**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 26.09.2024**

**CORAM**

**THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH**

**W.P.No.4846 of 2023**
**and WMP No.4881 of 2023**

P.Sakthivel ..Petitioner
Vs.

1. The Government of Tamil Nadu,
   Represented by the Secretary to Government,
   Commercial Taxes and Registration Department,
   Secretariat, Chennai 600 009

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

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent herein in proceedings (1) No.25688/V3/2021 dated 18.08.2021 and (2) No.34793/V3/2022 dated 03.11.2022 quash the same and to issue consequential direction to the respondents to include the name of the petitioner in the panel for promotion to the post of Assistant Inspector General of Registration for the year 2022-2023 and to promote him as such notwithstanding and without reference to the aforesaid disciplinary proceedings if he is otherwise fully qualified and eligible for the same.

For Petitioner : Mr.L.Chandrakumar
For Respondents : Mr.T.Chezhiyan
Additional Government Pleader

**ORDER**

This writ petition has been filed challenging the impugned proceedings of the 2nd respondent dated 18.08.2021 and 03.11.2022 wherein charge memo has been issued against the petitioner to face proceedings under Rule 17 (b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules and for a consequential direction to the respondent to include the name of the petitioner in the panel for promotion to the post of Assistant Inspector General of Registration in the year 2022 – 2023 and to promote the petitioner with all attendant benefits.

2. The case of the petitioner is that he was initially appointed as a Sub Registrar in the year 2000 and thereafter, he was promoted as a District Registrar in the year 2011. Disciplinary proceedings were initiated against the petitioner through charge memo dated 18.08.2021 leveling a sole charge against the petitioner to the extent that the petitioner had registered nearly 85 documents

pertaining to unapproved plots in violation of Section 22 A of the Registration Act and in violation of the directions issued by this Court. Thereafter, yet another charge memo was issued by the 2nd respondent dated 03.11.2022. This charge memo is more in the nature of a supplementary charge memo wherein the registering of 51 documents has been put to question since it pertained to unapproved plots. The disciplinary proceedings has been initiated under Rule 17 (b) of the Rules.

3. The further case of the petitioner is that even if the allegations made in the charge memo are taken as it is, it will not fall within the requirement of Rule 17(b) of the Rules and the Government Circular issued in this regard dated 11.03.1993. The other ground that has been raised by the petitioner is that he has exercised a quasi judicial power and therefore, there is no question of initiating departmental proceedings while exercising such power. The further grievance of the petitioner is that in view of the initiation of the departmental proceedings, his promotion to the post of Assistant Inspector General of Registration was not considered even though he was entitled to be included in the panel of the year 2022-2023. It is under these circumstances, the

present writ petition came to be filed before this Court.

4. The 2nd respondent has filed a counter affidavit. The 2nd respondent has taken a stand that this Court had passed an order directing the registering authority not to register any unapproved plots. The Government issued a Government Order in GO Ms.No.123 dated 20.10.2016 and Section 22A of the Registration Act was brought into force which specifically bars registering unapproved plots. The petitioner, who is holding the cadre of a District Registrar was aware about the specific bar under the Act and in the circular issued by the Inspector General of Registration and inspite of the same, he has proceeded to register documents pertaining to unapproved plots. In view of the serious nature of the charge, the disciplinary proceedings has been initiated under Rule 17 (b) of the Rules. It has been further stated in the counter affidavit that the charge memo has been issued in accordance with law by a competent authority and no adverse order has been passed against the petitioner and the petitioner has been given opportunity to give his reply and to participate in the disciplinary proceedings. Therefore, this is not one such case which falls under the exceptional category warranting the interference of this Court. Accordingly, the

respondents have sought for the dismissal of this writ petition.

5. When the matter came up for hearing on 12.09.2024, this Court passed the following order:-

*The main issue that has been urged by the learned counsel for the petitioner is that even if the allegations made in the charge memo are taken as such, that will not result in initiating disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules and that at the best, the respondents can proceed only under Rule 17(a) of the said Rules. To substantiate this submission, the learned counsel has brought to the notice of this Court the earlier order passed.*

*2. A counter affidavit has been filed by the respondents.*

*3. The learned Additional Government Pleader seeks time. 4. Post on 18.9.2024 under the caption 'part heard cases'.*

6. Heard Mr.L.Chandrakumar, learned counsel for the petitioner and Mr.T.Chezhiyan, learned Additional Government Pleader for respondents.

