BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.08.2023

PRONOUNCED ON : 29.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.5621 & 5627 of 2020
and
W.M.P(MD)Nos.4919 & 4623 of 2020

P.Ponnum Perumal ... Petitioner in both W.Ps'

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Commercial Taxes and Registration (H),
Fort St. George,
Chennai – 600 009.

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

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned charge memo issued by the second respondent/Inspector General of Registration vide proceedings in Memo.Nos.36641/V3/2019 and 36642/V3/2019, dated 13.01.2020 (received on 04.02.2020) quash the same and further direct the respondents herein to permit the petitioner to retire from the service on superannuation on 31.08.2019 and to release the pension and other terminal benefits from 31.08.2019.

For Petitioner (In both W.Ps') : Mr.T.Cibi Chakraborthy

For Respondents (In both W.Ps') : Mr.N.Muthu Vijayan, Special Government Pleader

COMMON ORDER

The present Writ Petitions have been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, to quash the impugned charge memo issued by the second respondent/Inspector General of Registration vide proceedings in Memo.Nos.36641/V3/2019 and 36642/V3/2019 dated 13.01.2020 (received on 04.02.2020) and further to direct the respondents to permit the petitioner to retire from the service on superannuation on 31.08.2019 and to release the pension and other terminal benefits from 31.08.2019.

2.The petitioner was initially appointed as Junior Assistant in the Registration Department on 07.03.1981. After being promoted to various posts, in the month of September 2016, he was transferred from Virudhunagar as District Registrar (Audit) and posted to Marthandam as District Registrar (Administration). The petitioner was due to retire from service on reaching the age of superannuation on

31.08.2019. While he was in the verge of his retirement, the second respondent, vide proceedings, dated 09.01.2019 issued a first charge-memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, for certain alleged misconduct/irregularities with respect to the petitioner's service as District Registrar at Tindivanam during the year 2012, for which the petitioner made his explanation on 16.04.2019. Thereafter, an enquiry officer was appointed to enquire into the charges and the petitioner participated in the enquiry on 17.06.2019 ie., almost at the fake end of his carrier. To the shock and surprise of the petitioner on 26.07.2019, a second charge memo came to be issued by the proceedings of the second respondent dated 26.07.2019 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, as against the petitioner for certain allegations which were alleged to have happened while the petitioner served as District Registration Administration at Marthandam, during the year 2018-2019. The said charge memo was challenged by the petitioner by filing a Writ Petition before this Court in W.P(MD)No.23446 of 2019. While so, on 29.08.2019, the petitioner was suspended vide G.O(2D) No.50, Commercial Taxes and Registration (H) Department. It was further instructed that the petitioner should not leave the Headquarters without permission, following which on 30.08.2019 vide G.O(2D) No.52, Commercial Taxes and Registration (H) Department, the first respondent refrained the petitioner from retiring from service by virtue of Fundamental Rule FR 56(i)(c).

3.In the meanwhile, on 23.09.2019, the second respondent issued a third charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, for certain allegations alleged to have happened during his service as Sub-Registrar at Bhavani, Erode District during the years 2007-2008. Challenging the third charge memo, the petitioner filed another Writ Petition before this Court in W.P(MD)No.25541 of 2019. This Court was pleased to grant an order of interim stay, dated 29.11.2019 and tagged the previous Writ Petition in W.P(MD)No.23446 of 2019 along with the same. Under such circumstances, the second respondent issued the fourth charge-memo vide proceedings No.36441/01/2019, dated 13.01.2020 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, the same was received on 04.02.2020, with respect to certain alleged incidents which are alleged to have happened between 2009 and 2018. Following which, on the same day, the second respondent issued the fifth charge memo vide proceedings No.

36442/01/2019, dated 13.01.2020 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, the same was received on 04.02.2020, with respect to the alleged incidents which are alleged to have happened between 2013-2016. Challenging the fourth and fifth charge memos, these Writ Petitions have been filed.

4.In W.P(MD)No.5621 of 2020, the fourth charge-memo issued by the second respondent dated 13.01.2020 contained three counts of charges and in W.P(MD)No.5627 of 2020, the fifth charge-memo issued by the second respondent, dated 13.01.2020 contained four counts of charges.

