IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.09.2023**

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THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.P No. 33566 of 2018
And
W.M.P.No. 38952 of 2018

Tmt. Sherly Reenuja ... Petitioner

-Vs-

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

2. The Inspector General of Registration
Office of the Inspector General of Registration
100, Santhome High Road,
Mylapore, Chennai – 600 004. ... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records relating to the order made in G.O.(D)No. 198, Commercial Tax and Registration (K) Department dated 13.08.2018 whereby confirming the punishment made in proceedings No.29511/v1/2010-2 on the file of the Inspector General of Registration, Chennai dated 10.07.2017 and quash the same as null and void.

For Petitioner : Mr. D.Veerasekaran

For Respondents : Mr. K.Surendharan
Additional Government Pleader

ORDER

The Writ Petition has been filed in the nature of Certiorari seeking records relating to the order made in G.O.(D)No. 198, Commercial Tax and Registration (K) Department dated 13.08.2018 confirming the punishment made in proceedings No.29511/v1/2010-2 on the file of the Inspector General of Registration, Chennai dated 10.07.2017 and quash the same.

2. The petitioner was appointed as Junior Assistant and posted in Sub-Registrar Office, Eranel on 12.10.2009. She was then transfered in the Sub-Registrar Office at Boothapandi in Kannyakumari District on 02.05.2014. She had been subsequently transfered to Sub Registrar Officer at Kottaram on 01.06.2017 and then transfered to Sub Registrar Officer at Thovalai, Kannyakumari District on 13.05.2018. When she was working as Junior Assistant in Sub Registrar Office at Boothapandi, a charge memo had been issued against her. In effect, in the charge memo, it had been stated that on 27.05.2010 a team of officials attached to the District Inspection Cell and Vigilance and Anti Corruption Department had conducted a surprise inspection at Sub Registrar Office at Boothapandi at about 05.45 p.m., which went on till 09.00 p.m. They had seized a sum of Rs.2,020/- from the concrete shelf in the record room. It was inferred that the said amount had been collected as bribe from the general public or from those, who had come over to the Sub Registrar Office for registration of various documents or for any other official purpose. The Officials had actually also found a sum of Rs.8,200/- a sum of Rs.3,700/- and a sum of Rs.1,500/- which allegedly belonged to document writers M.Nagarajan, M.Thamburan and K.Kannan. In view of all these allegations, a charge memo had been issued.

3. The charges against the document writers were held not proved. So far as the petitioner is concerned, after enquiry, the enquiry officer returned a finding that the charges were not established. In effect, it was held that it was not possible to hold that the amount of Rs.2,020/- found in the concrete shelf in the record room of Sub Registrar Officer, Boothapandi was bribe amount received by the petitioner herein.

4. Thereafter, the disciplinary authority / the second respondent, Inspector General of Registration at Chennai, re-examined the entire file and he accepted the finding with respect to the document writers against whom the enquiry officer had found that the charges had not been proved but however with respect to the charge No.1 relating to seizure of Rs.2,020/- in the concrete shelf at the record room, the disciplinary authority differred from the finding of the enqiury officer and stated that the finding was contrary to the statement of the Deputy Inspection Cell Officer. It was stated that no explanation had been given as to how the said amount had come to the concrete shelf in the record room and holding that the petitioner had received the said amount as bribe, proceeded to impose a punishment of cut of stoppage of increment for a period of 6 months without cumulative effect.

5. It is stated by the learned counsel for the petitioner that the procedure before imposing such punishment has been followed including issuing notice to the petitioner herein.

6. This particular order of the second respondent was subsequently confirmed by the first respondent, who passed G.O.Ms.No. 198, Commercial Tax and Registration (K) Department, dated 13.08.2018. Questioning these orders, the Writ Petition has been filed.

