IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 23.12.2022

Orders delivered on 14.02.2023

CORAM :

THE HON'BLE Mrs.Justice **J.NISHA BANU**

W.P.No.7007 of 2013

Kasi.Venkatesan .. Petitioner

Vs

1. The Secretary to Government,
   Commercial Taxes and Registration (K) Department,
   Fort St.George,
   Chennai-600 009.

2. Inspector General of Registration,
   No.100, Santhome High Road,
   Chennai-600 028. ..Respondents.

PRAYER: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for records relating to the impugned order of removal from service passed by the second respondent herein in his proceedings No.45515/AA1/2005 dated 04.12.2008 and confirmed by the first respondent herein in his proceedings G.O.(D) No.427 (Commercial

Taxes and Registration (H4) Department) dated 28.09.2012 and quash the same and consequently direct the respondents to allow the petitioner to retire from service together with all consequential service and monetary benefits, within a time frame as deem fit and proper by this Court.

For Petitioner	:	M/s G.Bala and Daisy
For Respondents	:	Mr.T.Arunkumar Addl.Govt.Pleader

ORDER

This writ petition has been filed challenging the order of removal from service passed by the second respondent by proceedings dated 04.12.2008 which was confirmed by the first respondent in his proceedings in G.O.(D) No.427 (Commercial Taxes and Registration (H4) Department) dated 28.09.2012 and consequently, direct the respondents to allow the petitioner to retire from service together with all consequential service and monetary benefits, within a time frame to be fixed by this Court.

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

The petitioner joined the Government service as Typist on 18.09.1970 and was promoted as Assistant on 22.11.1974. Thereafter, he was promoted as Sub-Registrar Grade-II on 08.10.1987 and further promoted as Sub-Registrar Grade-I on 17.07.1998. The petitioner has rendered more than 38 years of service and was due for promotion as District Registrar. The petitioner was due for retirement on attaining the age of superannuation on 31.01.2009. While so, a case was filed against him by the Department of Vigilance and Anti-Corruption that he has acquired assets disproportionate to his known sources of income, that he had constructed 7 shops without prior permission and that his wife was doing business without intimating the same to the department. In continuation of the same, detailed enquiry was conducted by the said department and a case was filed in CDP. Nos.5, 6 & 7/2005 before the Tribunal for Disciplinary Proceedings, Thanjavur and charges were framed against the petitioner. Subsequently, the case was transferred to the file of TDP, Trichirapalli and a detailed enquiry was conducted in TDP case Nos.5, 6 & 7 of 2005 and by report dated 25.12.2006 held that the charges against the petitioner were proved. Based on the same, the 2nd respondent removed the petitioner from service vide order dated

04.12.2008. Aggrieved against which, the petitioner filed an appeal before the 1st respondent and the 1st respondent also rejected the appeal vide order dated 24.04.2009. Aggrieved over the same, the petitioner filed W.P.No.14618/2009 and this Court vide order dated 29.03.2012 remanded the matter back to the 1st respondent for fresh disposal of the appeal after affording an opportunity to the petitioner. The 1st respondent, vide order dated 14.07.2012, confirmed the order of the 2nd respondent. Aggrieved by the same, the present writ petition has been filed.

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

4. (i) Learned counsel for the petitioner would submit that three charges have been framed against the petitioner. The first charge vide TP.No.5/2005 is that the petitioner had disproportionate assets during the check period, 01.12.1987 to 01.12.1997. With regard to the above said charge, the petitioner had clearly accounted proper income and expenditure. It is well settled principle of law that the prosecution has the burden to prove the charges with acceptable evidence. But the enquiry officer held

that the charges as proved on the ground that the petitioner did not give proper evidence during oral enquiry. Further, in the charge memo itself, it has been wrongly stated that the petitioner's income from salary for the check period is Rs.3,40,465.40/- instead of Rs.4,64,873.15/-. The petitioner clearly explained the same with proper documentary evidence, but the enquiry officer had stated that the petitioner's evidence has not been corroborated by any other witnesses. Though the salary of the petitioner is connected with official records, the enquiry officer held the charge as proved without application of mind.

