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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.17525 of 2017 & 23065 of 2016

and

W.M.P.(MD)Nos.14061 of 2017 & 16522 of 2016

A.Balakrishnan ... Petitioner (In both cases)

vs

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

2. The Deputy Inspector General of Registration,
   Tirunelveli, Tirunelveli
   District.

3. The District Registrar(Administration)
   Cheranmahadevi,
   Tirunelveli District. ... Respondents (In both cases)

PRAYER in W.P.(MD)No.17525 of 2017: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned charge memo made in Memorandum No.206/A1/2017 dated 11.01.2017 issued by the 2nd respondent and consequential order of suspension made in Proc.No.206/A1/2017 dated 27.01.2017 issued by the 2nd respondent and the order of retaining the petitioner in service made in Proc.No.2415/B1/2017 dated 30.01.2017 issued by the 1st respondent and quash the same.

PRAYER in W.P.(MD)No.23065 of 2016 : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned charge memo made in Memorandum No.5271/A1/2015 dated 23.10.2015 issued by the 2nd respondent and quash the same.

(In both cases)

For Petitioner : Mr.P.R.Prithvi Raja

For Respondents : Mrs.D.Farjana Ghoushia
Special Government Pleader

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O R D E R

This writ petition in W.P.(MD)No.17525 of 2017 is filed to quash the Charge Memo dated 11.01.2017 and consequential suspension order, dated 27.01.2017 and the order of retaining the petitioner in

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service, dated 30.01.2017 and quash the same. The writ petition in W.P.(MD)No.23065 of 2016 is filed to quash the impugned charge memo dated 23.10.2015.

2. The brief facts of the case as stated in W.P.(MD)No.17525 of 2017 are that the petitioner was recruited through TNPSC as Junior Assistant cum Typist in the Medical Department on 07.06.1989. Thereafter, the petitioner was transferred to the Registration Department and joined as Junior Assistant in the District Registrar Office, Karaikudi on 01.10.1993. Then promoted as Assistant on 01.09.1995 and subsequently, promoted as Sub Registrar on 29.12.2011. From 06.08.2015, the petitioner was working as Grade-I Sub Registrar. The petitioner attained superannuation on 31.01.2017. The petitioner was issued a Charge Memo, dated 23.10.2015 alleging that the petitioner has caused loss to the tune of Rs.23,17,023/- (Rupees Twenty Three Lakh Seventeen Thousand and Twenty Three only) to the Government while granting 29 encumbrance certificates and registering 424 documents and thereby violated Rule 20(1) of Tamil Nadu Government Servants Conduct Rules. Aggrieved over the same, the petitioner has preferred a writ petition in W.P.(MD)No.23065 of 2016 and the case came up for admission on 02.12.2016 and this Court has directed the respondents to file a counter affidavit and posted the case on 13.12.2016. Thereafter, the respondents have filed a counter affidavit and the case is still pending as on date (the case is tagged along with this writ petition and heard). On 11.01.2017, the present impugned Charge Memo was issued alleging that the petitioner has caused loss to the tune of Rs.68,023/- (Rupees Sixty Eight Thousand and Twenty Three only) while granting two encumbrance certificates and registering 11 documents.

3. The contention of the petitioner is that the present Charge Memo is one and same as that of the earlier Charge Memo, dated 23.10.2015. The contention of the petitioner is that he has not caused any loss to the Government as narrated in the Charge Memo. The stamp duty and registration fee has been collected on the basis of recitals found in the registration deed. The authorities mechanically without any basis has come to the conclusion that the petitioner has created loss. The contention of the petitioner is that the said document where the respondents alleges loss, the proceedings were initiated under Section 47-A (3) of the Indian Stamp Act, 1889 and the amount was also remitted by the parties concerned. With respect to some of the documents, at the relevant point of time, the petitioner was not discharging the work of the Sub-Registrar. However, the impugned Charge Memo states that the alleged charges have taken place from the year 2010 onwards. Every year Audit was carried by the District Registrar Audit and no remarks were found in any of the Audit. But suddenly the present charge memo was issued. The facts relating to the present Charge Memo was available even at the time of issuance of earlier Charge Memo, dated 23.10.2015. Moreover, the Government in G.O.Ms.144 Personnel and Administrative Reforms(N) Department, dated 08.06.2007

