others)*** wherein this Court has held applying the principles laid down in that decisions particularly when there is no motive directed against the petitioner and no misconduct against the petitioner and the charge framed against the petitioner is not maintainable, who is the quasi judicial authority. Therefore, following the judgment of this Court is convinced the petitioner is exercising the quasi judicial authority, which is liable to be tested before the Deputy Collector (Stamps). The respondents have rightly tested in appeal before Deputy Collector (Stamps) and all the cases ended up in favour of the petitioner. Therefore, this

Court is of the considered opinion that the recovery order passed against the petitioner is liable to be set aside and accordingly, the recovery is set aside and the respondents are directed to repay the amount recovered. As far as the promotion is concerned, the respondents are directed to implement this order and pass consequential order of promotion.

8. Accordingly, the Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

trp

To

1. The Secretary,
Department of commercial and Registration
Secretarit,
Chennai -5.

2.The Inspector General of Registration,
Santhome High Road,
Chennai – 28.

3.The District Registrar (Administration),
Sivagangagi District,
Sivagangai.

+1 CC to M/s.J.LAWRANCE, Advocate (SR-8237[F] dated 24/02/2022)

+1 CC to M/s.SPL GP (SR-8323[F] dated 24/02/2022)

Order made in
W.P(MD) No.21291 of 2014 and
M.P(MD).No.2 of 2014
23.02.2022

CK(CO)
TR(21.03.2022) 5P 6C