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WP.Nos.9851, 11156, 11781, 11782 & 13132/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.09.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.Nos.9851, 11156, 11781, 11782 & 13132/2016

and

WMP.No.8824, 9700, 9701, 10170, 11503, 38479/2016 & 22772/2017

N.Jayalakshmi

... Petitioner in all
the Writ Petitions

Versus

- 1.The Inspector General of Registration
Registration Department,
Santhome, Chennai.
- 2.The Deputy Inspector General of Registration
Registration Department, Cuddalore Zone
Thirupapuliyur, Cuddalore.
- 3.The Deputy Inspector General of Registration
Registration Department, Chennai Zone
27, Rajaji Salai, Chennai-1.
- 4.The District Registrar
Chidambaram.

... RR 1 to 4 in
WP.Nos.9851 & 11156/2016



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5.The District Registrar [Audit], Chengalpattu.

6.The District Registrar [Administration], Chengalpattu.

7.The District Registrar [Audit], Villupuram.

8.The District Registrar [Administration], Villupuram.

.. RR 5 to 8 in
WP.No.11156/2016

1.The Inspector General of Registration
Registration Department,
Santhome, Chennai.

2.The Deputy Inspector General of Registration
Registration Department, Cuddalore Zone
Thirupapuliyur, Cuddalore.

3.The District Registrar [Admin]
The Enquiry Officer, Tindivanam.

4.The Deputy Inspector General of Registration
Registration Department, Cuddalore Zone
Thirupapuliyur, Cuddalore.

5.The District Registrar,
No.7, Lalkhan Street
Chidambaram.

... Respondents in
WP.No.11781/2016

1.The Inspector General of Registration
Registration Department,
Santhome, Chennai.



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2.The Deputy Inspector General of Registration
Registration Department, Cuddalore Zone
Thirupapuliyur, Cuddalore.

3.The Deputy Inspector General of Registration
Registration Department, Cuddalore Zone
Thirupapuliyur, Cuddalore.

4.The District Registrar,
No.7, Lalkhan Street
Chidambaram.

... Respondents in
WP.No.11782/2016

1.The Inspector General of Registration
Registration Department,
Santhome, Chennai.

2.The Deputy Inspector General of Registration
Registration Department, Cuddalore Zone
Thirupapuliyur, Cuddalore.

3.The District Registrar,
No.7, Lalkhan Street
Chidambaram.

... Respondents in
WP.No.13132/2016

Prayer in WP.No.9851/2016 :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the file of the 2nd respondents in his proceedings No.3330/A/2015 dated 29.10.2015 and quash the same.

Prayer in WP.No.11156/2016 :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari



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calling for the records on the file of the 2nd respondent in his proceedings charge memo No.336/A/2016 dated 11.03.2016 and quash the same.

Prayer in WP.No.11781/2016 :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents to consider and pass order on the representation of the petitioner dated 11.03.2016 for permitting the petitioner to retire from the service subject to pendency of the disciplinary proceedings under Rule 9 of the Tamil Nadu Pension Rules.

Prayer in WP.No.11782/2016 :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the file of the 2nd respondent in his proceedings No.336/A/2016 dated 23.03.2016 and to quash the same.

Prayer in WP.No.13132/2016 :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records on the file of the 1st respondent in his proceedings No.13047/B1/2016 dated 30.03.2016 and to quash the same, and direct the respondents to allow the petitioner to retire subject to the disciplinary proceedings.

For Petitioner in all
Writ Petitions : Mr.M.Vijayakumar

For Respondents in all
Writ Petitions : Mr.S.Ravikumar, Spl.GP

COMMON ORDER



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- (1) All the five writ petitions have been filed by the very same petitioner complaining about the charge memos issued to her and further complaining that though in one of the charge memos, enquiry had been completed, final orders have not been passed and in the other, complaining about the suspension order passed against her and in yet another writ petition, complaining about the order not permitting her to retire on attaining the age of superannuation.
- (2) Since the facts in all the five writ petitions relate to the tenure of the petitioner as Sub Registrar at Madurantagam in Chengalpattu Registration District, as Joint Sub Registrar, Cuddalore Zone in Cuddalore Registration District, as Joint-I Sub Registrar, Villupuram in Villupuram Registration District and as Joint-II Sub Registrar, Villupuram in Villupuram Registration District and the facts also overlap to a large extent and in the counter affidavits and the rejoinder affidavits, the same stand has been taken with respect to the charge memos which had been issued to the petitioner herein and also since the learned counsels advanced arguments with respect to all the five writ petitions without differentiating the facts from one another, it is



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only prudent that a common order is passed.

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- (3) The petitioner N.Jayalakshmi, at the time of attaining the age of superannuation, was working as Sub Registrar [Administration] at the District Registrar Office at Chidambaram, had filed WP.No.9851/2016 in the nature of a certiorari seeking the records relating to the proceedings of the 2nd respondent, Deputy Inspector General of Registration, Registration Department, Cuddalore Zone, Cuddalore, dated 29.10.2015 and to quash the same. It must be mentioned that by the said proceedings, a charge memo had been issued to the petitioner herein stating that owing to various acts of omission and commission committed by her while working as Sub Registrar at Madurantagam in Chengalpattu Registration District, she had caused loss to the Government to an extent of Rs.19,65,899/-.
- (4) The same petitioner N.Jayalakshmi filed WP.No.11156/2016 again in the nature of a certiorari seeking the records of the 2nd respondent, Deputy Inspector General of Registration, Registration Department, Cuddalore Zone, Cuddalore, with respect to a charge memo in proceedings No.336/A/2016 dated 11.03.2016 and to quash the same.



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(5)

By the said charge memo, a series of four charges had been framed against the petitioner herein again with respect to loss caused to the Government by her various acts of omission and commission and it had been stated that this loss had been determined on the basis of the monthly internal audit of the Sub Registrar Offices, where she was functioning and on the basis of the audit conducted by the Accountant General Office and on the basis of annual inspection conducted. It had been stated in the first charge that owing to various acts committed by the petitioner herein, she had caused loss to a sum of Rs.55,15,260/- to the Government. In the second charge, it had been stated that she had caused loss to the Government to a sum of Rs.13,90,807/-. In the third charge, it had been stated that she had caused loss to the Government to an extent of Rs.1,82,343/-. In the fourth charge, it had been stated that though she had collected towards stamp duty and registration charges while registering Doc.No.4475/2009, while working as Joint Registrar-II at Villupuram and had collected a sum of Rs.5,100/- by way of registration charges and a total sum of Rs.96,360/- on 29.10.2009, she had deposited into



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the Treasury Account only a sum of Rs.91,260/- and had not deposited the other sum of Rs.5,100/- and had deposited the same only on 02.11.2009. In brief, these are the charges which had been framed against the petitioner herein in the aforementioned writ petition.

