IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.21645 of 2012

T.Jeyajothi ... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Commercial Taxes and Registration (K) Department,
Fort St.George, Chennai - 600 009.

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

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to G.O.(D) No.39 Commercial Taxes and Registration (K) Department dated 07.02.2011 in and by which the first respondent partially confirming the order of punishment of removal from service passed by the Inspector General of Registration, Second Respondent herein, by modifying the punishment of removal of service into that of compulsory retirement and further quash the order passed by the second respondent bearing ROC

No.38802/B-1/2006-1 dated 18.12.2007 into with all consequential benefits such as arrears of pension and other monetary benefits etc.

For Petitioner : Mr.K.S.Viswanathan, Senior Counsel for Ms.T.Hemalatha

For Respondents : Mr.T.Chezhiyan Addl. Government Pleader for R1 & R2

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ORDER

While the petitioner was working as Sub-Registrar (Administration) in the Office of the District Registrar, Nagapattinam, she was placed under suspension by proceedings dated 28.07.2006 while the date of retirement of the petitioner on attaining age of superannuation is due on 31.07.2006 i.e., 3 days prior to the date of superannuation of the petitioner. It is thereafter, only on 11.12.2006, the charge memo was issued by the Tribunal for disciplinary proceedings containing five charges. All the five charges pertains to the documents that were registered by the petitioner during the years 2004 i.e., on 28.10.2004, 10.12.2004, 02.11.2004, 16.11.2004 and 18.10.2004. All the charges are identical in the nature of demanding illegal gratification and accepting the part of the same by the petitioner.

2. The Tribunal for disciplinary proceedings, after conducting an enquiry into the matter submitted its report on 23.03.2007 and thereafter, a show cause notice dated 03.09.2007 was issued while furnishing copy of the report of the Tribunal for disciplinary proceedings. Accordingly, the impugned order dated 18.12.2007 came to be passed by the 2nd respondent, removing the petitioner from service. Aggrieved by the same, the petitioner filed an appeal before the 1st respondent. The 1st respondent having considered the appeal filed by the petitioner, modified the punishment of removal from service to that of the compulsory retirement by issuing G.O.D.No.39 dated 07.02.2011. It is aggrieved by the said Government Order dated 07.02.2011, the petitioner approached this Court by filing the present Writ Petition.

3. Heard Mr.K.S.Viswanathan, learned Senior Counsel appearing for the petitioner and Mr.T.Chezhiyan, learned Additional Government Pleader appearing for the respondents and perused the entire material on record.

4. The perusal of the material on record, especially, the report of the Tribunal for disciplinary proceedings discloses that the basis for all the five charges are the oral statements said to have been made by certain middleman who are nothing to do with the documents which are subject matter of all the five charges. The alleged demand of illegal gratification and acceptance of the same pertains to the year 2004. None of the parties to the documents that were registered by the petitioner were examined as witnesses during the course of enquiry. Though as many as 17 witnesses were proposed to be examined in respect of the charges, only 6 witnesses were examined and all the 6 witnesses are no way concerned with the documents which were registered by the petitioner.

5. As already noted above, the allegations pertains to the year 2004 but there was no complaint from any corner at the relevant point of time and it is only at the verge of superannuation of the petitioner, she was placed under suspension and thereafter, the charge memo came to be issued while continuing the petitioner in service beyond the date of superannuation. Absolutely, there is no explanation that is coming forth for the delay of two

years when such a serious allegation of demand of illegal gratification leveled against the petitioner. It is also surprising, if there is any such allegation of demand and acceptance of illegal gratification, the parties to the documents are the right persons who are supposed to be aggrieved and they ought to have made a complaint at the relevant point of time. Admittedly, there is no complaint in respect of all the five charges at the relevant point of time during the year 2004. It only basing upon the oral allegations of the third party who are nothing to do with the documents in question, the entire disciplinary proceedings are concluded. The evidence of the persons who are nothing to do with the transactions under which the illegal gratification is alleged to have been demanded and accepted by the petitioner is totally an irrelevant evidence in the absence of examining the parties to the documents in question. If at all there is any misconduct and demand of illegal gratification by the petitioner in respect of the documents which are the subject matter of all the five charges, the parties to the said documents ought to have raised grievance at the relevant point of time.

6. From the above, it is evident that it is only at the instance of third parties who are said to be middlemen dealing with the affairs of the office of

the Sub-Registrar. The impugned disciplinary proceedings appears to have been initiated a couple of days prior to superannuation of the petitioner, resulting in imposing the punishment of compulsory retirement on the petitioner. In the light of the above, the entire evidence that is basis for imposing the punishment of compulsory retirement is totally an irrelevant evidence and the relevant evidence is not at all placed during the course of enquiry.

7. In the circumstances, the findings that are recorded by the Tribunal for disciplinary proceedings as was accepted by the 1st respondent, disciplinary authority is bound to be declared as perverse and no reasonable man would come to such a conclusion basing upon such oral evidence of third parties. Perhaps taking these factors into consideration, only the 1st respondent has exercised his appellate power and modified the punishment of removal to that of compulsory retirement.

8. As already noted above, the petitioner continued in service from the date of appointment, till she was placed under suspension just two days prior to date of superannuation. Further, it is also necessary to note that the

1st respondent while modifying the punishment as compulsory retirement in the place of removal from service has not chosen to reserve the power Rule 39 of the Tamil Nadu Pension Rules, for imposing the punishment in terms of Rule 39. Thus, the 1st respondent also appears to have been convinced on the insufficiency and irrelevancy of evidence to bring the charges home and modified the punishment.

9. The consequential order issued in G.O.Ms.No.178 dated 08.05.2012, cutting pension under Rule 39 of the Tamil Nadu Pension Rules was rightly challenged by the petitioner in W.P.No.18415 of 2014 and the said Writ Petition was allowed by this Court by an order dated 14.07.2014. The said order of the learned single Judge was also confirmed by a Division Bench of this Court in W.A.No.661 of 2015 by order dated 01.06.2015. In effect, though there appears to be a punishment of compulsory retirement, the same has no effect.

10. In the light of the above observations of this Court on the evidence and also taking into consideration the ineffective nature of punishment that was imposed on the petitioner, this Court is inclined to quash the impugned

order and accordingly, G.O.(D).No.39 dated 07.02.2011 is hereby quashed.

11. This Writ Petition is allowed with the above observations. No costs.

20.09.2024

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Internet : Yes/No
Index : Yes/No
Speaking order:Yes/No
Neutral Citation:Yes/No

To

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

2.The Inspector General of Registration,
120, Santhome High Road,
Chennai - 600 028.

MUMMINENI SUDHEER KUMAR, J.

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