7. In the counter affidavit filed, it had been stated that on 27.05.2010 a surprise inspection was conducted by the District Inspection Cell and by the Vigilance and Anti Corruption Department between 05.45 p.m., and 09.00 p.m. It was stated that unaccounted money of Rs.2,020/- was seized in the concrete shelf of the record room. It had been stated that the enquiry officer had not analysed the evidence of the District Inspection Cell Officer. It had also been stated that the disciplinary authority had every right to differ from the findings of the enquiry officer with respect to the said amount and to draw a conclusion that it was actually bribe amount received from the general public and it was the petitioner, who was working as junior assistant, who had so received the bribe amount. The punishment of stoppage of increment for six months without cumulative effect was justified in the counter affidavit. It was also stated that the Government had also carefully considered all the surrounding circumstances and had confirmed the said punishment. It was finally stated that the Writ Petition should be dismissed.

8. Heard arguments advanced by the learned Counsel appearing on behalf of the petitioner and also the learned Additional Government Pleader appearing on the side of the respondents.

9. The entire issues surrounds a surprise inspection conducted by the District Inspection Cell and also by the Vigilance and Anti Corruption Department at Kannyakumari on 27.05.2010 at Sub Registrar Office, Boothapandi in Kannyakumari District between 05.45 p.m., and 09.00 p.m. At that particular point of time in the concrete shelf of the record room, a sum of Rs.2,020/- was found. No explanation was given as to how it came to be there and who kept it there and from whom it was received and by whom it was kept. The purpose of keeping the money in the concrete shelf could also not be detected. In the evidence of the Deputy Inspection Cell Officer, it was asserted that the money was there.

10. But however, during the enquiry which was conducted consequent to charges being framed against the petitioner herein, none of the general public came forward to state that they had handed over such money either to the petitioner or to any other staff of the Sub Registrar Office at Boothapandi. There was no evidence of either demand or acceptance of bribe money. The enquiry officer on the face of such evidence held that the allegation was not proved.

11. It must also be stated that simultaneously three other sums, namely, Rs.8,200/-, Rs.3,700/- and Rs.1,500/- were also recovered and an explanation was given that it belonged to three separate document writers. On that ground the second charge which had been framed was also held not proved.

12. The evidence of the Deputy Inspector Cell Officer was with respect to the recovery of the amount in the concrete shelf in the record room. But there is no evidence as to how it came there. There was not a single piece of evidence adduced by any one individual that there was a demand of bribe and of handing over of bribe amount and simultaneous acceptance of bribe amount. There is no evidence that there was demand of bribe and a direction to place the bribe amount in the concrete shelf of the record room. It was only natural that the enquiry officer, in the absence of any evidence, therefore held that the charges were not proved.

13. The second respondent however differed from the findings therein. The primary ground on which the second respondent differred was by placing reliance on the evidence of the Deputy Inspection Cell Officer. That particular evidence once again related only to the detection of the amount and the recovery of the amount. But it is trite in law to point out that unless demand is established, the charge of bribe cannot be held established.

14. The primary factory is demand of bribe and thereafter, there has got to be acceptance and then recovery. Without there being a demand and if unaccounted money is found, an explanation could always be given as to how that amount came to be in the possession of the charged official an if such explanation is given, that explanation has o be examined in its proper light. It cannot be brushed aside. When there is no evidence of demand of bribe, it would be stretching issue too far to hold that every money recovered was a result of bribe being demanded and the same being accepted. More over, there is no finding given as to why the petitioner among all other staff was singled out to be issued with this charge memo. There has been no evidence that there has been a demand by the petitioner either individually or as Junior Assistant from any of the witnesses who were called upon to tender evidence during the enquiry. There is no evidence to link the petitioner with the amount found in the concrete shelf in the record room. It is therefore highly improbable that the petitioner would be the only person who could be charged with the money found in the concrete shelf.

15. The learned counsel for the petitioner placed reliance on the Judgment of the learned Single Judge ***in W.P.No. 4339 of 2014 [S.Gurumoorthy Vs. the Secretary to Government, Commercial Tax and Registration Department at Chennai and two others] dated 13.06.2014***. That case was also on similar facts wherein during surprise inspection, a sum of Rs.74,580/- was recovered from the office premises of the petitioner therein. The learned Singe Judge had observed as follows:-