- (6) In WP.No.11781/2016, the petitioner seeks a mandamus to consider passing orders on a representation given by her on 11.03.2016 seeking to permit her to retire from service subject to the pendency of Disciplinary Proceedings under Rule 9 of the Tamil Nadu Pension rules.
- (7) In WP.No.11782/2016, the petitioner had sought a certiorari to call for the records on the file of the 2nd respondent, Deputy Inspector General of Registration, Registration Department, Cuddalore Zone, Cuddalore, relating to the proceedings in No.336/A/2016 dated 23.03.2016 and to quash the same. By the said proceedings, the said 2nd respondent had placed the petitioner under suspension.
- (8) In WP.No.13132/2016, the petitioner herein had again sought a certiorari seeking records of the 1st respondent, Inspector General of



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Registration, Chennai, in proceedings No.13047/B1/2016 dated 30.03.2016 and to quash the same. By the said proceedings, the 1st respondent had passed an order not permitting the petitioner to retire on reaching the age of superannuation on 31.03.2016 and retaining her in service till the Disciplinary Proceedings pending against her are concluded and final orders are passed. The 1st respondent had placed reliance on Rule 56[1][c] of the Fundamental Rules.

- (9) Counter affidavits have been filed in all the five writ petitions and rejoinder affidavits have also been filed by the petitioner herein.
- (10) Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing on behalf of the respondents.
- (11) It would only be appropriate that since WP.Nos.11781, 11782 and 13132/2016 relate to orders to be passed based on a representation given by the petitioner, orders passed placing her under suspension and orders passed not permitting her to retire from service pending Disciplinary Proceedings, these writ petitions are taken up after examining the charge memos which had been issued to the petitioner and which are the basis for filing WP.Nos.9851 and 11156/2016.



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(12) In WP.No.9851/2016, in the affidavit, the petitioner had stated that she had been appointed as Junior Assistant in the respondent / Registration Department on 08.12.1978 on compassionate grounds and was then promoted to the post of Assistant. She was then promoted as Grade-II Sub Registrar on 09.06.1997 and subsequently, promoted to the post of Grade-I Sub Registrar on 30.05.2008. She stated that between 05.07.2012 and 06.03.2013, she was working as Sub Registrar at Madurantagam in Chengalpattu Registration District. It was stated that an Audit Report was prepared in the months of July and August, 2012 on the basis of the guideline value as found in the website. It was stated by the petitioner that there was a difference between the guideline value as found in the website and in the guideline value as maintained in the records of the Sub Registrar. She claimed that she did not know about this difference and followed the guideline value as available in the office of the Sub Registrar. It was stated that the audit, however examined the stamp duty collected and the registration charges levied on the basis of the guideline value as available in the website and had come to a conclusion that with



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respect to the documents in the Annexure to the charge memo, the petitioner had not properly collected the stamp duty and had caused loss to the Government to a total extent of Rs.19,65,899/-. In the Annexure to the charge memo, a total number of 62 documents had been listed and the details given are the Registration District, the Sub Registrar Office, the period on which the documents were registered, the Book wherein the said documents were actually entered in the office of the Sub Registrar Office, the Document Number and the year of the Document, the deficit stamp duty and the deficit registration charges and the total loss for each document.

- (13) A counter affidavit had been filed.
- (14) But the learned counsel for the petitioner had placed much reliance on the rejoinder affidavit filed by the petitioner giving explanations with respect to each one of the documents and explaining the circumstances under which the registrations were done by the petitioner. He called upon the Court to examine those particular explanations given by the petitioner and therefore, sought that the charge memo itself should be set aside.



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- (15) Along with the rejoinder affidavit, additional documents had also been filed to substantiate the explanations made. In the rejoinder affidavit, it had been stated as follows:-

"3.I submit that in the revenue loss Rs.19,65,899/- arrived by repeating the very same loss amount viz., 8-46, 12-25, 13-30, 59-61. The impugned charge memo liable to be quashed for the very short reasons.

4.I submit that the Sl.No.20,21,22,23, 37, 44 7 59 are included document therein are the document which are registered prior to my posting in the particular station, i.e., by predecessor. The proof for the same has been filed in typed set of paper-I.

5.I submit that the Sl.No.52, 58, 57, 6, 56, 14, 10, 13 and 16 are the documents wherein the loss mentioned in the schedule of impugned charge memo are already been collected. The proof for the same has been filed in the typed set of-II.

6.I submit that the Sl.No.24 and its 13 documents, 31, 35, 43 and its 3 documents, 51, 55 and 36 are the documents which are referred for proper action to take under section 47A[1] of the Stamp Act.



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The proof for the same has been filed in the typed set of papers – III.

7.I submit that the Sl.No.3,7,12,6 and its 19 documents, 17 and its 10 documents, 18 and its 6 documents and 33 and its 10 documents are referred for taking revenue recovery proceedings under section 47A[3] of the Stamp Act. I have registered duly following the guideline value. The audit objection relying on online value has been clarified subsequent to the registration by circular date 24.05.2012 the copy are enclosed in the typed set of papers IV.

8.I submit that the other items mentioned in the schedule are duly stamp in accordance with guideline value and there is no revenue loss to the Government at all."

- (16) In the affidavit filed in support of WP.No.11156/2016, the petitioner had stated that during the period between 04.12.2008 and 30.03.2010, she was working as Joint-II Sub Registrar at Villupuram and between 05.07.2012 and 06.03.2013, she was working as Sub Registrar at Madurantagam. She had further stated that there was an Audit Report conducted for the period 2008-2010 and a charge memo had been issued calling upon the petitioner to give an explanation for



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a loss of a sum of Rs.2,46,947/- as one caused, according to the respondents, during the period between 04.12.2008 and 30.03.2010.

She stated that she had given her explanation on 01.06.2012. It was also stated that the explanation was considered and the proceedings were dropped. However, she expressed grievance that a further charge memo had been issued on 11.03.2016 which is the subject matter of the said writ petition in which four charges had been issued against the petitioner herein. With respect to the four charges, again, the respondents have given in detail in the Annexure, the details of the documents for which deficit stamp duty or registration charges had been collected by the petitioner herein.

- (17) A perusal of the Annexure shows that the respondents have stated that by acts of omission and commission by the petitioner herein in the registration of 323 documents, the petitioner had caused a total loss of Rs.16,67,282/- and Rs.55,15,260/- respectively. The details relating to each document and the amounts which were deficit in the stamp duty and the amounts which were deficit in the registration charges had been given. Again, with respect to each one of the documents, the



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petitioner had filed a rejoinder affidavit giving explanation and filing additional documents to substantiate the explanations given by her. The explanations given by the petitioner herein in the rejoinder affidavit insofar as this writ petition is concerned, are as follows:-

"4.I submit that the Sl.No.84, 88, 90, 104, 105, 106, 142, 143, 288, 289, 292, 301, 322 and 323 are the document therein amount are already collected the proof for the same has been filed in the additional typed set of papers-I.

5.I submit that in respect the Sl.No.143, 144, 320, 91,92, 93, 94, 95, 96,97, 98, 109 and 110 these are the documents are referred for action under section 47A[1] and 47A[3] before Sub Collector. The proof has been filed in the additional typed set of papers-I.

6.I submit that the Sl.No.1 to 33 are relating fixation of value for new lay out of Kamala Nagar at SRO, Madurangdagam. I have fixed the correct value. The fixation order has been enclosed in the additional typed set of papers-I.

7.I submit that the Sl.No.34 to 70 are the documents which are not registered by me. I have



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worked at Madurandagam and relieved on 06.03.2013. The above documents are registered subsequent to the date of 06.03.2013. The proof for the same has been filed additional typed set of papers-II.