(ii) The second charge vide TDP.No.6/2005 is that on 5.8.1992, the petitioner obtained permission from the competent authority for construction of a house for the value of Rs.1,50,000/- but he had constructed 7 shops in the same place without prior sanction from the competent authority. But the petitioner submits that on 12.09.1991, the petitioner had applied for construction of a house for a sum of Rs.1,50,000/-. Further, on 20.02.1992, he made an additional request along with the earlier application for permission to construct shops and godown.

For which, two reports were submitted to the Head of Department (Competent authority) vide proceedings dated 18.11.1991 and 12.03.1992 and the District Registrar, had accorded sanction by order dated 5.8.1992 to the petitioner for building construction. All the factual aspects have been stated by the petitioner during oral enquiry but the enquiry officer, without application of mind, held that the petitioner had violated the conduct rules and held the said charge proved, without proper verification of records.

(iii) The third charge vide TDP.No.7/2005 is that the petitioner failed to report the commencement of business started by his wife in the year 1996. The enquiry officer and the disciplinary authority had arrived at a conclusion that the petitioner failed to obtain permission from the competent authorities with regard to the business run by his wife with the help of his father and mother. On 20.02.1992, the petitioner had intimated that his father, after his retirement, had proposed to start his business in his wife's name. Further on 12.08.1996, the petitioner had submitted a representation to the Inspector General of Registration stating that his parents would like to start a business in his wife's name, which is totally based on their saving and means and the proposed action has no connection whatsoever with his official duties and responsibilities. The petitioner father worked as Village Karnam and retired from service and he had sufficient wealth even prior to his appointment into his service. All the above facts were made known to the investigating officer, enquiry officer and the disciplinary authority. But all the officials had miserably failed to take into account the petitioner's explanation and held the said charge as proved stating that the petitioner had not obtained permission from the competent authority.

(iv) Learned counsel would further submit that as per the provisions of Tamil Nadu Government Services and Conduct Rules, if the family member of a Government Servant has movable or immovable property acquired solely with their own resources, the Government servant concerned need not require notice to the prescribed authority and seek prior permission. Inspite of the above provisions, the petitioner submitted representations to the Head of the Department informing them about the family business which was enquired and forwarded. Therefore, the question of misconduct would not arise in connection with TDP.No.7/2005. Learned counsel would further submit that all the private witnesses had specifically denied the allegations leveled against him. Therefore, the petitioner should have been exonerated from the charges but the enquiry officer has held the charges as proved without even an iota of evidence and imposed with major punishment of removal from service, that too, in the eve of his retirement. The order of removal from service is not justifiable either in law or on facts. The punishment order has been passed based on mere presumption and assumption.

(v) Learned counsel would further submit that the alleged misconduct is said to have been occurred in the year 1987 to 1996 but the charge memo was framed after a period of more than a decade i.e., in the year 2005 and the final order was passed after another inordinate delay of 4 years, that too, one month before the petitioner was due to retire from service. There is an inordinate and unexplained delay in passing the impugned orders which are non-speaking orders. Further, the punishment of removal from service is highly excessive and totally disproportionate to the allegations levelled against the petitioner. Further, the charges have been held proved only because the petitioner has not let in evidence to disprove the charges. This reasoning of the respondents is totally against the law of the land and principles of natural justice.

(vi) In support of the above contentions, the learned counsel for the petitioner relied on the following decisions:

i) 2006(5) CTC 723

ii) 2006(2) CTC 574

iii) 2005 (4) CTC 403 :: 2005 SCC (L&S) 861

5. (i) On the other hand, the learned Additional Government Pleader appearing for the respondents would submit that the first charge in respect of disproportionate assets to the tune of Rs.4,85,719.95 during the check period 1.12.1987 to 1.12.1997 is concerned, if the version of the petitioner that his salary for the check period is Rs.4,64,873.15 and not Rs.3,40,465.40 as mentioned in the charge memo is true, how can he hold Rs. 4,85,719.95 without any expenditure of the salary amount. The petitioner failed to