Charges:-

5.The crux of the charges in the fourth charge memo in W.P(MD)No.5621 of 2020 is as follows:-

Charge No.1:-

5.1.While functioning as District Registrar (Audit) at Virudhunagar, the petitioner raised audit objection with respect to 41 documents registered with Kunoor Sub-Registrar in relation to the housing plots in Sathuragiri Nagar, Sathuragiri Village in various survey numbers in the month of July 2015 for the loss of sum of Rs. 6,56,368/- towards stamp duty and a sum of Rs.93,767/- towards Registration fee (total Rs.7,50,135/-). The said objection was confirmed by the Deputy Inspector General of Registration, Madurai, vide proceedings dated 24.01.2017. Since the petitioner failed to raise the audit objection as early as in the year September 2013, it is alleged that the petitioner is responsible for the loss to the tune of Rs. 3,34,583/- towards stamp duty and Rs.47,801/- towards Registration fee (total Rs.3,82,384/-) with respect to 21 documents. Since the appeal filed by the petitioner as against the said order, dated 24.01.2017 was dismissed by the Additional Inspector General of Registration (Audit), vide proceedings, dated 28.08.2019, the petitioner was held responsible for the loss of Rs.3,82,384/- for undervaluing 21 documents during the period between September 2013 to July 2015.

Charge No.2:-

5.2.One Selvakumari, the then Sub-Registrar, Kovilpatti, now District Registrar (Administration) had lodged a complaint as against the petitioner stating that the petitioner had given audit loss in the name of Selvakumari for the documents registered by other Sub-Registrars of Sivakasi other than Selvakumari with respect to 9 documents registered between 2009 and 2013, the petitioner while functioning as District Registrar (Audit) at Virudhunagar.

Charge No.3:-

5.3.On the basis of the complaint lodged by one K.Navaneethan and on the basis of the enquiry report of the Deputy Inspector General of Registration, Madurai and on the basis of the evidence given by the then Sub-Registrars, namely V.Selvakumari, Saraswathi and Marimuthu, with respect to the alleged written memos issued by the petitioner for not heeding to his demand for money and that he had caused unnecessary burden to the higher officials and loss to the Government.

5.4.On the basis of the three counts of charges, the second respondent has sought for an explanation within a period of 15 days from the petitioner for having acted with malafide intention for unlawful gain and that he had conducted himself prejudicial to the

Government Service violating Rule 20(1)of the Tamil Nadu Government Employees Conduct Rules.

Charges:-

6.The crux of the charges in the fifth charge memo in W.P(MD)No.5627 of 2020 is as follows:-

Charge No.1:-

6.1.The petitioner, while serving as District Registrar (Audit) at Virudhunagar, raised an objection for the loss incurred in the registration of three documents during the year 2013-2014 registered in the office of Sub-Registrar, Sivakasi. The Assistant Inspector General of Registration vide proceedings dated 01.02.2016, on the appeal preferred by the Sub-Registrar, Sivakasi, dismissed the said audit objection raised by the petitioner.

Charge No.2:-

6.2.The petitioner while serving as the District Registrar (Audit) Virudhunagar raised an audit objection for the loss incurred in the registration of a document in the year 2014 in the office of the Sub-Registrar, Sivakasi as against the Sub-Collector, Virudhunagar, vide order, dated 25.11.2015 had come to a conclusion that the value mentioned in the document was correct in the reference made to him under Section 47A(3) of the Indian Stamp Act, 1899, dismissing the audit objection of the petitioner.

Charge No.3:-

6.3.It is proved by the report of the Assistant Inspector General of Registration, Madurai through the oral statements of Sub-Registrars and Document Writers that there were many instances as mentioned in charge Nos.1 and 2 where the petitioner had raised audit objections in a prejudicial manner.

Charge No.4:-

6.4.As per the statement of one Document Writer Abdul Sathhar during enquiry, it came to light that the petitioner while serving as District Registrar (Audit) at Virudhunagar had raised an audit objection with an ill motive of receiving a bribe with regard to the registration of a release deed in the year 2015. The said audit objection was raised on the basis of the confirmation of loss in the previous document registered during the year 2014 and the same was confirmed by the proceedings of the Assistant Inspector General of Registration, Madurai, dated 19.08.2016. The said conduct confirmed that the said audit objections were raised with an ill motive for not offering a bribe as demanded by the petitioner.