8.I submit that in respect of A.G's Audit Annexure-II SRO at Madurandagam Sl.No.1 and 2 amount have already been collected. Sl.No.3 relating to service tax for which no stamp duty levyable, as per the I.G.order dated 16.04.2019. The Sl.No.4,5,6,7,11,12,13,14,15 and 16 are documents executed by brother and sister. In respect A.G's audit is concerned the department can either accept the audit report or contest. The above said documents are contested by Department. If it is contested by Department the SR are not responsible for any loss. The Sl.No.8, 9 and 10 are cancellation of sale deed and the Department also contested. The I.G's order dated 04.02.2013 stating that the cancellation of sale deed is not a transfer of title I have followed the same. The Sl.No.17 and 18 are the document executed by the SIPCOT for which 50% of the stamp duty only has to be collected as per the G.O.141 dated 30.09.2003 and



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I.G's proceedings dated 10.10.2005. I have collected in accordance with the above said orders hence no loss. The proof for the same has been filed in the additional typed set of papers-III.

9.I submit that in respect of Annual Inspection, Annexure-III, Sl.No.1 to 5 are documents relating cancellation of the sale deed, release deed of brother sister, ratification deed respectively. I have collected stamp duty as per circular dated 07.01.2014 issued by I.G. Registration. The copy of the circular filed along with Addl.Typed set of paper-III, no loss.

10.I submit that all other documents relating to fixation of value and stamp duties are duly collected as per the guideline value. The fixation of value is concern I have followed the order of the I.G. Registration, but whereas the audit has taken higher value which is against the I.G's order. The copy of the I.G's order not to take higher value, dated 22.04.1998 and fixation of guideline issued by the Department dated 11.09.2007 an 12.09.2011 are filed along with typed set of papers-III.

11.I submit that the Sl.No.101 and 102, the stamp duty and registration fees have been duly



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collected but wrong calculated the collected stamp duty and registration fees and charge memo issued for no loss. The proof documents are filed in Additional set IV herewith.

12.i submit that Sl.No.111,114,115,145,283,303, 304, 308 to 311 and 313 to 315 not registered by me while working Joint-2 Sub Registrar Villupuram but registered by other SR Addl.Typed set V is the proof for the same."

- (18) Placing strong reliance on the explanations given by the petitioner herein, the learned counsel for the petitioner called upon the Court to compare each of the documents with the documents filed as additional typed set of papers and stated that reasonable explanations having been given with respect to the charge memo issued against the petitioner herein, the charge memo should be quashed.
- (19) The learned counsel for the petitioner stated that the act of the petitioner in collecting stamp duty or registration charges or adjudicating the amount of stamp duty to be collected, is a quasi-judicial act and therefore stated that the Disciplinary Proceedings cannot be initiated for bona fide errors in a quasi judicial order. It is



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contended that the said order being either revisable or appealable, the respondents have committed grave error in issuing the charge memos.

(20) In this connection, the learned counsel for the petitioner relied on the following judgments:-

A)The judgment of a learned Single Judge of the Madurai Bench dated ***08.09.2022*** in ***WP [MD] No.13924/2022 [T.Rajendran Vs. The Inspector General of Registration, Chennai and 2 Others]***.

In that particular case, the petitioner therein had sought records relating to a charge memo issued and sought that the same should be quashed. The particular document to which that particular charge memo was issued was with respect to a document which was registered as a Partition Deed. The learned Single Judge therefore, had to examine the extended meaning of family and the amendment brought about with respect to as to who could be the members of a family. It was then observed by the learned Single Judge that the document was registered prior to the amendment brought about by the Act 19/2013 to Schedule-I of Explanation to Article 45 of the Indian Stamp Act, 1899. Thereafter, it was



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stated by the learned Single Judge that determination of proper stamp duty chargeable on an instrument involves an issue of adjudication and therefore, came to a conclusion that the work is a quasi judicial work and therefore, stated that a charge memo cannot be issued if the adjudication had not been done properly or in accordance with the Rules. The learned Single Judge had gone in much detail with respect to conflicting judgments of the Hon'ble Supreme Court in this regard. Let me extract the portion which is relied on by the learned counsel for the petitioner in entirety:-

*"7.Be that as it may, there is an element of adjudication involved in the matter of determination of proper stamp duty chargeable on an instrument. In **S.P Goel v. Collector of Stamps (1996) 1 SCC 573**, a question arose whether the act of the registering authority in not registering a document or issuing certified copy thereof in spite of full registration charges having been paid would constitute “deficiency of service” so as to maintain an action under the provisions of the Consumer Protection Act, 1986. The Hon'ble Supreme Court held that under the Registration Act as also under the Stamp Act, the*



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officers, apart from performing administrative duties, also, at times, perform quasi-judicial functions. It was observed as follows :

“28.The registration Act as also the Stamp Act are meant primarily to augment the state revenue by prescribing the stamp duty on various categories of instruments or documents and the procedure for collection of stamp duty through distress or other means including criminal prosecution as non-payment of stamp duty has been constituted as an offence. Payment of registration fee or registration charges including charges for issuing certified copies of the registered documents or fee for the inspection of various registers or documents kept in the Registrars or Sub-Registrars office etc. constitute another component of State revenue.

29.In this situation, therefore, the person who presents for registration and pays the stamp duty on it or the registration fee, does not become a consumer nor do the officers appointed to implement the provisions of the



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two Acts render any service within the meaning of Consumer Protection Act. They only perform their statutory duties (some of which, as earlier indicated, are judicial or, at least, quasi-judicial in nature) to raise and collect the State revenue which is a part of the sovereign power of the State.”

A learned Judge of this Court in the decision reported in 2010-2-L.W. 964 (B.K.Gunasekaran Vs. State of Tamil Nadu and others) held that the determination as to whether proper Stamp Duty has been paid under Act is a quasi-judicial function to be exercised by the registering authority by going through the contents of the document and by forming an opinion regarding the classification of the document for demanding proper Stamp Duty as per the rates specified in Schedule I to the Act. Thus, there is an element of adjudication involved in the matter for determination of proper Stamp Duty chargeable on an instrument.

8.The next question that arises is whether for a mere error committed while exercising this quasi-judicial power, disciplinary action can be taken against the official concerned. The precedential trajectory is quite



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interesting. In **Zunjarrao Bhikaji Nagarkar v. Union of India (1999) 7 SCC 409**, it was held that an erroneous exercise of jurisdiction by a quasi-judicial authority cannot result in disciplinary proceedings and that it must be kept in mind that being a quasi-judicial authority, he is always subject to judicial supervision in appeal. It was further observed that if every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers. This decision was by a two judges Bench. It came up for consideration before a Three Judges Bench comprising Their Lordships Ruma Pal, C.K. Thakker and Markandey Katju, JJ. in **Union of India v. Duli Chand (2006) 5 SCC 680**. The Hon'ble Supreme Court held as follows :

“5.The law on the subject was considered in extenso in the Three Judge Bench decision of **Union of India v. K.K. Dhawan 1993 2 SCC 56** wherein it was noted that the view that no disciplinary action could be initiated against an officer in respect of judicial or quasi-judicial functions was wrong. It was further said that the officer who exercises judicial or quasi-judicial



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powers acting negligently or recklessly could be proceeded against by way of disciplinary action. The Court listed six instances when such action could be taken:

28. i. where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

ii. if there is prima facie material to show recklessness or misconduct in the discharge of his duty; iii. if he has acted in a manner which is unbecoming of a government servant;

iv. if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

v. if he had acted in order to unduly favor party; vi. if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago 'though the bribe may be small, yet the fault is great'.

