IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM

THE HON'BLE MRS. JUSTICE J.NISHA BANU

Writ Petition No. 5919 of 2015

K. Ratha ... Petitioner

Vs.

1. The Secretary to Government,
Commercial Taxes and Registration Department,
Fort St. George, Chennai – 600 009.

2. The Inspector General of Registration,
Santhome High Road,
Santhome, Chennai – 600 028. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Certiorarified Mandamus, call for the records relating to the second respondent herein in Proceedings No. 52030/ B1/2006 dated 15.06.2012 and quash the same and consequently direct the respondents herein to permit the petitioner to retire from service on reaching the age of superannuation on 30.04.2006 and confer all the retirement benefits with due regards to the petitioner's service.

For Petitioner : Mr. R. S. Anandan.

For Respondents : Mr. U.M. Ravichandran
Spl.Government Pleader

ORDER

This writ petition is filed praying to quash the proceedings dated 15.06.2012 and to direct the respondents herein to permit the petitioner to retire from service, on reaching the age of superannuation on 30.04.2006 and to confer all the retirement benefits.

2. The petitioner, while working as Sub Registrar, Grade -I in the office of the 2nd respondent, served with four charge memos, based on the audit report for the years 2002, 2003 and 2004, alleging that the petitioner had caused loss to the Government, by way of Stamp duty and Registration charges to an extent of Rs.10,74,035/-, thereby violated Rule 20(1) of the Government Servant Conduct Rules. In the enquiry conducted by the respondent Department, the Enquiry Officer submitted a report as charges were held proved; based on the Enquiry Officer's report, by the impugned Government Order, the punishment of removal from service was imposed on the petitioner; challenging the same, this writ petition is filed.

3. According to the learned counsel for the petitioner, the petitioner having exercised her powers as contemplated under the

provisions of the Indian Stamp Act, as a Quasi Judicial Authority. If anybody is aggrieved, the proper remedy is to file an appeal against the said order as contemplated under the Act, before the Inspector General of Registration and no misconduct for the alleged violation of the Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, is attracted.

4. In support of his submission, the learned counsel for the petitioner relied on the decision reported in ***(1999) 7 SCC 409 (Zunjarrao Bhikaji Nagarkar v. Union of India),*** wherein the Hon'ble Supreme Court has considered similar issue and held that negligence in exercising quasi-judicial power by mere carelessness or inadvertence or omission is not sufficient to initiate proceedings under misconduct. Unless there is a culpable negligence or ill-motive, no charge could be framed. In paragraphs 43 and 44, the Supreme Court held as follows:

> *"43. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having*

committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi-judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi-judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative adjudication whereunder quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.

44. Considering whole aspects of the matter, we are of the view that it was not a case for initiation of any disciplinary proceedings against the appellant. The charge of misconduct against him was not proper. It has to be quashed."

5. The learned Special Government Pleader appearing for the

respondents would submit that the petitioner cannot be permitted to justify her improper action under the cover of quasi judicial function when there is material to show that she caused huge loss to the Government.

6. Heard the learned counsel for the petitioner as well as the learned Special Government Pleader.

7. Admittedly petitioner had exercised quasi-judicial function under section 47-A(1) of the Indian Stamp Act. If the Department is not satisfied with the valuation, nothing prevented the Department from filing appeal before the Inspector General of Registration. When there is no motive or recklessness attributed, the charge memos are not maintainable. In the absence of the same, mere audit objections cannot be preceded with a disciplinary action.

8. Therefore, this Court is of the view that the power exercised by the registering authorities, under the provisions of the Indian Stamp Act, the Registration Act and the rules framed there under are quasi-judicial

powers and adjudicatory in nature and if there is any error in violation or assessment or discharge of such quasi-judicial power, the same cannot be a basis for a disciplinary action in the absence of proof of any motive or bad intention. If such quasi-judicial power has not been exercised, whether it could form the basis for a disciplinary action. This question is no longer *res-integra* and having been settled by various decisions of the Hon'ble Supreme Court and this Court and it would be useful to refer to the recent decision of this Court in ***S.Muthuramu Vs. State of Tamilnadu, rep. By its Chief Secretary to Government, Public (Special – A) Department, Chennai - 9 and Another*** reported in ***(2008) 3 MLJ 766,*** in which, earlier decisions have been considered by the learned Judge and wherein it has been held as follows:-

> *"6.From the perusal of the charge memo, it could be seen that the allegation against the petitioner is that he has fixed the market value at Rs.22/- per sq.ft., in document No.70 of 1998 whereas the adjacent lands were acquired by the Government on negotiation at the rate of Rs.58/- per sq.ft., in the year 1999. No motive or ill-will is alleged in the said imputation of charge. Admittedly, petitioner is exercising quasi-judicial function under Section 47-A (1) of the Indian Stamp Act.*

> *If the Department is not satisfied with the valuation, nothing prevented the Department from filing appeal before the Inspector General of Registration challenging the order passed by the petitioner, fixing the market rate of Rs.22/- per sq.ft.,. In the absence of any motive or bad intention, no charge could be framed against the Quasi-Judicial Authority and the same is well settled."*

9. Applying the principle laid down in the above decision to the facts of this case, particularly when there is no motive or recklessness attributed against the petitioner and no misconduct is committed by her, this Court holds that the charges framed are not maintainable against the petitioner, who is a quasi-judicial authority. The impugned order is set aside and the writ petition is allowed. Further, the respondents are directed to permit the petitioner to retire from service on 30.04.2006 and confer all the retirement benefits. No costs.

Jer 17.04.2023

Index : Yes / No

Internet : Yes / No
Neutral citation : Yes / No
Speaking order/Non-speaking order

To
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J. NISHA BANU, J.,

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