Submissions in W.P(MD)No.5621 of 2020:-

7.1.The learned counsel appearing for the petitioner submitted that the allegations in the fourth charge memo relate to those incidents which took place during the period between 2014 and 2017 ie., more than 5 months and 2 years ago respectively from the date of the charge memo. All three charges have been framed vindictively by the second respondent in order to wreak vengeance against the petitioner for the reason that the petitioner did not oblige to some of his unlawful instructions. The charges make out neither any misconduct nor any negligence of duty, nor any delinquency in service. The charge memo was issued only as an afterthought, since the petitioner managed to obtain an interim stay challenging the first and second charge memos in W.P(MD)No.23446 of 2019. All the charges are being framed vengefully by the second respondent in order to stop the petitioner's retirement from service.

7.2.It is pertinent to observe that the person, who originally undervalued the property of Sathuragiri Village, whereby incurring loss to the Government, namely N.Vijayaselvi, the then Sub-Registrar is now set free whereas the petitioner who filed the audit objection has been implicated in the disciplinary proceedings at the verge of his retirement that too after a period of 5 years from the date of occurrence.

7.3.As far as the second charge in the fourth charge memo is concerned, the petitioner had only discharged his official duty as District Registrar (Audit) at Virudhunagar, by submitting the audit loss report to the higher authorities and there is no substantial piece of evidence to prove that the petitioner had any personal grudge or vengeance against the then Sub-Registrar, Kovilpatti, namely V.Selvakumari or any other person. As far as the third charge is concerned, when the same arose from the enquiry report which was based on the complaint of one Navaneethan, the said Navaneethan was not at all made as a party to the enquiry. Not a single piece of substantial document is also available to prove the said charge.

Submissions in W.P(MD)No.5627 of 2020:-

8.The learned counsel appearing for the petitioner submitted that as far as the fifth charge memo is concerned, all the four counts of impugned charges are based on the allegation of one Abdul Sathhar, Document Writer, Sivakasi and the enquiry officer of the Assistant Inspector General of Registration, Madurai, for which no list of witnesses has been provided together with the charges. All four charges have been framed maliciously by the second respondent exclusively to wreak vengeance on the petitioner. The first respondent failed to admit the fact that the petitioner discharged his official duty diligently as the District Registrar (Audit), at Virudhunagar, while he submitted his audit loss report to the higher authorities. None of the charges as framed by the second respondent would constitute any misconduct or neglect of duty or insubordination or any other delinquency warranting the issuance of a charge memo. Apparently, the impugned fourth and fifth charge memos are only a continuation of the series of attacks which is continuously being made by the second respondent, which commenced at the verge of his retirement. Each and every charge as framed in the fourth and fifth charge memos are vague and main charges are nothing but an act of victimization which has put the petitioner into inexpressible shock and shame and the same has eroded his long-maintained reputation throughout his career till his retirement. Hence, both the impugned charge memos are liable to be quashed as both are arbitrary and malicious.

9.The learned Special Government Pleader appearing for the respondents has filed separate counter-affidavits in both the Writ Petitions.

10.The learned Special Government Pleader appearing for the respondents drew my attention that both the Writ Petitions which were filed by the petitioner challenging the second and third charge memos were dismissed on 10.02.2022 and that the respondents are directed by this Court to dispose of the disciplinary proceedings as expeditiously as possible in view of the fact that the petitioner has already reached the age of superannuation and it is only because of the pendency of the Writ Petitions, the disciplinary proceedings are pending. He further submitted that the petitioner while working as

