IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.03.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.26254 of 2015
and
M.P.No.2 of 2015

S.Nazeemuddin .... Petitioner

vs

1. Government of Tamil Nadu,
   rep. by its Secretary to Government,
   Commercial Taxes & Registration Department,
   Secretariat,
   Chennai - 600 009.

2. The Inspector General of Registration,
   Chennai - 600 028. .... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to (1) Government Letter No.5427/H/2013-9, Commercial Taxes and Registration department dated 26.05.2014 of the first respondent (2) Charge Memo No.30051/R2/2005 dated 19.01.2006 of the second respondent, quash the same.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.U.M.Ravichandran,
Special Government Pleader

O R D E R

This writ petition has been filed, challenging the order of the 1st respondent dated 26.05.2014, in which, it has been proposed to impose the punishment of Rs.500/- cut in the monthly pension for a period of six months and also to recover an amount of Rs.33,908/- from DCRG of the petitioner, and also challenging the charge memo dated 19.01.2006 passed by the 2nd respondent respectively.

2. The brief facts of the case of the petitioner are as follows:

i) The petitioner joined the service as Sub-Registrar, Grade II in the Registration Department, on being sponsored through TNPSC during 1972-73 and promoted as Sub Registrar, Grade I and thereafter, promoted as District Registrar in Mach, 1987 and further, notionally promoted as Assistant Inspector General of Registration with retrospective effect from 03.02.1997 and permitted to retire from service on 30.04.2006, without prejudice to the pending disciplinary proceedings.

ii) On the date of retirement i.e., on 30.04.2006, the following charges under Rule 17(b) of Tamil Nadu Civil Services (D & A) Rules were pending:

1) Charge Memo No.36364/B7/2002-1 dated 20.09.2002

2) Charge Memo No.62761/B4/2002 dated 14.01.2003

3) Charge Memo No.60239/R2/2002-2 dated 25.04.2003

4)Charge Memo No.56333/B7/2007-2 dated 23.11.2002

5) Charge Memo No.62744/R2/2002-3 dated 08.11.2014
(dropped subsequently)

6) Charge Memo No.30051/R2/2005 dated 19.01.2006

iii) As far as charge memo dated 19.01.2006 is concerned, the same relates to the alleged lapses on the part of the petitioner related to the period from 1998-2002 while the petitioner was serving as District Registrar, Kallakurichi. The charge has been framed in the basis of Internal Audit Report of the Department and that of the Accountant General.

iv) The petitioner was placed under suspension in G.O.(2D) No.54 Commercial Taxes and Registration (H1) Department dated 28.04.2006 and subsequently, the 1st respondent, by order in G.O.(3D).No.2 dated 29.04.2006, not permitted the petitioner to retire from service on 30.04.2006 and retained the petitioner in service till final orders are passed by the competent authority in the pending disciplinary proceedings. Therefore, the petitioner filed W.P.Nos. 49090 & 49091/2006 challenging the charge memo dated 19.01.2006 and for a direction to finalise all disciplinary proceedings pending against the petitioner. This Court, vide order dated 18.01.2007, directed the respondents to conduct the enquiry and complete the same within a period of one year. But the respondents failed to implement the same and kept the disciplinary proceedings pending.

v) Thereafter, enquiry was conducted and a report dated 06.08.2007 was filed and the enquiry officer found that the six documents involving Rs.67,816/-, relating to the years 1998 & 2002 alone, the charge has been proved. The petitioner sent further representation dated 14.02.2008 and also requested to drop the charges. The 1st respondent, revoked the order of suspension and permitted the petitioner to retire on 30.04.2006, without prejudice to the pending disciplinary proceedings. However, the 1st respondent informed the petitioner that the charge framed against him stands proved and the petitioner is responsible for the loss of Rs.67,816/- sustained by the Government and it is proposed to recover 50% of the said amount which comes to Rs.33,908/- and it is proposed to recover a sum of Rs.500/- per month from the monthly pension of the petitioner. The petitioner was called upon to reply as to whether he accepts the proposed punishment or refuses to accept. The petitioner submitted his reply dated 14.04.2014 stating that he had already denied the charge and submitted a detailed explanation. Further, the 1st respondent vide letter dated 26.05.2014, called the petitioner to state specifically as to whether he accepts or refuses to accept the proposed punishment. The petitioner submitted his reply dated 15.07.2014 expressing his objection to the proposed punishment, but till date no order has been received. The petitioner is suffering without pensionary and retirement benefits for the past nine years. Hence, this writ petition.

3. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

4. i) Learned counsel for the petitioner would submit that there has been inordinate and unexplained delay in the initiation of disciplinary proceedings and at each and every stage till the final order was passed. For the alleged lapses of the year 1997 to 1999, disciplinary proceedings was

initiated in the year 2003 and final order was passed in the year 2013.

ii) Learned counsel for the petitioner would submit that the respondents failed to follow the instructions of the Government vide letter (Ms)No.1118/per.N./87, P & AR Department dated 22.12.1987, in which, time limits have been prescribed for each and every stage of disciplinary proceedings. He would further submit that the charge has been directly framed on the basis of Departmental internal audit report. The respondents failed to see that mere audit objections, cannot be the subject matter of disciplinary proceedings and the proper procedure is to communicate the audit objections with the official concerned, get his reply, examine the same with reference to connected documents and pass orders as to whether loss has been sustained and if so, who is responsible for such lapse. In the absence of such order, the impugned disciplinary proceedings are bad in law.

iii) Learned counsel would further submit that the allegation against the petitioner is that he had undervalued the properties covered by the documents mentioned therein but no motive or ill-will is attributed in the said imputation of charge against the petitioner. The respondents failed to consider that as per Government Letter No.L1/1440/79 dated 30.11.1979 and Letter No.3455/J1/79 dated 25.05.1979 of the Inspector General of registration, the Sub Registrar cannot go beyond the recitals of the document for the purpose of stamp duty and the Sub-Registrar need not refer to any indexes and decide. For the failure of the executants of the document, suppressing the name of the street, action has been initiated against the executants under sections 27 and 64 and not against the Sub-Registrar who registered the documents. Further, unless there is proof of culpable negligence or ill motive, no charge could be framed and if every error of law were to constitute a charge of misconduct, it will infringe upon the independent functioning of quasi judicial officers like the petitioner. Further, while action has been initiated under Section 47A(i) of the Indian Stamp Act, there is no justification to initiate disciplinary proceedings against the petitioner under Rule 17(b) of the TNCS(D&A) Rules.

5. i) On the contrary, the learned Special Government Pleader appearing for the respondents would submit that since the petitioner was having number of disciplinary proceedings involving huge loss of revenue to Government and because of the voluminous work involved, final orders could not be passed in time. Out of the six disciplinary proceedings, final

order has been passed in three of the cases and for the rest of the cases finality has been reached in passing final orders and the first respondent had proposed punishment of cut in pension payable to the petitioner and the consent of the petitioner for the punishments were sought. Having objected to the above punishment, the petitioner has filed this writ petition and this Court, vide order dated 19.11.2015, has granted interim stay, until further orders.

ii) Learned counsel would further submit that out of the total alleged loss of Rs.7,48,236/-, it was found by the Inquiry Officer that loss to the extent of Rs.67,816/- was not collected. For the proven loss of Rs.67,816/-, it was proposed to recover Rs.33,908/- from DCRG and Rs.500/- per month for 6 months from the pension payable to the petitioner. The petitioner has caused huge revenue loss to the Government and the petitioner cannot escape from the clutches of disciplinary action taken against him. The said revenue loss would not have accrued to Government, had the petitioner was diligent in collecting proper stamp duty and registration fee, while admitting the documents for registration. Further, the delay in passing the final order is on account of administrative reasons. Further, after the suspension order was set aside by the Tribunal, the petitioner was given posting as per the direction of the Tribunal and salary for the period of 'compulsory wait' was also disbursed to the petitioner. Hence, he would pray to dismiss the writ petition.

6. This Court considered the submissions made on either side and perused the materials available on record.

7. From the perusal of the charges, it could be seen that the allegation against the petitioner is that he had undervalued the properties covered by the documents mentioned therein, but no motive or ill-will is attributed in the said imputation of charges against the petitioner.

8. Further, for the alleged lapses of the year 1997 to 1999, disciplinary proceedings was initiated in the year 2003 and final order was passed in the year 2013. There is inordinate delay in the initiation of disciplinary proceedings and at each and every stage till the final order was passed. Though the respondents would contend that the delay in passing the final order is on account of administrative reasons as there was voluminous work involved in disposal of the number of disciplinary proceedings, the said contention cannot be countenanced, as the subsequent charge dated

19.01.2006, is the repetition of the earlier charges and all of them have been consolidated and it has taken more than 10 years for passing final order from the initiation of the disciplinary proceedings in the year 2003.

9. It is pertinent to mention the decision of the Hon'ble Supreme Court reported in ***2005(6) SCC 636 (P.V.Mahadevan vs. Managing Director, Tamil Nadu Housing Board)*** wherein the Hon'ble Supreme Court has held as follows:

> *"14. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough*

and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

10. The aforesaid judgment of the Hon'ble Apex Court would squarely apply to the present facts of the case. Even assuming that the disciplinary action is permissible to be initiated against the petitioner, this initiation of disciplinary action after a period of more than 5 years for the alleged lapses on the part of the petitioner relating to the period 1998-2002 and passing final order after a period of 10 years, is patently unjust and unreasonable, which cannot be countenanced both in law and on facts. Moreover, the mental agony and sufferings undergone by the petitioner due to the protracted disciplinary proceedings for these long years would be much more than the punishment. Therefore, this Court is of the opinion that the petitioner is entitled to all pensionary and retirement benefits.

11. In the result, the Writ Petition is allowed. The impugned order dated 26.05.2014 passed by the first respondent and the impugned charge

memo dated 19.01.2006 passed by the second respondent, are hereby set aside. The respondents are directed to disburse all pensionary and retirement benefits to the petitioner, within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

24.03.2023

Index:Yes/No
Speaking/Non-speaking order
vsi

To

1. Government of Tamil Nadu,
   rep. by its Secretary to Government,
   Commercial taxes & Registration Department,
   Secretariat,
   Chennai - 600 009.

2. The Inspector General of Registration,
   Chennai - 600 028.

J.NISHA BANU,J.

vsi

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