"7. As I have already pointed out, the punishment imposed on the petitioner is only in respect of charge No.3. Charge No.3 states that a sum of Rs.74850/- was recovered somewhere from the office of the petitioner. Admittedly, the money was not recovered either from the petitioner or from his Box, Bureau or Table. The place of recovery of the amount was behind the seat of A.2 officer. There is no evidence available anywhere that the petitioner had knowledge about the said amount being kept behind the seat of A.2 officer. It may be true that the claim of P.W.5 was not accepted by the Commissioner for Disciplinary Proceedings and consequently, by the disciplinary authority also. Simply because, the claim made by P.W.5 that he only kept the money in the said place was not accepted by the Commissioner for Disciplinary Proceedings and consequently by the disciplinary authority, it cannot be concluded that the money was kept in the office premises either

by the petitioner or by the other accused officers with his knowledge. There has to be positive evidence to prove either that the petitioner kept the money there or that at least he had any knowledge. Ofourse it is true that in the departmental proceedings, charges need not be proved beyond any doubt, as in the case of criminal case and it is suffice that if the charge is proved by applying the principle of preponderance of probabilities. But, in this case, absolutely, there is no evidence even to attribute knowledge, that the above said amount was kept elsewhere in the office of the petitioner. When that be so, at no stretch of imagination, it can be concluded that the petitioner was responsible for the said amount. Thus, in my considered opinion, the finding given by the Commissioner for Disciplinary proceedings is perverse and the same is based totally on no evidence.

8. *I am conscious of the fact that in a writ proceeding, this Court cannot re-appreciate the evidence adduced in the disciplinary proceedings but, at the same time, it is permissible for the Court to interfere with the order of punishment when the Court finds that the said finding is totally baseless which is based on no evidence. In this case, since, I have hold that there was no evidence at all available to hold that the petitioner is guilty of charge No.3, the finding given by the Commissioner for Disciplinary Proceedings that the petitioner is guilty of Charge No.3 and the consequential Government Order imposing punishment on the petitioner are liable to be set aside.*

9. *In the result, the writ petition is allowed and the impugned charge memorandum and G.O.(D) No.691 Commercial Tax and Registration (H) Department dated 20.12.2013 are liable to* *be set aside and the petitioner is exonerated from Charge No.3. The petitioner shall be permitted to retire from the date on which he had attained the age of superannuation, if, there was no other legal impediment and he shall be paid all the retirement benefits by the respondents. No costs. Consequently, connected miscellaneous petition is closed "*

16. The learned Single Judge had also found that there was no evidence available that the petitioner therein was guilty of the charges framed. Even in that particular case, the amount which was found, was held, could not be linked to the petitioner therein.

17. In the instant case, as a matter of fact, there is no evidence that there was any demand of bribe specifically by the petitioner herein, or by any other staff in the Sub Registrar Office.

18. The learned counsel for the petitioner also placed reliance on the Judgement of a learned Single Judge ***in W.P.No. 13392 of 2017 dated 10.01.2010 [A.Arumuga Navaraj Vs. The Additional Chief Secretary to Government, Commercial Tax and Registration (K) Department at Chennai and another]***. Even in that particular case, there was a surprise inspection by the Deputy Inspection Cell and the Vigilance Anti Corruption Department at Vellore District in Sub Registrar Office at Ambur and cash and demand drafts for Rs.3,59,823/- had been recovered.

19. The learned Single Judge on examination of the facts, had also followed the ratio laid down in *S.Gurumoorthy* referred supra and held that unless there is direct evidence to link the amount with the charged official no conclusion can be drawn that the charged official had demanded bribe and accepted bribe. The ratio laid down would directly applicable to the facts of this case.

20. The contention of the respondents that no explanation had been given by the petitioner for the presence of the said amount of Rs.2,020/- though considered, cannot be countenanced since if the petitioner had no knowledge as to how the money was kept there, there cannot be any explanation given by her. Therefore the absence of explanation would not come to the disadvantage of the petitioner herein.

21. In the result, I hold that the impugned orders must be set side and the punishment imposed is interfered with and also set aside. Both the impugned orders are quashed.

22. The Writ Petition stands allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

vsg 12.09.2023

Index:Yes/No
Neutral Citation:Yes/No

C.V.KARTHIKEYAN,J.

vsg

To

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