furnish the above said amount in his property statement that is due for every 5 years. It is further stated during the enquiry before the Tribunal for Disciplinary Proceedings by the petitioner that his father sold his properties and the proceeds paid to him is to be taken as petitioner's income. On perusal of the sale deeds executed by the petitioner's father and the deposition of the petitioner clearly shows that the petitioner's father sold the properties to meet the marriage expenses of his daughter and for purchase of new property. Further, during enquiry, the petitioner requested the Tribunal to include the sale proceeds of the agricultural produce to the tune of Rs.10 lakhs that belonged to his father to his account. But he failed to adduce what were the crops cultivated and the price of such proceeds in such years. Even if the said amount is to be added in his revenue, he ought to have got permission of the Department under the Tamil Nadu Government Servants Conduct Rules. It shows that the petitioner, being in the post of Sub Registrar, having dealing with the public, amassed wealth disproportionate to his income.

(ii) Learned Additional Government Pleader would further submit that insofar as the second charge is concerned, the petitioner was given permission under conduct rules to construct a house at a cost of Rs.1,50,000/- but the petitioner in the guise of the said permission, constructed 7 shops in the said premises, incurring huge expenditure, without obtaining permission from the 2nd respondent. The petitioner's averments that the 2nd respondent accorded permission for construction of shops is false. The petitioner has not produced the copy of the said order to justify his stand.

(iii) Learned Additional Government Pleader would further submit that insofar as the third charge is concerned, the petitioner failed to report the commencement of business started by his wife in the year 1996. There is no difference between obtaining permission from the 2nd respondent or giving intimation to the 2nd respondent. In both the cases, the matter will be considered by the 2nd respondent how the sources came. In the present case, the averment of the petitioner is that he sought permission of 2nd respondent in his application dated 12.8.1996 to start business by his parents in the name of his wife is totally false and he has not produced any documentary evidence to that effect. Moreover, in the instant case, the petitioner's wife is not an employee having separate source of income, but a mere house wife. As such, she is dependent on the petitioner. Therefore, the petitioner ought to have obtained prior permission of the 2nd respondent for starting business in his wife's name or have reported the fact of the proposed business. The petitioner has neither obtained permission nor intimated the same. Finally, the learned Additional Government Pleader would conclude that all the above charges are proved against the petitioner. The petitioner has amassed wealth disproportionate to his income and also violated the provisions of the Tamil Nadu Government Servant Conduct Rules and thus, the punishment of removal from service ordered by the 2nd respondent is proportionate to the gravity of charges proved against him.

6. This Court paid its anxious consideration to the submissions made by the learned counsel on either side and also perused the materials placed before this Court.

7. Admittedly, three charges have been framed against the petitioner and not satisfied with the explanation offered by him, the impugned order of removal from service has been passed against him. Insofar as the first charge that the petitioner had disproportionate asset of Rs.4,85,719.95/- during the check period 01.12.1987 to 01.12.1997 is concerned, though the petitioner has given his explanation, the enquiry officer held the charge as proved as the petitioner has not properly given evidence during oral enquiry. The salary of the petitioner is well connected with official records. It is the contention of the petitioner that his salary income was wrongly stated for the said check period as Rs.3,40,465.40 instead of Rs.4,64,873.15/- but the enquiry officer found that the petitioner cannot hold the said sum without any expenditure of the salary amount. It is alleged by the petitioner tht there are income from other sources like agricultural income, milk business of mother and wife etc. to meet out his expenditure. There is no witness to say that the petitioner received illegal gratification and there is no complaint from anybody. Therefore, this Court is of the opinion that the punishment imposed is disproportionate to the nature of misconduct alleged to have

been held proved by the enquiry officer.