7. The short issue that arises for consideration in the present writ petition is as to whether the charge memo issued against the petitioner warrant proceedings under Rule 17(b) of Rules. The alternative question is as to whether the petitioner was exercising a quasi judicial power and therefore, no charge memo can be issued while exercising such a power.

8. The specific charge against the petitioner is that the petitioner as a registering authority had entertained documents pertaining to unapproved plots and has registered the same. According to respondents, such registration is in violation of the orders passed by this Court and the specific bar under Section 22A (2) of the Registration Act and also the circular issued by the Inspector General of Registration dated 21.06.2017.

9. Insofar as initiating disciplinary proceedings under Rule 17(b) of Rules, it deals with such initiation to impose major penalty. Therefore, the facts of the case must involve moral turpitude or some illegal motive or mental element qua the act performed by the delinquent employee.

10. I had an occasion to deal with the scope of Rule 17(a) and 17(b) of the Rules in WP No.20073 of 2019 and order dated 11.12.2019. The relevant portions in the order are extracted hereunder :-

> *7. The important issue that has to be taken into consideration is, whether the Charge, that has been levelled against the petitioner, can be brought under Rule 17 (b) of the Rules. Guidelines have been issued by the Government in this regard and there are clear indications as to the types of cases, for which Charge Memo can be served under Rule 17 (b). It must also be borne in mind that the criminal case that was registered for the very same incident was quashed by this Court by an order, dated 03.07.2019, passed in Crl.O.P.No.17302 of 2019. The burning of Government Order during agitation had happened due to sudden rush of blood and it cannot be taken to be intentional. It will also be relevant to rely upon the judgments, which have been placed before this Court.*
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> *8. This Court, in the case of M.Sampoornam, referred to supra, has held as follows :*
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> *"7. Learned counsel for the petitioner submitted that based on the allegations, charges could be framed against the petitioner only under rule 17 (a) and not under rule 17 (b) of the Tamil Nadu Civil Services ( Discipline & Appeals) Rules. In support of the contention raised, the*

learned counsel appearing for the petitioner also relied the various decisions: A Division Bench of this Court (P.K.Misra, J and F.M. Ibrahim Kalifulla, J) in W.P.No.6809 of 2004 dated 17.06.2004, preferred by the State against the order passed in Original Application No.3913 of 2003 dated 04.02.2004 by the Tamil Nadu Administrative Tribunal, has held that the modification of charge under Rule 17(a) instead of Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules was not against law and accordingly declined to interfere with the order. It was held that there is no error in the order passed by the Tamil Nadu State Administrative Tribunal, modifying the charge under Rule 17(b) instead of Rule 17(a) under the Tamil Nadu Civil Services (Discipline & Appeal) Rules and accordingly, the writ petition was dismissed. It has been made clear in the decision that charge Nos.1 and 2 framed against the first respondent therein relating to failure for taking effective steps towards collection of taxes due from the dealers by Subordinate Officials and it was failure in executing administrative instructions given by the superior officers therein. The Tamil Nadu State Administrative Tribunal held that the Assistant Commissioner (CT), violating Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973 would be under rule 17(a) and not rule 17(b) to frame the charge for the alleged failure for the non-compliance of the administrative instructions given by the superior officer. A Division Bench of this Court (Elipe Dharma Rao, J and K.Suguna, J) passed an order dated 05.09.2006 in W.P.No.3558 of

*2004, wherein it has been held that as per the guidelines given by the Government, the charges framed against the petitioner would not come under rule 17(b) but only under rule 17(a) of the said Rules. The Government of Tamil Nadu has given specific guidelines with regard to framing of charges under rule 17(a) and rule 17(b) of the said Rules. In this regard, the guidelines given are as follows:*

*"(1) Cases in which there is reasonable ground to believe that a penal offences has been committed by a Government Servant but the evidence forthcoming is not sufficient for prosecution in a Court, of law, e.g.,*

*(a) possession of asset disproportionate to the known sources of income;*

*(b) obtaining or attempting to obtain illegal gratification;*

*(c) misappropriation of Government property, money or shares;*

*(d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate, etc.,*

*(2) Falsification of Government records.*

*(3) Irregularity of negligence in the discharge of official duties with a dishonest motive".*

