BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.16385 of 2018

and

W.M.P.(MD).No.14549 of 2018

C.Malaisamy (Died) ... Petitioner

2.M.Malliga
3.M.Lakshmanaprabu
4.C.M.Ramkumar
5.M.Vijaya Nandhini Devi ... Proposed petitioners

(Petitioner Nos.2 to 5 are impleaded vide Court order, dated 22.04.2022 in W.M.P(MD)No.5531 of 2022 in W.P(MD)No.16385 of 2018)

Vs.

1.The Secretary to Government,
Commercial Taxes and Registration (k) Department,
Fort St.George, Chennai.

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

3.The District Registrar (Audit),
Madurai North Registration District,
Madurai. ... 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 pertaining to the impugned order passed by the second respondent in his proceedings in No.3028/Aa2/2013, dated 05.06.2015 and the further impugned order passed by the first respondent in G.O.(d) No.259 Commercial Taxes and Registration (k) Department, dated 15.07.2016 and quash them as illegal and consequently, direct the respondents 1 & 2 to permit the petitioner's retire from service with effect from 31.01.2013 and to pay all the retirement benefits from the date of his retirement with 18% interest within a time as stipulated by this Court.

For Petitioner : Mr.P.Gunasekaran
For Respondents : Mr.P.Thambidurai
Government Advocate (Civil Side)

ORDER

The writ petition has been filed to quash the impugned order passed by the second respondent in his proceedings No.3028/Aa2/2013, dated 05.06.2015 and the further impugned order passed by the first respondent in G.O.(d) No.259 Commercial Taxes and Registration (k) Department, dated 15.07.2016 and consequently, direct the respondents 1 and 2 to permit the petitioner to retire from service with effect from 31.01.2013 and to pay all the retirement benefits from the date of his retirement with 18% interest.

2. During the pendency of the writ petition, the writ petitioner died on 04.03.2019 and hence, the legal heirs of the petitioner had filed impleading petition in W.M.P.(MD)No.5531 of 2022 and the same was allowed on 22.04.2022. The petitioner Nos.2 to 5 are the legal heirs of the deceased petitioner.

3. The brief facts of the case are that the deceased petitioner was appointed as Junior Assistant in the Animal Husbandry Department on 07.12.1981 and subsequently, the petitioner was transferred to the Sub-Registrar Office, Theni as Junior Assistant on 22.03.1996. Thereafter, the petitioner was promoted as Assistant and transferred to Sub Registrar Office and transferred to various places, the petitioner was due to retire on 31.01.2013. When the petitioner was working as a Sub Registrar, Palani, the second respondent issued a charge memo, dated 28.01.2013 stating that the petitioner has caused a loss of Rs.17,44,385/- to the Government while he was working as a Sub Registrar in Bodinaickanur. On the verge of retirement, the petitioner was placed under suspension on 29.01.2013 and on receipt of the charge memo, the petitioner submitted an explanation and the third respondent was appointed as an enquiry officer.

4. The contention of the petitioner is that during the enquiry, the documents relied by the respondents as a proof to show the deceased petitioner was responsible for loss to the Government were not at all furnished to the petitioner, pleaded before the third respondent and the documents registered was only as per the guidelines issued by the Government. Subsequent amendments which were not at all brought to the knowledge that the alleged loss were recovered from the parties to the document, further pleaded that there was no ulterior motive in registering the documents and the charges were framed belatedly that too on the verge of retirement. But the third respondent, without considering the petitioner's defense, submitted a report saying that the charge leveled against the petitioner are proved and the basis of the said report, the second respondent passed the impugned order on 05.06.2015,

dismissing the petitioner from service. The petitioner has preferred an appeal before the first respondent and also pleaded that the punishment of dismissal is disproportionate to the charges. The first respondent dismissed the appeal on 15.07.2016, by confirming the dismissal order and has reduced the loss to Rs.14,83,098/- by way of a cryptic order. Aggrieved over the same, the present writ petition has been filed.

5. The respondents have filed a counter stating the petitioner, while he was served as Sub Registrar, Bodinayakanur from 2011 to 2012, registered certain documents. In the Departmental Quarterly Audit Reports a loss due to the Government to the tune of Rs.17,44,385/- was reported. Based on the said report, the Head of the Department and Inspector General of Registration has framed charges under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules and enquiry officer was appointed. According to the enquiry officer, the Revenue loss caused to the Government is as follows:

> *"(i) non adoption of correct guideline value by the petitioner in respect of 102 documents has caused loss of stamp duty of Rs.8,72,170/- registration fees Rs.1,36,040/- and others Rs.80 totaling Rs.10,08,290/-*
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> *(ii) Failure to decide the correct nature in respect of 14 documents has caused stamp duty loss of Rs.4,11,908/- and fees loss of Rs.62,900/- totalling Rs.4,74,808/-".*