6.The Court, however, made it clear that ultimately the matter would have to depend upon the facts of a particular case. The present case would fall squarely within the fourth instance listed above.

*7.The decision in **K.K. Dhawan case** was considered by this Court and followed in **Govt. of T.N. v. K.N. Ramamurthy 1997 7 SCC 101** In that case the Tribunal had set aside the order imposing punishment on an officer who had been discharging judicial functions. The Court was of the view that the Tribunal's action was contrary to the several judgments of this Court and the settled law on the question. 8.In 1999 another bench of two judges in*



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Zunjarrao Bhikaji Nagarkar considered and referred to these earlier decisions. However, the Court appears to have reverted back to the earlier view of the matter where disciplinary action could be taken against an officer discharging judicial functions only where there was an element of culpability involved. Since in that particular case there was no evidence whatsoever that the employee had shown any favour to the Assessee to whom refund had been made, it was held that the proceedings against him would not lie. In fact the Court set aside the disciplinary proceedings at the stage of the issuance of charge-sheet to the charged officer.

9. In our opinion, Nagarkar case was contrary to the view expressed in *K.K. Dhawan* case. The decision in *K.K. Dhawan* being that of a larger Bench would prevail. The decision in Nagarkar case therefore does not correctly represent the law. Inasmuch as the impugned orders of the Tribunal and the High Court were passed on the law enunciated in Nagarkar case this appeal must be allowed. The impugned decisions are accordingly set aside and the order of punishment upheld.”

But another Three Judges Bench of the Hon'ble Supreme Court in ***Ramesh Chander Singh v. High Court of Allahabad*** (2007) 4 SCC 247 approvingly referred to ***Zunjarrao. Duli Chand*** which was decided on 21.04.2006 was not brought to the Hon'ble Bench which decided ***Ramesh Chander Singh*** on 26.02.2007. In ***Inspector Prem Chand v. Govt. of NCT of Delhi*** (2007) 4 SCC 566, ***Zunjarrao*** was relied on.



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Interestingly, His Lordship Mr. Justice Markandey Katju who was part of the Duli Chand Bench which overruled Zunjarrao was part of the Hon'ble Bench which decided **Inspector Prem Chand. Zunjarrao** was followed in **ESI Corpn v. A.K. Abdul Samad (2016) 4 SCC 785, Krishna Prasad Verma v. State of Bihar (2019) 10 SCC 640**. In Krishna Prasad Verma it was held as follows :

“16. We would, however, like to make it clear that we are in no manner indicating that if a judicial officer passes a wrong order, then no action is to be taken. In case a judicial officer passes orders which are against settled legal norms but there is no allegation of any extraneous influences leading to the passing of such orders then the appropriate action which the High Court should take is to record such material on the administrative side and place it on the service record of the judicial officer concerned. These matters can be taken into consideration while considering career progression of the concerned judicial officer. Once note of the wrong order is taken and they form part of the service record these can be taken into consideration to deny selection grade, promotion etc., and in case there is a continuous flow of wrong or illegal orders then the proper action would be to compulsorily retire the judicial officer, in accordance with the Rules. We again reiterate that unless there are clear-cut allegations of misconduct,



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extraneous influences, gratification of any kind etc., disciplinary proceedings should not be initiated merely on the basis that a wrong order has been passed by the judicial officer or merely on the ground that the judicial order is incorrect.”

One common thread is evident. Unless the official exercising quasijudicial function was actuated by corrupt motive or he acted under extraneous considerations or he was recklessly negligent, he cannot be visited with disciplinary action. In this case, the petitioner had carried out his quasi-judicial duty while registering the documents in question. His decision was endorsed not once but twice. There is no allegation that the petitioner was swayed by any other consideration. The petitioner has not committed any act of misconduct. Even if the petitioner's decision as regards the chargeability of the instrument is held to be incorrect, still, no cause of action had arisen for initiating disciplinary proceedings.

9. Respectfully applying the aforesaid ratio laid down by the Hon'ble Supreme Court to the facts of this case, I hold that the impugned charge memo ought not to have been issued against the writ petitioner for having taken a particular view as regards the



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chargeability of the instrument under the relevant provisions of the Stamp Act. The impugned charge memo is quashed. "

B)The learned counsel for the petitioner also placed reliance on the judgment of a learned Single Judge of this Court reported in **2010 [2] LW 964 : 2010 [7] MLJ 32 [B.K.Gunasekaran Vs. The State of Tamil Nadu rep. by the Secretary to Government and Others]**. In that particular case also, the petitioner therein was functioning as Assistant Inspector General of Registration at Coimbatore and charges related to a Release Deed presented for registration before the Joint Sub Registrar-II at Central Madras and the charge was that the document should have been treated as a conveyance and appropriate stamp duty should have been collected. The 2nd charge was with respect to the loss on the stamp duty not collected. In that particular case, the petitioner had given his explanation and thereafter, an Enquiry Officer had also been appointed and a Report had also been filed. The petitioner therein had also given his reply to the charge memo. The learned counsel for the petitioner had placed reliance on paragraphs No.7, 13 and



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14 of the said judgment which are as follows:-

"7.Mr.N.R.Chandran, learned Senior counsel and Mr.K.V.Venkatapathy, learned Senior counsel and P.V.Balasubramaniam, learned counsels appearing for the petitioner would raise the common legal issue based on which the impugned charge memo is liable to be set aside. It is contended that the power exercised by the registering authorities under the provisions of the Indian Stamp Act, the Registration Act and the Rules framed thereunder are quasi-judicial powers and adjudicatory in nature and if there is any error in the violation or assessment or discharge of such quasi-judicial power, the same cannot be a basis for a disciplinary proceedings in the absence of proof of any motive or bad intention. The learned Senior counsels would therefore submit the allegation in the charge memo itself is regards the matter as to whether the petitioner ought to have exercised the statutory power under Section 33 (A) of the Act for recovery of deficit stamp duty and such power being a quasi-judicial power, since a decision has to be arrived at whether proper Stamp Duty payable under the Act in respect of such instrument



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*has not been paid or has been insufficiently paid and based on a certificate of the Registrar of District could be recovered from the person liable to pay the Stamp Duty. Therefore, it is contended that failure to exercise such statutory power, which is in the nature of a quasi-judicial power can hardly be a ground for initiation of disciplinary proceedings. In support of such contention, the learned Senior counsels referred to the decision of the Hon'ble Supreme Court in *Zunjarrao Bhikaji Nagarkar Vs. Union of India and Others* " (1999) 7 SCC 409, and the decision of the Hon'ble Division Bench of this Court in ***The Special Commissioner and Commissioner of Commercial Taxes, Chennai and another Vs. N.Sivasamy, Commercial Tax Officer, (Under suspension), Chennai and another-(2005) 4 MLJ 659, Union of India, rep. by the Secretary to Government of India, Ministry of Finance, Department of Revenue, New Delhi Vs. A.Kannan and Another (2008) 4 MLJ 424*** and the decision of the learned Single Judge of this Court in *S.Muthuramu Vs. State of Tamil Nadu, rep. by its Chief Secretary to Government, Public (Special-A) Department, Chennai-9 and Another**



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(2008) 3 MLJ 766.