8. Insofar as the second charge is concerned, the petitioner had applied for construction of a house for a sum of Rs.1,50,000/- on 12.09.1991 and also on 20.02.1992, the petitioner further requested along with earlier permission to construct shops and godown and the District Registrar, Mayiladuthurai submitted two reports to the Head of the Department (competent Authority) in his proceedings dated 18.11.1991 and 12.03.1992 and based on the same, the competent authority had accorded sanction for building construction. Perusal of the sanction order dated 05.08.1992 would show that there was a reference of the petitioner's application dated 20.02.1992, in which, he had sought permission for construction of shops and godown. Even though the competent authority has not accorded sanction and the aforesaid charge is held proved, this Court is of the view that the punishment of removal from service is a major punishment and it is disproportionate to the charge levelled against the petitioner.

9. Insofar as the third charge is concerned, the petitioner had already intimated through letter dated 20.02.1992 that his father, after his retirement had proposed to start a business in his wife's name. The petitioner also submitted a representation dated 12.08.1996 to the Inspector General of Registration stating that his parents would like to start a business in his wife's name which is totally based on their saving and means and there is no connection whatsoever with the petitioner's official duties and responsibilities. He has also further stated in the said representation that his father had sufficient wealth even prior to his father's appointment as Village Karnam but the investigation officer had failed to consider his explanation and held the charge proved stating that the petitioner has not obtained permission from competent authority. Moreover, as per the provisions of Tamilnadu Government Servants Conduct Rules, if the family member of a Government Servant has movable or immovable property acquired solely with their own resources, the Government servant concerned need not require notice to the prescribed authority or seek prior permission. A perusal of the permission letter dated 20.02.1992 in paragraph No.3, it is seen that

the petitioner has sought permission to construct shops and godown in his wife's name but there is no proof of according permission by the concerned authority. But imposition of major penalty has to be considered as disproportionate to the alleged mis-conduct of the petitioner even if the amount was indeed fully paid by the petitioner's father for the construction of house, shops and godown by the petitioner's wife without prior permission from competent authority.

10. Be that as it may, in the case on hand, the alleged misconduct is said to have been occurred in the year 1987 to 1996, the charge memo was framed after a period of 9 years i.e., nearly a decade. in the year 2005, and the final order was passed after another inordinate delay of 4 years, that too, merely one month before the petitioner was due to retire from service on attaining the age of superannuation on 31.01.2009. This court has repeatedly held that inordinate delay in initiating disciplinary proceedings is a ground for quashing the enquiry unless the employer satisfactorily explains the delay.

11. The decision relied on by the learned counsel for the petitioner viz., State of A.P. vs. N.Radhakrishnan reported in 1998 (4) SCC 154 and P.V.Mahadevan vs. Managing Director, Tamil Nadu Housing Board reported in 2005(4) CTC 403 equivalent to 2005 (6) SCC 636 would apply to the present facts of the case in respect of the ground of delay. Necessarily the unexplained delay would cause serious prejudice to the employee and therefore, enquiry will have to be quashed.

12. Admittedly, in this case, the disciplinary proceeding has been initiated after a delay of nearly a decade of the occurrence and the same has been concluded after a delay of 4 years. There is no explanation on the part of the respondents for the inordinate delay in initiation of disciplinary proceedings as well as in conclusion of the same. More over, 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. For the mistakes committed by the department in the

procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer. Therefore, this Court is inclined to set aside the impugned orders on the ground of delay in initiation of the disciplinary proceedings and also in completion of the same.

13. In the result, this Writ Petition is allowed and the impugned orders dated 04.12.2008 and 28.09.2012 passed by the 2nd respondent and 1st respondent respectively are set aside. The respondents are directed to sanction regular pension and other retirement benefits, to be payable to the petitioner, as if he was allowed to retire on the date of retirement without any disciplinary proceedings, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

14.02.2023

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

To

1. The Secretary to Government,
   Commercial Taxes and Registration (K) Department,
   Fort St.George,
   Chennai-600 009.

2. Inspector General of Registration,
   No.100, Santhome High Road,
   Chennai-600 028

J.NISHA BANU, J.

(vsi)

W.P.No.7007 of 2013

14 .02.2023