6. The enquiry officer has reduced the loss from Rs.17,44,385 to Rs.14,83,098/-. The second respondent being the disciplinary authority, concurred with the findings of the enquiry officer. The petitioner was afforded the opportunity of submitting further explanation and also the opportunity of personal hearing by the second respondent herein on 01.06.2014. The petitioner could not give valid explanation, why he had registered documents adopting the lesser value in the case of 102 documents when there are different contradicting values. When there are different values, the petitioner has taken on his own decisions detrimental to the interest of the Government revenue. Hence, the punishment of dismissal from service was imposed for the proven charges, vide order No.3028/B2/2013, dated 05.06.2013. On appeal, the Appellate Authority has taken the opinion from the Tamil Nadu Public Service Commission and then had confirmed the punishment order. The contention of the respondent is that the loss of Rs.14,83,098/- have not yet been fully collected from the parties as on date and the claim of the petitioner is blatantly false and therefore, prayed to dismiss the writ petition.

7. Heard Mr.P.Gunasekaran, learned Counsel appearing for the petitioner and Mr.P.Thambidurai, learned Government Advocate (Civil Side) appearing for the respondents and perused the records.

8. It is seen from the records that the charge memo was issued for the alleged loss of Rs.17,44,385/- and after enquiry it has been reduced as Rs.14,83,098/-. The allegation against the petitioner is that there are two different contradicting values in the case of 102 documents and when there are two different values, the petitioner has taken his own decision which is detrimental to the interest of Government Revenue. The respondents themselves have admitted that there are two different contradictory values. If there are two contradicting values, the petitioner being the Sub Registrar who is sitting as "Quasi Judicial Authority" has power to take a decision on the guideline value by referring to other documents which were registered in and around the same area. If the quasi-judicial Authority has erred in taking the correct guideline value, the available remedy is to prefer an appeal to the Collector (Stamps) under Section 47 A. The respondents in their counter have not clarified whether Section 47 A proceedings were initiated against the said 102 documents. The respondents have stated that the loss of Rs.14,83,098/- have not yet been fully collected. Hence, this Court is of the considered opinion that the proceedings under Section 47 A is still pending for consideration. This Court in several judgments have held that the Sub Registrar post is a quasi-judicial Authority. The Sub Registrar has to determine the applicable guideline value and if, there is any mistake or wrong fixation of value, the same can be rectified under Section 47 A. The wrong fixation by exercising Quasi Judicial power cannot be a ground to initiate disciplinary proceedings. The respondents have initiated Section 47A proceedings and subsequently, the alleged loss amount was collected by the respondents.

9. Therefore, this Court is of the considered opinion, the loss stated as Rs.14,83,098/- has been reduced. It is seen from the records that the petitioner died and now the legal heirs are contesting this writ petition. Therefore, this Court is of the considered opinion, the punishment of dismissal from service ought to be interfered. The petitioner has relied on the Division Bench order rendered in ***Union of India represented by the Secretary Vs. The Registrar, Central Administrative Tribunal*** reported in ***2005 (2) MLJ 154,*** wherein this Court has held the disciplinary authority while imposing the punishment cannot act on the material which was neither supplied nor shown to the delinquent officer. Admittedly, in the present case, the petitioner has raised the plea that the documents referred in the enquiry was not supplied to the petitioner. The petitioner has relied on one another case reported in ***2016 (7) MLJ 751*** wherein, it has been held that the delinquent who has discharged the quasi-judicial power then the disciplinary proceedings cannot be initiated for the wrong exercise of such power.

10. Therefore, this Court is of the considered opinion, the petitioner who has served as Sub Registrar was exercising quasi-

judicial power while determining the guideline value. If there is any wrong exercise of such quasi-judicial power, the same can be rectified under Section 47 A. Admittedly, in the present case, Section 47 A has been initiated and subsequently, the alleged loss amount was collected by the respondents. The respondents have collected some amount and have not collected fully, but the respondents have power to collect the entire amount by initiating Section 47A proceedings.

11. Therefore, this Court is inclined to interfere in the punishment. The impugned order is set aside. The respondents are directed to implement this order and subsequently, quantify the terminal benefits and other benefits applicable to the petitioner and the same shall be disbursed to the deceased legal heirs. The said exercise shall be completed within the period of eight (8) weeks from the date of receipt of a copy of this order.

12. The writ petition stands allowed accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

btr

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Secretary to Government,
Commercial Taxes and Registration (k) Department,
Fort St.George,
Chennai.

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

3.The District Registrar (Audit),
Madurai North Registration District,
Madurai.

+1 CC to M/s.SPL.GP. (SR-21886[F] dated 27/04/2022)

ORDER MADE IN
W.P.(MD).No.16385 of 2018
26.04.2022

PKP/06.06.2022/6P/5C