District Registrar (Audit) Virudhunagar had acted with a malafide intention to gain unlawfully and caused a huge loss of revenue to the Government to the tune of Rs.3,82,384/-. He added that as the District Registrar (Audit) Virudhunagar, the petitioner acted with malafide intention to get a bribe and had raised audit objections with a dishonest motive, violating the Government Servant Conduct Rules. Hence, pendency of the above charge memos under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and also due to the contemplation of grave charges, in the interest of the public, the petitioner was placed under suspension by the Government vide G.O(2D)No.50, Commercial Taxes and Registration Department, dated 29.08.2019 and was not permitted to retire from service under Fundamental Rule 56(1)(c) on reaching the date of superannuation on 30.08.2019 vide G.O(2D)No.52, Commercial Taxes and Registration Department, dated 30.08.2019. It has also been averred in the counter-affidavit that the petitioner was habitually involved in serious financial irregularities and hence, disciplinary actions were initiated against him, categorically stating that all the charge-memos issued against the petitioner are just and bona fide and that all those charges were based on documentary evidence, pressed for dismissal of the Writ Petitions.

11.Heard Mr.T.Cibi Chakraborthy, learned counsel appearing for the petitioner and Mr.N.Muthuvijayan, learned Special Government Pleader appearing for the respondents and perused the materials available on record.

Discussions:-

12.The case in hand is a case where the petitioner is encountered with charge memo after the charge-memo at the verge of his retirement and after his retirement. The petitioner while he was serving as District Registrar (Administration) in Marthandam Registration District was issued with the first charge memo dated 09.01.2019 by the second respondent when his date of superannuation was almost 7 months thereafter on 31.08.2019. While so, just one month of his date of superannuation on 26.07.2019, the second charge memo was issued by the second respondent as against the petitioner. In furtherance to the same, he was placed under suspension on 29.08.2019. The said suspension came to be passed by the issuance of G.O(2D)No.50, Commercial Taxes and Registration (H) Department, dated 29.08.2019 by the first respondent, following which another G.O(2D)No.52, Commercial Taxes and Registration (H)

Department, dated 30.08.2019 was issued by the first respondent restraining the petitioner from retiring from service by virtue of FR 56(1)(c) of the Fundamental Rules of the Tamil Nadu Government. Challenging these two G.Os, the petitioner filed W.P(MD)No.23446 of 2019 before this Court. During the pendency of the same, the third charge memo was issued by the second respondent on 23.09.2019 that was challenged by the petitioner by filing W.P(MD)No.25541 of 2019 before this Court.

13.Both the aforementioned Writ Petitions were disposed of, by order, dated 10.02.2022 by a learned Single Judge of this Court. The learned Single Judge in ***W.P(MD)No.23446 of 2019, dated 10.02.2022 [P.Ponnum Perumal Vs. The Principal Secretary to Government and another],*** in which the petitioner had challenged the two G.Os' mentioned supra has passed the following order:-

> *"11.A charge memo is not liable to be quashed, as it does not adversely affect the rights of an employee and does not give rise to give any cause of action. A writ lies only when some right of a party is infringed. The charge memo perse does not infringe the right of a person. Only when there is a final order*

imposing punishment or otherwise, it may have a cause of action. Hence writ petition challenging charge memo by itself is not maintainable.

12.However, it can be quashed on the ground that issuing authority being not competent to issue the same in the present case. The charge memo impugned was issued by the competent authority and the ground of vagueness raised by the petitioner has not been established. A perusal of the charge as well as the statements and the documents, this Court is of the opinion that the charges are definite and capable of being proceeded with in accordance with the Rules in force.

13.The learned counsel for the petitioner made a submission that in respect of other charge memo dated 09.01.2019, the enquiry was over and in respect of the impugned charge memo, the enquiry is yet to be completed, on account of pendency of the writ petition. Therefore, the respondents are directed to proceed with the disciplinary proceedings, conclude the same and pass final orders as expeditiously as possible.

14.As far as ***W.P(MD)No.25541 of 2019, dated 10.02.2022 [P.Ponnum Perumal Vs. the Secretary and another]*** is concerned, the learned Single Judge has dismissed the said Writ Petition and the operative portion of which is extracted as follows:-

"5. In view of the submission made on behalf of the petitioner, the respondents are directed to proceed with the charge memo and the petitioner is also directed to co-operate with the same. It is needless to state that the explanation submitted by the writ petitioner along with the proceedings of the Accountant General is also to be considered while deciding the case. The respondents are directed to dispose of the disciplinary proceedings as expeditiously as possible, in view of the fact that the petitioner has already reached the age of superannuation."