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has stated that no disciplinary proceedings shall be initiated against the employee at his verge of retirement and guidelines were issued for the same. In order to avoid the peaceful retirement, the impugned Charge Memo has been issued and the charges are also vague and indefinite. For the earlier Charge Memo, an Enquiry Officer has been appointed and the report has also been submitted. But further action was not taken by the respondents. The petitioner was suspended from service on 27.01.2017 and the petitioner was not allowed to retire, vide proceedings, dated 30.01.2017. Aggrieved by this order, the petitioner has filed this writ petition. The learned Counsel appearing for the petitioner submitted that the earlier Charge Memo was filed in W.P. (MD) No. 23065 of 2016 and the same was dismissed for non-representation on 22.02.2020. The petitioner has filed a restoration petition in W.M.P. (MD) No. 11483 of 2021 in W.P.(MD)No.23065 of 2016 and the same is listed along with this writ petition.

4. The third respondent has filed a detailed counter affidavit stating that in the Local Audit report by the Sub-Registrar Offices for the period from 2006-2012 states that because of the petitioner's negligence incurred a loss to the tune of Rs.23,17,023/-. The above loss has been confirmed by the final orders of the District Registrar Audit. Thereafter, a Charge Memo was issued on 23.10.2015 and an Enquiry Officer was appointed on 16.03.2016. The petitioner has filed a writ petition in W.P.(MD) No.23065 of 2016 and the third respondent had filed a counter affidavit, in the case the Enquiry Officer submitted a report on 28.11.2016 and the Inspector General of Registration, Chennai was called for further representation from the petitioner, vide letter, dated 10.01.2017. The petitioner submitted a representation dated 10.03.2017 and the same was forwarded to the Inspector General of Registration, Chennai through proper channel on 15.03.2017. The petitioner has worked in District Registration, Cheranmahadevi with effect from 06.08.2015. When the petitioner worked as a Sub-Registrar in the Office of the Uthumalai, the Local Audit report states from 2010 to 2011 and from 2012 to 2014 the petitioner has incurred loss of Rs.68,023/-. Based on the Audit report, again a Charge Memo, dated 11.01.2017 was issued and an Enquiry Officer was appointed on 18.01.2017 and the enquiry is pending. As per Rule 161 of the Registration Rules and Standing Order 679(c) Registering Officer has to be held liable for any loss to the Government which may arise due to the negligence on his part in the registration of a documents. Rule 161 states that Registering Officer will be held liable for any loss to the Government which made in the document, the making of a search or the grant of a copy of a document. In the instant case, the petitioner as Registering Officer failed to levy in respect of 11 documents and failed to levy proper search fees for two Encumbrance Certificates. Based on the aforesaid lapses, the proceedings were initiated. The Registering Officer has not properly value as to the nature of an instrument and of its chargeability to stamp duty. Hence, it cannot be construed as a

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quasi-judicial authority. "Irregularity or negligence in the discharge duties with a dishonest motive" warrants initiation of disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Services (discipline and appeal) Rules. In view of the above the charge has been framed under Rule 17 (b) against the petitioner. Therefore, the respondents prayed to dismiss the writ petition.

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5. Heard Mr.P.R.Prithvi Raja, learned Counsel appearing for the petitioner and Mrs.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondents.

6. It is seen from the records that the petitioner was issued with a Charge Memo in the year 2015. Thereafter, for the same charges again a second Charge Memo was issued in the year 2017. According to the petitioner, the Charge Memo is a second Charge Memo for the same set of facts and for the same documents. The respondents have not clarified in their counter affidavit whether it is for different documents. Since the respondents have not clarified, this Court is of the considered opinion that the second set of Charge Memo is for the same documents. Therefore, the second Charge Memo is not maintainable.

7. The contention of the respondents is that the disciplinary proceedings can be initiated under Rule 17(b) if there is any irregularity and negligence in the discharge of official duties with dishonest motive. But the respondents failed to establish whether there is any dishonest motive. The contention of the respondent is that there is a negligence in discharge of the official duties and has not stated that there is a dishonest motive. Therefore, the respondent has misinterpreted the Rule and has proceeded disciplinary action.