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13.I have considered the submissions made on either side and perused the materials available on record. Though elaborately submissions have been made on either side as regards the factual contentions raised, the first of the legal issues which would arise for consideration is to whether the allegations contained in the charge memo would clothe the respondents with power to initiate disciplinary action. It has been alleged in the charge memo that the petitioner ought to have invoked Section 33 A of the Indian Stamp Act for recovering a deficit Stamp Duty on a release deed submitted before the Joint Registrar Central Chennai, who treated the document as a deed of release under Article 55 of Schedule I of the Stamp Act. Section 33 A deals with recovery of deficit Stamp Duty of the Stamp Act and provides for contingencies for such recovery and procedure to be followed. At this stage, it is useful to refer to 33A which reads as follows:-

"33-A. Recovery of deficit stamp duty:-

(1) Notwithstanding anything contained in



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section 33 or in any other provisions of this Act, if, after the registration of any instrument under the Registration Act, 1908 (Central Act XVI of 1908), it is found that the proper stamp duty payable under this Act in respect of such instrument has not been paid or has been insufficiently paid, such duty or the deficit, as the case may be, may, on a certificate from the Registrar of the district under the Registration Act, 1908 (Central Act XVI of 1908) be recovered from the person liable to pay the duty, as an arrear of land revenue:

Provided that no such certificate shall be granted unless due inquiry is made and such person is given an opportunity of being heard:

Provided further that no such inquiry shall be commenced after the expiry of three years from the date of registration of the instrument.

(2) The certificate of the Registrar of the district under sub-section (1) shall, subject only to appeal under sub-section (3), be final and shall not be called in question in any court or before any authority.

(3) Any person aggrieved by a certificate of the Registrar of the district under sub-section (1) may appeal to the Chief Controlling Revenue Authority.



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Any such appeal shall be preferred within such time, and shall be heard and disposed of in such manner, as may be prescribed."

14. Thus, it is to be noted that the pre-requisite for invoking Section 33-A is that it has to be found that proper Stamp duty payable under the Act in respect of the instrument has not been paid or has not been sufficiently paid and on determining such fact the Registrar of the District may issue a certificate for recovery of such amount and no such certificate shall be granted unless enquiry is made and such person is given an opportunity of being heard and no such enquiry shall be commenced after the expiry of three years from the date of Registration of the instrument. Thus, the determination as to whether proper Stamp Duty has been paid under Act is a quasi-judicial function to be exercised by the registering authority by going through the contention of the document and coming to an opinion as to determine as to what calls the document could be classified for demanding proper Stamp Duty as per the rates specified in Schedule I to the Act. Therefore, there is an element of adjudication involved in the matter for



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determination of proper Stamp Duty chargeable on an instrument. Even according to the respondents the concerned Joint Sub-Registrar central Chennai treated the document as a release deed and held that the document would fall within the description under Article 55 of Schedule I. The allegation is that an Audit objection was raised by the Audit Department stating that such instrument which was admitted for registration by a Sub-Registrar ought to have been treated as a deed a of conveyance under Article 23 and not under Article 55 and therefore, deficit stamp duty is payable and in spite such Audit objection said to have been confirmed by the Inspector General, the petitioner failed to invoke Section 33-A for recovery of deficit stamp duty. In my view the power of the Sub-Registrar is a quasi-judicial power in determining the Stamp Duty. Likewise, the officer in the position of the petitioner is required to render a quasi-judicial findings before issuing a certificate for recovery that the document in question was not sufficiently Stamped. This finding cannot be done without an enquiry to the aggrieved person."

C)The learned counsel for the petitioner placed reliance on the



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judgment dated **13.08.2012** in **WP.No.6698/2009**

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[K.M.Thiyagaraj @ Henry Mani Vs. The Inspector General of Registration, Chennai and Another]. That writ petition was also filed seeking interference with the charge memo and the order of suspension and the order by which the petitioner therein was not permitted to retire from service. After extracting the charge memo, it had been held by the learned Single Judge that it would not be possible for the petitioner therein to give effective reply since the details had not been given in the charge memo. Be that as it may, the learned Single Judge had held as follows:-

"12.Though the learned Additional Government Pleader vehemently contended that the charge memo and the consequential orders are not liable to be quashed and also placed reliance on the decision of the

Hon'ble Apex Court in KUNNITSETTY's case [cited supra] reported in AIR 2007 SC 906[I], I am unable to countenance such contention for the simple reason that the Hon'ble Apex Court has not imposed any total ban for quashing the charge memos. It was made



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clear by the Hon'ble Apex Court in the said decision that this Court can quash a charge sheet in some very rare and exceptional cases where the charges are found to be wholly without jurisdiction or for some other reason, if it is wholly illegal. As far as the case on hand is concerned, it is already pointed out by this Court that the charges are not specific and definite and the same is vague and bald. It is also already pointed out by this Court that the impugned charge memo is liable to be quashed not only on the ground of vagueness of the charge, but also on the ground that the petitioner has acted only as a quasi-judicial authority and as such, in the absence of any specific allegation of dishonest or corrupt practice or any ulterior motive, no charge can be framed against a quasi-judicial authority. Further, the disciplinary proceedings is not maintainable insofar as the petitioner, on the basis of the impugned charge memo as he has admittedly, discharged his duties as a quasi-judicial authority. Therefore, the impugned charge memo is liable to be quashed on this ground also."

D)The learned counsel for the petitioner also placed reliance on the



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judgment of a learned Single Judge of this Court dated **26.02.2008** in **WP.No.19012/2007 [S.Muthuramu Vs State of Tamil Nadu]**. In that particular case also, the petitioner therein had questioned the issuance of a charge memo. The petitioner therein was working as Additional Special Deputy Collector and at that time, the Sub Registrar, Arakonam, had referred a document under Section 47A[1] of the Indian Stamp Act. Examining the charge, the learned Single Judge had stated as follows:-

"7.(a) In the decision reported in (1999) 7 SCC 409 (Zunjarrao Bhikaji Nagarkar v. Union of India), the Supreme Court 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



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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."

(b) Whether the disciplinary proceeding can be initiated against a judicial officer, who granted bail exercising discretion while discharging the Judicial function, was considered by the Supreme Court in the decision reported in (2007) 2 SCC



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(Criminal) 266 (Ramesh Chander Singh v. High Court of Allahabad). In paragraph 12, the Supreme Court held as follows:

"12.This Court on several occasions 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. The appellate and revisional courts have been established and given powers to set aside such orders. The higher courts after hearing the appeal may modify or set aside erroneous judgments of the lower courts. While taking disciplinary action based on judicial orders, the High Court must take extra care and caution."