15.While the aforesaid Writ Petitions were pending before this Court, the fourth and fifth charge-memos came to be issued by the second respondent on the same date ie., on 13.01.2020, vide memo Nos.36641/V3/2019 and 36642/V3/2019, dated 13.01.2020 for three and four counts of charges respectively. Challenging the same, these Writ Petitions have been filed by the petitioner on various grounds.

16.Though this Court has refrained from quashing the first, second and third charge memos for the reason that the charges were definite and not vague and are capable of conducting enquiry, the fourth and fifth charge memos impugned in these two Writ Petitions have to be tested independently irrespective of the decision of this Court with respect to the first, second and third charge memos.

Fourth Charge memo:-

17.A reading in between the lines of the three charges in the fourth charge memo would reveal that all three charges are vague.

17.1.As far as the first charge is concerned, the same has been given in three paragraphs, wherein the first paragraph elaborates about the petitioner about the petitioner's audit objection with respect to 41 sale deeds of Sathuragiri Nagar pertaining to the deficit stamp duty and registration fee, wherein he has concluded that a total loss of Rs.7,50,135/- has been caused to the Government by the Registration of the aforesaid 41 sale deeds. The said audit objection was raised during the monthly audit conducted in July 2015. The second paragraph elaborates that the said audit objection with respect to the loss pointed out by the petitioner was confirmed by the Deputy Inspector General of Registration, Madurai, on 24.01.2017 stating that of the 41 audited documents, as far as 21 documents are concerned, the aforesaid audit objection ought to have been raised by the petitioner as early as during his monthly audit for the month of March 2013 and since he failed to do the same in March 2013 a loss of Rs. 3,82,384/- has been caused to the Government for which the liability is fastened on the petitioner.

17.2.As far as the second charge is concerned, it has been framed on the basis of the complaint made by one B.Selvakumari, former Sub-Registrar of Kovilpatti, in which she had alleged that the petitioner had raised audit objections for the registration of 9 documents during the years 2009, 2012 and 2013, which were actually not registered during her term as Sivakasi Sub Registrar, but which were registered during the term of some other officers.

17.3.Similarly, the third charge has also been framed on the basis of the complaint of one K.Navaneethan wherein he has alleged that the petitioner had raised an audit objection for not having obliged to his demand for bribe.

17.4.All these three charges have been proceeded as against the petitioner on the basis of the circular of the Inspector General of Registration, dated 02.11.2018, the complaint, nil dated made by Selvakumari, former Sub-Registrar, Kovilpatti, the complaint of K.Navaneethan, Aruppukottai dated 31.01.2017 and the letter of the Deputy Inspector General of Registration, Madurai, dated 14.08.2019 along with preliminary enquiry report.

17.5.Four persons have been included in the list and witnesses namely Selvakumari, former Sub-Registrar, Kovilpatti, Saraswathi, Sub-Registrar (extension of service), Marimuthu, Sub Registar and Abdul Sathhar, Document Writer.

18.As far as the first charge in the fourth charge memo is concerned, there is no definite details as to the 21 documents on the Registration of which a loss of Rs.3,82,384/- has been caused to the Government and it is pertinent to mention here that it is only because of the fact that the petitioner had caused audit objections for 41 sale deeds pertaining to Sathuragiri Nagar, of which the second respondent was able to trace 21 documents for which the petitioner ought to have raised audit objection as early as March 2013 itself. Neither the details of all the 41 sale deeds, for which the petitioner raised audit objection during the month July, 2015 nor the details of 21 documents which are required by the second respondent that the petitioner ought to have raised audit objection as early as in the month of September 2013 is revealed either in the charges or in the annexure and thus, I conclude that the first charge is vague.

19.As far as the second charge is concerned, the same is based on the complaint given by the former Sub-Registrar of Kovilpatti one Selvakumari and the same was not served on the petitioner. The details of the date of the complaint are also not revealed either in the charge or in the annexure. That apart, the document numbers mentioned in the second charge are of the years 2009, 2012 and 2013. A quick observation of this simple aspect will prove that this particular complaint ought to have been very much available with the respondents as early as on 09.01.2019 itself when the first charge memo came to be issued on the petitioner and this charge itself would prove that the charge memos are being issued on the petitioner one after other in a peace meal manner with a calculated mind of not allowing him to retire indefinitely.