8. The next contention put forth by the petitioner is that since exercising the quasi-judicial authority, negligence cannot be attributed against the petitioner and has relied on the judgments rendered in W.P(MD)No.7294 of 2005 dated 27.09.2007 and the relevant portion is extracted hereunder:

> "7. *A perusal of the principle enunciated in these cases of the Honourable Supreme Court would make it clear that wrong exercise of a quasi-judicial authority or mistake of law or wrong interpretation of law cannot be the basis for the disciplinary proceedings.*
>
> *8. Applying the above stated legal principle, if the charge of the petitioner is analyzed, there is not allegation that the petitioner registered the documents which are said to be under valued with any malafide intention or actuated by any corrupt motive. It has also not been stated that the petitioner has exercised his poser in a reckless manner. It may be*

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true that his decision in respect of the value of the documents, registered by him have been subsequently found out to be incorrect, but that alone cannot be the foundation for a charge against the petitioner."

In W.P.(MD)No.3853 of 2016, dated 23.08.2016, the relevant portion is extracted hereunder:

"6. A close reading of the above judgment of the Apex Court shows that negligence in exercising quasi-judicial power by mere carelessness or inadvertence or omission, is not sufficient to initiate proceedings under misconduct, therefore, unless there is a culpable negligence or ill motive, no charge could be framed. Yet another observation of the Apex Court holding that the entire system of administrative adjudication where under quasi-judicial powers are conferred on the administrative authorities, would fall into disrepute, if officers performing such functions are inhibited in performing their functions without fear of favour because of the constant threat of disciplinary proceedings.

7. Almost in a similar circumstance, an identical issue came up before the Apex Court, whether disciplinary proceedings can be initiated against a judicial officer, who granted bail exercising discretion while discharging the judicial function and the Apex Court while dealing with the said issue in Ramesh Chander Shing vs. High Court of Allahabad and another, reported in 2007 (4) SCC 247, held that on several occasions, the Apex Court has disapproved the practice of initiation of disciplinary proceedings against officers of the subordinate judiciary, merely because the judgments/orders passed by them are wrong, since appellate and revisional Courts have been established and given power to set aside such orders, The higher Courts after hearing the appeal may modify or set aside erroneous judgments of the lower Courts. The above observation squarely applied to the case on hand."

9. This Court has already rendered a similar judgment in W.P.(MD)No.21291 of 2014 dated 23.02.2022 where it has been held that since the employee is exercising the quasi-judicial function and even if the employee has fixed it wrongly, the remedy is to challenge before the Special Deputy Collector (Stamps). This Court, B.K.Gunasekaran vs. the State of Tamil Nadu reported in 2010 (7) MLJ 32 has held as under:

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> *"2010 (7) MLJ 32 (B.K.Gunasekarn vs. State of Tamil Nadu represented 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 the tested before the Deputy Collector (Stamps). The respondents have rightly tested in appeal before Deputy Collector (Stamps) and all the cased ended up in favour of the petitioner."*

Relying on all these judgments, this Court is of the considered opinion that the petitioner is entitled to the relief. Hence the charge memo dated 11.01.2017 is quashed. The respondents are directed to revoke the suspension order dated 27.01.2017 and consider the said period as duty period and the respondents are also directed to revoke the order dated 30.01.2017 retaining the petitioner in service. The impugned charge memo dated 23.10.2015 is quashed. The respondents are directed to pass consequential orders. The petitioner has attained superannuation and is receiving the provisional pension till date. The respondents are directed to grant pensionary benefits and other monetary benefits to the petitioner and the same shall be disbursed to the petitioner within a period of four weeks from the date of receipt of the copy of this order.

10. With the above direction, the Writ Petitions are allowed. No costs. The consequential miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

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Sub Assistant Registrar(CS)

jbr

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.

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To

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

2.The Deputy Inspector General of Registration,
Tirunelveli, Tirunelveli District.

3.The District Registrar(Administration)
Cheranmahadevi,
Tirunelveli District.

+1 CC to M/s.D.SADIQ RAJA, Advocate (SR-15268[F] dated 30/03/2022)

+1 CC to M/s.SPL GP (SR-15324 & 15652/2022[F]

Order made in
W.P.(MD)No.17525 of 2017
AND
23065 OF 2016
29.03.2022

TP(CO)
GC(04.05.2022) 7P 6C