(c)In the decision reported in 2007 (3) LLN 106 = (2007) 4 SCC 566 (Inspector Prem Chand v. Government of N.C.J. of Delhi) following the earlier decisions, the Supreme Court held that the acts of negligence, error of judgment or innocent mistake, do not constitute misconduct. In the above case, the appellant/Police Officer failed to seize the tainted money on receipt of complaint of alleged demand of bribe by an Inspector (Malairiya). Department initiated disciplinary proceeding on the charge that he had not seized the tainted money, which could be an important piece of evidence in criminal proceeding.



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The Supreme Court held that the Police Inspector could not be said to have committed any misconduct merely because in the opinion of the higher authorities he ought to have seized the tainted money. The Supreme Court in paragraphs 10 to 12 dealt with the term misconduct, which reads as follows:

"10. In State of Punjab v. Ram Singh, Ex-Constable (1999 (2) LLN 419) it was stated, in para.5, at page 422:

"Misconduct has been defined in Black's Law Dictionary , 6th Edn. at p.999, thus:

"A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness."

Misconduct in office has been defined as:

"Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office-holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act." "

11. In P.Ramanatha Aiyar's Law Lexicon , 3rd Edn., at p.3027, the term "misconduct" has been defined as under:

"The term "misconduct" implies a wrongful intention, and not a mere error of



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judgment.

Misconduct is not necessarily the same thing as conduct involving moral turpitude.

The word "misconduct" is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. "Misconduct" literally means wrong conduct or improper conduct."

(See also Bharat Petroleum Corpn. Ltd. v. T.K. Raju (2006 (2) LLN 54))

*12. It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behaviour in relation to discharge of his duties in service, which was wilful in character. No such finding was arrived at. An error of judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In **Union of India v. J.Ahmed ((1979) 2 SCC 286)** whereupon Mr Sharan himself has placed reliance, this Court held so stating:*

"Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for



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*the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pierce v. Foster* 17 Q.B.536, 542). A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle (Indicator Newspapers (1959(1) W.L.R.698))*. This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional Supdt., Central Rly., Nagpur Division, Nagpur* (61 B.L.R. 1569) and *Satubha K. Vaghela v. Moosa Raza* (10 G.L.R. 23). The High Court has noted the definition of misconduct in *Stroud's Judicial Dictionary* which runs as under:*

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct "

(emphasis supplied)

(d)A Division Bench of this Court in the decision reported in 1999 (2) LW 174 (A.M.Sankaran v. The Registrar, High Court, Madras), quashed an order of compulsory retirement passed against the judicial officer for destroying the seized spirit without examining or recording any evidence regarding the inflammable nature of the spirit. This court held that



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the said order having been passed during discharge of the function as judicial officer, framing such charge without any allegation or recklessness or abuse of power, cannot be sustained.

8.Applying the principles laid down in the above decisions to the facts of this case, particularly when there is no motive or recklessness attributed against the petitioner and no misconduct is committed by the petitioner, I hold, the charge as framed is not maintainable against the petitioner, who is a quasi-judicial authority. The impugned order is set aside and the writ petition is allowed. No costs. Connected miscellaneous petitions are closed."

E)The learned counsel for the petitioner also placed reliance on a judgment of a Division Bench of this Court in **WP.No.41699/2002 [Special Commissioner and Commissioner of Commercial Taxes, Chennai Vs. N.Sivasamy, Commercial Tax Officer, [Under Suspension], Chennai]**. There again, the Division Bench had examined whether a charge memo could be issued for an act of omission or commission of a work which is quasi judicial in nature. The learned counsel relied on paragraph No.4, which is



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extracted below:-

"4.A perusal of the above charges would show that incorrect report without personally verifying the bill of lading, wrong deduction of the amount from the taxable turnover, failure to take follow-up action to prevent misuse of forms and loss of revenue, loss of records, failure to make payment in time, failure to make demand in time, short levy of penalty, wrong statement and false report causing loss, as rightly observed by the Tribunal and argued by the learned counsel for the applicant, in none of the charges there is allegation misappropriation or any other offence of criminal nature. Though learned Government Advocate vehemently contended that the charges are all of serious nature, on going through the same, we are unable to accept his 5 contention, as the same cannot be construed as criminal allegations. At the most, he must be held responsible for negligence.

In Union of India Vs. R.K.Desai, 1993 [2] SCC 49, after finding that there is deficiency in discharging quasi-judicial function, however, that cannot be a basis for disciplinary action. The following conclusion of their Lordships is relevant:-



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"4.In our view, the allegations are merely to the effect that the refunds were granted to unauthorised persons and this was done in disregard to the instructions of the Central Board of Direct Taxes. There is no allegation, however, either express or implied that these actions were taken by the respondent actuated by any corrupt motive or to oblige any person on account of extraneous considerations. In these 5 circumstances, merely because such orders of refunds were made, even assuming that they were erroneous or wrong, no disciplinary action could be taken as the respondent was discharging quasi-judicial function. If any erroneous order had been passed by him the correct remedy is by way of an appeal or revision to have such orders set aside."

***In Zunajarro Bhikaji Nagarkar V. Union of India
AIR 1999 SC 2881 : 1999 [7] SCC 409 : 2000-1-LLJ-
728 in similar circumstance, the Supreme Court after
finding that the applicant being a quasi-judicial
authority, he is always subject to judicial supervision***



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in appeal, merely because penalty was not imposed, concluded that the charge of misconduct against the applicant was not proper and quashed the Disciplinary Proceedings initiated against him

In the light of the above principles, let us consider whether the department would be justified to take action under Pension Rules by pursuing the above charges, on the ground that the applicant attained superannuation even on July 31, 1997. It is the definite case of the applicant, that in his capacity as Commercial Tax Officer, Assessment Circle, he had been exercising the quasi judicial power. As rightly pointed out assuming that there was any error, the remedy would be by way of appeal or revision as provided in the Central Sales Tax Act or Tamil Nadu General Sales Tax Act. Further, there was inordinate delay in issuing the charge memo. It is not in dispute that in respect of alleged occurrence in 1992-1995, charge memo was issued on July 15, 1997 and served on July 23, 1997 when he was due to retire on the afternoon of July 31, 1997."

- (21) Placing reliance on the ratios laid down in the above judgments, it had been very strenuously argued by the learned counsel for the petitioner



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that this Court should interfere with the charge memos issued to the petitioner herein and quash the charge memos.

- (22) In this connection, it had also been stated that in several of the registrations given in the Annexure, proceedings had also been initiated under Section 47 of the Indian Stamp Act and it is then stated that since such proceedings had been initiated, the petitioner cannot be held responsible even deficit stamp duty had been collected by her. With respect to valuation, it had been stated again that, that is an adjudicatory process and since it was an adjudication, disciplinary action should not be initiated against the petitioner herein and learned counsel faulted the respondents for having issued the charge memos. It had been stated that in view of the pronouncements made above, it would be extremely harsh on the part of the petitioner herein to participate in the Disciplinary Proceedings particularly when the charge memos themselves suffer from having been issued questioning quasi judicial order of the petitioner herein. The learned counsel for the petitioner therefore, submitted that the charge memos should be quashed and consequently, if the charge memos are quashed, then the



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order of suspension should be revoked and the petitioner should be permitted to retire and the order, not permitting the petitioner to retire, should be set aside. It is also contended that a mandamus would also lie as sought for in WP.No.11781/2016 and order should be passed in the enquiry already conducted against the petitioner herein.

