IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.03.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.26255 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.3275/H/2009-14, Commercial Taxes and Registration department dated 29.01.2014 of the first respondent (2) Charge Memo No.60239/B4/2002-2 dated 25.04.2003 of the second respondent, quash the same.

For Petitioner : Mr.M.Ravi

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

ORDER

This writ petition has been filed, challenging the order of the 1st respondent dated 29.01.2014, in which, it has been proposed to impose the punishment of recovery of a sum of Rs.2000/- per month from the monthly pension for three years and also proposed to recover a sum of Rs.3,68,866/- from the DCRG payment to the petitioner and also challenging the charge memo dated 25.04.2003 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 25.04.2003 is concerned, 10 charges have been framed and they relate to the period 1998-2002 while the petitioner was serving as District Registrar, Kallakurichi, for causing loss of revenue to the Government to the extent of 18,61,444/-. The petitioner submitted his explanation on 20.06.2003. An enquiry was conducted and a report dated 24.08.2004 was filed holding Charges 1,2,8 and 10 had been proved and charges 3,4,5,6,7 and 9 had not been proved. Thepetitioner filed further representation dated 28.04.2005 disputing the findings of the Enquiry Officer . No order was passed. But, just two days prior to the date of superannuation i.e., on 28.04.2006 the petitioner was placed under suspension and on the next day(29.04.2006) another order was issued, 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 and dragged on the same for more than 7 years.

v) In the meantime, the 1st respondent passed final orders in other disciplinary proceedings in G.O.(2D)No.65 Commercial Taxes and Registration (H) Department dated 16.05.2013 imposing the penalty of compulsory retirement. Before passing the said order, the petitioner's suspension without prejudice to the pending disciplinary. However, the 1st respondent informed the petitioner that for the proved charges, it has been proposed to impose the punishment of recovery of a sum of Rs.2000/- per month from the monthly pension for three years and also proposed to recover a sum of Rs.3,68,866/- from the DCRG payment to the petitioner and called upon the petitioner to reply as to whether the petitioner accepts the proposed punishment. The petitioner submitted his reply dated 22.07.2014 to the 1st respondent objecting to the proposed punishment. No order has been passed thereon till date. The petitioner has bee suffering for the past 9 years without pensionary benefits. 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 1998 to 2002, disciplinary proceedings was initiated in the year 2003 and final order was passed in the year 2014.

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.

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. 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 the charges 1, 2 and 8 framed against the petitioner and which had been held as proved relate to the alleged lapses in the discharge of his duties exercising quasi judicial functions under the Indian Registration Act and Indian Stamp Act and such lapses cannot be the subject matter of disciplinary proceedings.

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. However, final orders have been passed in 3 of the 6 disciplinary cases. In the instant case finality has been reached in passing final order and the first respondent had proposed to impose the punishment of recovery of a sum of Rs.2000/- per month from the monthly pension for three years and also proposed to recover a sum of Rs.3,68,866/- from the DCRG payment to the petitioner 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 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 1998 to 2002, disciplinary proceedings was initiated in the year 2003 and final order was passed in the year 2014. 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 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 29.01.2014 passed by the first respondent and the impugned charge memo dated 25.04.2003 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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