20.As far as the third charge is concerned, the same is based on the complaint of one K.Navaneethan, dated 31.01.2017 which was not served on the petitioner. Neither the complaint of the said K.Navaneethan was served on the petitioner nor the said person had been included in the list of witnesses in the charge memo. Hence, I have no hesitation in holding that the third count of charge is a baseless charge.

Fifth Charge memo:-

21.1.As far as the first count of charge in the fifth charge memo is concerned, the same is with respect to the audit objection raised by the petitioner while he served as the District Registrar (Audit) at Virudhunagar as far as the registration of 3 documents during the years 2013 and 2014 at Sivakasi Sub-Registrar office. It has been stated thereat on the appeal made by the Sivakasi Sub-Registrar before the Assistant Inspector General of Registration, Madurai, dated 01.02.2016, the said audit objections were set aside. The second respondent has concluded that the petitioner had raised the said objection only for the refusal of the Sivakasi Sub-Registrar to receive a bribe as instructed by the petitioner. However, it is ridiculous to understand neither the concerned Sivakasi Sub-Registrar nor any other person has made any complaint in this regard to the second respondent stating that the petitioner had raised the audit objection for not receiving bribe by the Sivakasi Sub-Registrar on the instruction of the petitioner. The entire charge proceeds on the basis of assumption, and it is fully vague.

21.2.The second count of charge in the fifth charge memo is on similar lines with respect to the registration of a document in the year 2014 in the Sivakasi Sub-Registrar.

21.3.The third count of charge in the fifth charge memo is with respect to another document which has been registered during the period 2014.

21.4.The fourth count of charge in the fifth charge memo is with respect to another document registered during the year 2015.

22.In all the four counts of charges, it has been categorically stated that the same are framed on the basis of separate complaints seeking bribes and the crux of all four charges is that only for the refusal of respective Sub-Registrars of Sivakasi to receive bribes as demanded by the petitioner, the petitioner had raised audit objections subjecting those officers to difficulty and as against which an appeal was preferred by the respective Sub-Registrars and in all those appeals, on enquiry, the competent authority had dismissed the petitioner's audit objection as baseless. However, none of the alleged complaints has been annexed to the charge memo except that of one complaint of S.Abdul Sathhar, dated 19.07.2016 with respect to the fourth count. Interestingly, in the list of witnesses, even the said Abdul Sathhar has not been included as witness. This itself will prove that all four counts of the charges are pre-conceived, pre-determined and baseless charges which have been issued by the second respondent only with a pre-determined intention of not allowing the petitioner to retire indefinitely.

23.The Hon'ble Supreme Court in the case of ***Zunjarrao Bhikaji Nagarkar Vs. Union of India and others*** reported in ***1999 (7) SCC 409*** has categorically held that initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite and that suspicious has no role to play in such matter and the relevant portion of which is extracted as follows:-

"42.*Initiation of disciplinary proceedings against an officer cannot take place on an information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty.*

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."*

24.Even in this case, in both the fourth and fifth charge memos, each count of charge is indefinite, vague and is not based on reliable information. Such a conclusion is arrived at by this Court only because of the fact that neither the complaint is annexed with the charge memo nor alleged complainants are brought into the list of witnesses as far as all the four counts of charges in the fifth charge memo are concerned.

25.As far as the fourth charge memo is concerned, the details of the documents for which the petitioner ought to have raised audit objections as early as March, 2013 have not been described in charge No.1. Similarly, the complaint of the complainant one Selvakumari, former Sub-Registrar, Kovilpatti with respect to the second charge is an undated complaint which cannot be relied on as to the fact that when the said complaint was actually received by the second respondent. As far as the third charge of the fourth charge memo is concerned, though the same has been framed on the basis of the complaint of one K.Navaneethan, the said person, has not been included in the list of witnesses. This itself would prove that both the fourth and fifth charge memos are baseless, vague, indefinite and unreasonable.