- (23) The learned Special Government Pleader on behalf of the respondents however disputed the contentions raised by the petitioner herein. It is the contention of the learned Special Government Pleader that the charges indicate that the petitioner had, by her acts of commission and omission, collected deficit stamp duty from nearly about more than 400 documents. It had been stated that therefore, the petitioner is duty bound to give her explanations, to the respondents herein and if such explanations are given to the respondents, they would be in a position to examine the explanations along with the records available. It had been stated that it is only a preliminary stage of a charge memo being issued and at that stage, the Court should not interfere with the proceedings. The learned Special Government Pleader also pointed out the charge memos issued against the petitioner herein and alleged



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that the petitioner had been the direct cause for collection of deficit stamp duty which correspondingly had led to unlawful gain by those who had presented the documents for registration.

- (24) With respect to the contention that the act of collection of deficit stamp duty is quasi-judicial authority, the learned Special Government Pleader had placed reliance on the judgment of the Hon'ble Supreme Court as stated in the counter affidavit, reported in **2016 [10] SCC 767 [Satya Pal Anand Vs. State of Madhya Pradesh and Others]**. In that particular case, which had been referred to a Larger Bench of Hon'ble Supreme Court consequent to difference of opinion of the two Coordinate Benches of the Hon'ble Supreme Court, the points in difference were as follows:-

"A.M.KHANWILKAR, J. This appeal has been placed before a three-Judge Bench in terms of order dated 25-8-2015 [Satya Pal Anand v. State of M.P., (2015) 15 SCC 263 : (2016) 3 SCC (Civ) 318] , consequent to the difference of opinion between the two learned Judges of the Division Bench.

2. Dipak Misra, J. took the view that, in the fact situation of the present case the writ petition filed by



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the appellant challenging the order passed by the Sub-Registrar (Registration) and the Inspector General (Registration) was rightly dismissed [Satya Pal Anand v. State of M.P., 2011 SCC OnLine MP 627 : (2012) 1 MPLJ 555] by the High Court. However, his Lordship opined that a question would still arise for consideration, namely, whether in absence of any specific rule in the State of Madhya Pradesh, the general principle laid down in Thota Ganga Laxmi v. State of A.P. [Thota Ganga Laxmi v. State of A.P., (2010) 15 SCC 207 : (2013) 1 SCC (Civ) 1063] would be applicable?

3. V. Gopala Gowda, J., on the other hand, allowed the appeal on the finding that the Sub-Registrar (Registration) had no authority to register the extinguishment deed presented by the respondent Society dated 9-8-2001 and his action of registration of that document was void ab initio. For the same reason, the subsequent deeds in respect of the property in question registered by the Sub-Registrar dated 21-4-2004 and 11-7-2006 were also without authority and void ab initio. His Lordship held that the High Court should have declared the above



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position and set aside registration of the subject documents and also the orders passed by the Sub-Registrar (Registration) and Inspector General (Registration). His Lordship allowed the appeal filed by the appellant with compensation amount to be paid by the respondents quantified at Rs 10 lakhs."

- (25) On the basis of aforementioned facts and ratio laid down by the Division Bench, the Larger Bench of the Hon'ble Supreme Court had formulated the questions which were referred as follows:-

23. Having considered the rival submissions, including keeping in mind the view taken by the two learned Judges of this Court on the matters in issue, in our opinion, the questions to be answered by us in the fact situation of the present case, can be formulated as under:

23.1. "(a) Whether in the fact situation of the present case, the High Court was justified in dismissing the writ petition?

23.2. (b) Whether the High Court in exercise of writ jurisdiction under Article 226 of the Constitution of India is duty-bound to declare the registered deeds



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(between the private parties) as void ab initio and to cancel the same, especially when the aggrieved party (appellant) has already resorted to an alternative efficacious remedy under Section 64 of the 1960 Act before the competent forum whilst questioning the action of the Society in cancelling the allotment of the subject plot in favour of the original allottee and unilateral execution of an extinguishment deed for that purpose?

23.3. *(c) Even if the High Court is endowed with a wide power including to examine the validity of the registered extinguishment deed and the subsequent registered deeds, should it foreclose the issues which involve disputed questions of fact and germane for adjudication by the competent forum under the 1960 Act?*

23.4. *(d) Whether the Sub-Registrar (Registration) has authority to cancel the registration of any document including an extinguishment deed after it is registered? Similarly, whether the Inspector General (Registration) can cancel the registration of*



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*extinguishment deed in exercise of powers under
Section 69 of the 1908 Act?*

23.5. (e) *Whether the Sub-Registrar (Registration) had no authority to register the extinguishment deed dated 9-8-2001, unilaterally presented by the respondent Society for registration?*

23.6. (f) *Whether the dictum in **Thota Ganga Laxmi [Thota Ganga Laxmi v. State of A.P., (2010) 15 SCC 207 : (2013) 1 SCC (Civ) 1063]** is with reference to the express statutory Rule framed by the State of Andhra Pradesh or is a general proposition of law applicable even to the State of Madhya Pradesh, in absence of an express provision in that regard?"*

- (26) One of the questions which was presented was whether the High Court in exercise of Writ jurisdiction under Article 226 of the Constitution, had the power to declare a registered Deed between private parties as *void ab initio* and cancel the same particularly, when one of the parties had resorted to an alternate efficacious remedy under Section 64 of the Registration Act before the competent



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Forum. One of the other questions was whether the Sub Registrar [Registration] had authority to cancel the registration of any document including an extinguishment Deed after its registration. While answering the issues, the Larger Bench of the Hon'ble Supreme Court had stated that the High Court, in that particular case, was correct in dismissing the writ petition with liberty to pursue the statutory remedy as provided under the Statute. The references had been answered that once the document is registered, the role of the Sub Registrar [Registration], stands discharged and thereafter, the documents cannot be cancelled. The power of the Inspector General is limited to superintendence of the Registration Offices and make Rules in that behalf. It had been very specifically held that the Inspector General has no power to cancel registration of any document which had already been registered. In effect, the ratio laid down is that once the document had been registered with deficit stamp duty, then the document does not become void, but is voidable and the authorities have every right to seek the deficit stamp duty to be paid. It had also been held that this is so because it cannot be held that it is



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strictly an adjudication of the stamp, but an act of negligence by the Sub Registrar.

- (27) The learned Special Government Pleader having placed reliance on this particular judgment which was rendered by a Larger Bench of the Hon'ble Supreme Court, stated that therefore the petitioner herein should answer the charges framed against her and stated that if the petitioner gives an explanation, the said explanation would be considered in its proper light and stated that at this stage, it may not be proper on the part of this Court to interfere with the charge memos.
- (28) I have carefully considered the arguments and more particularly, considered the ratios laid down by a string of judgments of this Court by the learned Single Judges and also by a Division Bench.
- (29) It must be straightaway stated that the Division Bench was more concerned with the delay in issuing the charge memo. In ***T.Rajendran's case*** referred supra, in WP[MD].No.13924/2022, the learned Single Judge who had delivered the order on 08.09.2022 in Madurai Bench, had unfortunately not examined the decision of the Larger Bench of the Hon'ble Supreme Court reported in ***2016 [10]***



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SCC 767 [Satya Pal Anand's case] referred supra, which was specifically referred to the Larger Bench on difference of opinion between two Coordinate Benches. The ratio laid down by the Hon'ble Supreme Court as stated in the judgment of the learned Single Judge was also questioned and deviated by another Coordinate Bench which was also referred by the learned Single Judge. The learned Single Judge had stated that there was a judgment of the Hon'ble Supreme Court reported in **1999 [7] SCC 409 [Zunajarro Bhikaji Nagarkar V. Union of India]**, wherein it had been stated that erroneous exercise of jurisdiction by a quasi-judicial authority cannot result in Disciplinary Proceedings. A Three Judges Bench of the Hon'ble Supreme Court, examined the same issue in the decision reported in **2006 [5] SCC 680 [Union of India and Others Vs. Duli Chand]** and it examined another decision of a Three Judges Bench of the Hon'ble Supreme Court reported in **1993 [2] SCC 56 [Union of India and Others Vs. K.K.Dhawan]**. In that particular decision, it had been held that the view that no disciplinary action could be initiated against an officer discharging judicial or quasi-judicial functions, was wrong. It



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had been very specifically held that the officer who exercised judicial or quasi-judicial powers and acts negligently or recklessly, can be proceeded against by ways of disciplinary action. Instances had also been stated. There was also another Three Judges Bench decision of the Hon'ble Supreme Court reported in **2007 [4] SCC 247 [Ramesh Chander Singh Vs. High Court of Allahabad and Others]**. Once again, the earlier judgments were not brought to the notice of the other Coordinate Bench. The primary issue was whether a quasi-judicial function erroneously conducted, could be the subject matter of a charge memo issued by the authorities concerned. The learned Single Judge while examining all these judgments, had unfortunately not referred to the judgment of reference before a Larger Bench of the Hon'ble Supreme Court as held in **2016 [10] SCC 767 [Satya Pal Anand's case]** referred supra. Even though reference was with respect to cancellation of a document and whether the Registration Department could cancel the document, one of the aspects which was deeply considered was about the adjudicatory powers of the Sub Registrar and it had been held that the authorities can proceed if it had



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been done recklessly.

(30) Now, coming back to the facts of the present case, in the first writ petition in WP.No.9851/2016, to the Annexure in the Charge Memo, it had been stated by the respondents that the petitioner had committed acts of negligence while registering as many as 62 documents. In the other writ petition in WP.No.11156/2016, in the four charges issued against the petitioner herein, again the Annexure had been given and it is stated that the petitioner had collected deficit stamp duty in as many as 323 documents. This would only give an impression that in every document presented before the petitioner herein, she had collected deficit stamp duty. It is not an act of negligence. It is a series of acts and the total exceeds 400 documents. Every Sub Registrar would be working in a particular Sub Registrar Office only for a limited period of time. If for every alternate document, the petitioner was to collect deficit stamp duty, naturally, she must explain the basis on which she had so collected deficit stamp duty. It is a different issue that the amounts have been subsequently collected or amounts are subject matter of further adjudication under



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Section 47 of the Indian Stamp Act. But still, the petitioner is duty bound to explain her acts of negligence, if at all, it could be termed as negligence. The petitioner should be aware that a responsibility had been cast on her as Sub Registrar and as Joint Registrar and she had to necessarily collect the correct stamp duty. No reason had been given as to why she had collected deficit stamp duty. Claiming innocence on the basis that she had gone along with the records in the office of the Sub Registrar and had not verified the guideline value as given in the website, would not take the petitioner anywhere and it would only be a weak argument as ignorance of the guideline value makes her unfit to work as Sub Registrar or as a Joint Registrar.

- (31) She had been cast with the onerous responsibility to collect stamp duty as has been stipulated by the guideline value. There is no reason for the petitioner to favour the parties who presented the document for registration. These are issues which could be examined only if she gives explanations and this Court cannot sit as an Enquiry Officer to examine whether each and every explanation given by the petitioner would require the charge memo to be dropped against her in entirety



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and whether for all the documents presented for registration, explanations have been given. There are also instances pointed out by the petitioner herein that the same documents had been mentioned again and the deficit stamp duty being stated differently for the same document. This may be an error in the charge memo, but that would not invite the charge memo itself to be wiped away from the face of the records.

- (32) She had been paid her salary by way of public tax and it is only expected that any public servant who does not discharge his/her duty to the best of his/her ability, can never claim innocence and ignorance and seek indulgence. If the petitioner is not capable to perform her duty as Sub Registrar, then she should have resigned and walked away. It is also to be noted that she had not gone through the ordeal of being selected and not gone through the selection process for appointment to the post of Sub Registrar in the Registration Department, but had been the beneficiary of being selected by the respondents on compassionate grounds directly as Junior Assistant.



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Therefore, she had the benefit of being so appointed and after having been promoted as Assistant and subsequently, as Sub Registrar and also as Joint Registrar, if in over 400 documents, continuously she were to collect deficit stamp duty and then turn around and state that the Court should examine her explanation, I am afraid that under Article 226 of the Constitution of India, this Court cannot conduct an enquiry about the various charges levelled against the petitioner herein. It is for the respondents to so conduct an enquiry. The petitioner should forward the explanations to the respondents and the respondents, I am confident, would examine them with alignment with the records already available.

(33) In view of the same, I hold that no grounds have been made to interfere with the charge memos issued to the petitioner and consequently, ***WP.Nos.9851 and 11156/2016 stand dismissed.***

(34) With respect to the mandamus sought in WP.No.11781/2016, a direction is given to the petitioner herein to once again give a copy of the representation already given by her on 11.03.2016 and if such representation is given, the respondents may examine the same and



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pass necessary orders. But, even that would become otiose since that particular representation is for permitting the petitioner to retire from service, since she is facing Disciplinary Proceedings, it may not be possible for the respondents to permit the petitioner to retire from service and therefore, the order placing the petitioner under suspension which is the subject matter of WP.No.11782/2016 is upheld by me and the writ petition in ***WP.No.11782/2016 stands dismissed.***

(35) The order, not permitting the petitioner to retire from service which is the subject matter of WP.No.13132/2016 is also upheld by me. Hence, ***WP.No.13132/2016 also stand dismissed.***

(36) The mandamus sought becomes otiose since this Court itself had stated that the petitioner cannot be permitted to retire. Hence, ***WP.No.11781/2016 stands dismissed.***

(37) In effect, all the ***five writ petitions stand dismissed.*** No costs. Consequently, connected miscellaneous petitions are closed.

26.09.2023



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To

- 1.The Inspector General of Registration
Registration Department,
Santhome, Chennai.
- 2.The Deputy Inspector General of Registration
Registration Department, Cuddalore Zone
Thirupapuliyur, Cuddalore.
- 3.The Deputy Inspector General of Registration
Registration Department, Chennai Zone
27, Rajaji Salai, Chennai-1.
- 4.The District Registrar
Chidambaram.
- 5.The District Registrar [Audit], Chengalpattu.
- 6.The District Registrar [Administration], Chengalpattu.
- 7.The District Registrar [Audit], Villupuram.
- 8.The District Registrar [Administration], Villupuram.
- 9.The District Registrar [Admin]
The Enquiry Officer, Tindivanam.



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C.V.KARTHIKEYAN, J.,

AP

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