26.The Hon'ble Division Bench of this Court in ***A.Obaidhullah Vs. The Secretary to Government and another*** reported in ***2005 (5) CTC 380***, in a case of disciplinary proceedings has dealt with the aspect of delay in disciplinary proceedings and the relevant portion of which is extracted as follows:-

> *"13. In State of U.P. Vs. N.Radhakrishnan reported in (1998) 4 Supreme Court Cases 154, the following conclusion in para 19 is relevant:*
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> *"It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether*

on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties

> *honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."*

27.Even in this case, charge memos were issued one after another as against the petitioner while he was in the verge of retirement commencing 7 months before his retirement and continuing endlessly till 2020, that too, for those alleged incidents which took place even before 5 or 6 years before the issuance of charge memo. Such a delayed issuance of a charge memo issued after the date of superannuation of the petitioner certainly prejudices the interest of the petitioner, hounding him endlessly by not allowing him to retire so as to defeat him from receiving his terminal benefits during his old age within the appropriate period of time.

28.The Hon'ble Supreme Court in the case of ***R.Rajkumar Vs. The Commissioner of Police Trichy City, Trichy*** reported in ***2014 (2) CTC 769***, has held as follows:-

> "12.*We have perused the cause of action for the proceedings initiated by the Department in the first Charge Memo. as well as the second Charge Memo., which is the Complaint of the said A. Roche, who approached the officers of the Police Department for getting 'No Objection Certificate' to set up a fire cracker shop. The Charge Memo. dated 7.4.2005 is based on the Complaint given by A. Roche dated 8.11.2001, wherein he stated that the Police Authorities including the Appellant were delaying the issuance of 'No Objection Certificate' and also demanded bribe. It is the case of the Complainant that a sum of 8,000/- (Rupees Eight Thousand only) was demanded by the Appellant through Loganathan, Grade I-Police Constable. The Department in this case chose to proceed against the Appellant on various misconducts which include the Complaint of the said A. Roche dated 8.11.2001, but for some reason or other, did not choose to issue a Charge Memo. in respect of the allegation relating to illegal gratification. On the first Charge Memo. dated 7.4.2005, enquiry was conducted and punishment was imposed and the matter was put to rest then and there. Thereafter, the matter has been resurrected after more than seven*

years and the second Charge Memo. is issued and this is also based on the Complaint of the said A.Roche dated 8.11.2001. It is, therefore, clear that the basis for the first Charge Memo. and the present Charge Memo. is one and the same. It is another matter that the first charge contained other issues as well. The fact remains that on the plea of illegal gratification, the Department did not choose to proceed further. In any event, the Criminal case with regard to the demand of illegal gratification ended in acquittal. The decisions of the Honorable Apex Court in Capt. M. Paul Anthony's case referred to supra and G.M.Tank's case, respectively, would clearly cover the issue on hand. Furthermore, the Division Bench of this Court has clearly held that the fresh proceedings on the basis of the same issue and on the same set of allegations and corresponding materials, is not sustainable. Therefore, the learned Single Judge was not correct in dismissing the Writ Petition overlooking this legal plea.

13.The impugned proceedings is liable to be interfered with for the following reasons:

(i) Comparison of two Charge Memos clearly reveals that both the charges are framed based on the same Complaint dated 8.11.2001 given by the Complainant-A. Roche.

(ii) The materials forming basis of the second Charge Memo. was also available at the time of framing the first Charge Memo.

(iii) The Respondent cannot conduct the Departmental enquiry in a peace meal manner, according to their whims and fancies."

29.As far as the materials found in the basis of the fourth and fifth charge memos are concerned, all those were available even at the time of framing the first, second and third charge memos.

30.As discussed in the case supra, the case in hand is also a typical case where the respondents have proceeded to conduct the departmental enquiry in a piecemeal manner according to their whims and fancies to the difficulty of the petitioner causing indefinite prejudice to him after attaining his age of superannuation.

31.No doubt, the petitioner had raised audit objections during his monthly audit in various Sub-Registrar Offices, exercising his quasi-judicial power. It is no more res integra that neither the exercise of such quasi-judicial power nor the non-exercise of such quasi-judicial power could form the basis for disciplinary action, the said aspect has been dealt with by a learned Single Judge of this Court in the case of ***B.K.Gunasekaran Vs. The Secretary to Government***

and others reported in ***2010 (12) LW 964*** and the relevant portion of which is extracted as follows:-

> *"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 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.

15. Therefore, I am of the clear view that the power, which the respondents state that the petitioner ought to have exercised is a quasi-judicial power. If such 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 decision of the Hon'ble Supreme Court and this Court and it would be useful to refer the recent decision 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 reported in (2008) 3 MLJ 766."

32.The learned Single Judge of this Court in ***W.P(MD)Nos.6181 and 6182 of 2016, dated 26.02.2021 [V.Madhavachary Vs. The Inspector General of Registration and others]***, has held as follows:-

> *"7.Now that this Court has found that the function of the Sub Registrar is quasi-judicial in nature and that the lapse pointed out in the charge memos against him cannot be construed to be a misconduct, it would not be appropriate to permit the respondent herein to proceed against the petitioner on the charges framed against him."*

33.The learned Single Judge of this Court in ***W.P(MD)No.4629 of 2020, dated 15.06.2022 [R.Mahendran Vs. The Principal Secretary to Government and others],*** has held as follows:-

> *"11. The aforesaid extract is self explanatory. Thus, when the law does not permit the respondents to conduct disciplinary proceedings in installments, for the cause of action that existed even when the first disciplinary proceedings were initiated, the present impugned charge memo cannot be sustained."*

34.All the three + four counts of charges in the fourth and fifth charge memos respectively are based on the allegation that the petitioner while exercising his duty as the District Registrar (Audit) in the District of Virudhunagar has raised an audit objection with the malicious intention of gaining unlawfully thereby threatening the Sub-Registrars to receive bribe as per his whims and fancies. All three counts of charges in the fourth charge memo proceed in a similar line that the petitioner had raised several audit objections only to put pressure on the concerned Sub-Registrars so as to receive bribe on his instructions or subject them to mental pressure for having not heeded to his instructions. Likewise, all four counts of charges in the fifth charge memo has been styled in such a way that the said charge has been framed on the basis of the complaints seeking bribe from the respective Sub-Registrars who were subjected to unforeseen pressure by the petitioner to receive bribe as demanded by him, failing which he had raised an unreasonable audit objection, which was later set aside by the Appellate Departmental authority. None of the complaints on the basis of which such charges were framed are annexed with the charge memo nor the person who is alleged to have made the said complaints were included in the list of witnesses.

35.In view of the above discussions, this Court appreciates the fact that:-

(i) all the charges framed as against the petitioner vide fourth and fifth charge memos, dated 13.01.2020 issued by the second respondent are framed belatedly after a lapse of five to seven years from the date of the alleged incident.

(ii) The entire charges have been preceded by the second respondent as against the petitioner for all those audit objections which have been raised by the petitioner during his monthly audits in the Sub-Registrar office at Virudhunagar District while exercising his function as a quasi-judicial authority.

(iii) Each and every charge is vague, indefinite, pre-determined and malafide which would clearly reveal that the same has been preceded by the second respondent in a piecemeal manner exclusively with the intention of not allowing the petitioner to retire endlessly.

36.Hence, all those audit objections which have been raised by the petitioner in the exercise of his quasi-judicial function cannot be construed as misconduct and it would not be appropriate to permit the second respondent to proceed as against the petitioner on the charges framed vide the fourth and fifth charge memos.

37.In the result, the impugned charge memo issued by the second respondent/Inspector General of Registration vide proceedings in Memo.Nos.36641/V3/2019 and 36642/V3/2019, dated 13.01.2020, are set aside.

38.Accordingly, these Writ Petitions are partly allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

29.09.2023

NCC : Yes
Index : Yes
Internet : Yes
ps

To

1.The Secretary,
Represented by the State of Tamil Nadu,
Department of Commercial Taxes and Registration (H),
Fort St. George,
Chennai – 600 009.

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

L.VICTORIA GOWRI, J.

ps

Pre-Delivery Order made in W.P.(MD)Nos.5621 & 5627 of 2020

29.09.2023