*8. It is not in dispute that the charges under rule 17(a) relate to minor delinquencies whereas the charges under rule 17(b) relate to any major delinquency warranting major punishment in case the same is proved. In Writ Appeal No.1893 of 2011 dated 29.09.2011, a Division Bench of this Court (M.Y.Eqbal, the Chief Justice and T.S.Sivagnanam, J) has held as follows:*

*"2. We have considered the reasoning given by the learned Single Judge and other materials available on record including the charge memo and the consequential proceedings, from where it appears that there are no grave charges levelled against the respondent/writ petitioner except for some lapses in the discharge of his supervisory duty. Moreover the allegation pertains to the period 2004-2006, whereas, the charge memo was served only in the year 2011, i.e. on the verge of his retirement.*

*3. In that view of the matter, the impugned judgment passed by the learned Single Judge needs no interference by this Court..."*

*9. In S.KANNAN VS. STATE OF TAMIL NADU, (2009) 8 MLJ 217, this*

*Court (V.Dhanapalan, J) held that unless there is dishonest motive, misconduct or misappropriation of funds of the Government or wilful and dishonest act, there cannot be any departmental proceeding initiated under rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules, as per the guidelines issued by the Government. It is an admitted fact that the Government of Tamil Nadu has issued guidelines with regard to framing of charges under rule 17(a) and rule 17(b) of the said Rules. The unreported decision in W.P.No.13581 of 2007 dated 24.08.2011, this Court (K.N.Basha, J), based on the guidelines given by the Government has highlighted the same in respect of charges being framed under rule 17 (a) and rule 17 (b) of the said Rules. Referring to the guidelines in S.KANNAN VS. STATE OF TAMIL NADU, represented by its Secretary to the Government, calling upon the impugned proceedings therein, this Court (V.Dhanapalan, J) directed the first respondent therein to alter the charge levelled against the petitioner only under rule 17(a) and not proceed under rule 17 (b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules and to proceed in accordance with law.*

*10. In the instant case, it has been made clear in the light of various decisions rendered by this Court that the guidelines given by the Government have to be followed scrupulously for framing charges against employee of the Government. As per the guidelines, charges can be framed under rule 17 (b) of Tamil Nadu Civil Services*

*(Discipline & Appeal) Rules, under the following circumstances:*

*1) Cases in which there is a reasonable ground to believe that a penal offence has been committed by the Government Servant but the evidence forthcoming is not sufficient for prosecution in a Court of law, e.g., [a] possession of assets disproportionate to the known sources of income; [b] obtaining or attempting to obtain illegal gratification; [c] misappropriation of Government property, money or shares; [d] obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate etc.,*

*[2] Falsification of Government records.*

*[3] Irregularity or negligence in the discharge of official duties with a dishonest motive. [emphasis supplied]*

*[4] Misuse of official position for personal gain.*

*[5] Disclosure of secret or confidential information even though it does not fall strictly within the scope of the Official Secrets Act.*

*[6] Misappropriation of Government funds, false claims of Travelling Allowance, reimbursement of false medical bills, etc., Charges could be made framed under rule 17(b) of TNCS (D & A) Rules.*

11. It is quite clear from the above order that in order to proceed against a delinquent employee under Rule 17(b), it must involve a mental element. That is the reason why the Government itself issued a circular dated

11.03.1993 in which they have given the categories of cases which can be dealt with under Rule 17(b) of the Rules. While listing those categories, it can be seen that all those cases will involve a illegal motive / dishonest motive / motive for personal gain etc. Therefore, only when an act involves any such mental element which will ultimately result in a major penalty like dismissal / removal from service etc, proceedings should be initiated under Section 17(b) of the Rules.

12. In the case in hand, the specific charge against the petitioner is that the petitioner had registered documents pertaining to unapproved plots which goes against Section 22 A of the Registration Act and the circular issued by the Inspector General of Registration. The charge memo does not any where state that such registration was done by the petitioner by misusing his official position for personal gains. In the absence of such a mental element, proceedings under Rule 17 (b) of the Rules is not warranted.

13. This Court is not able to agree with the stand taken by the petitioner as if the petitioner performed a quasi judicial function and therefore, disciplinary proceedings should not have been initiated against the petitioner. Registration of

a document cannot be elevated to the status of a quasi judicial function and any negligence / violation in registering the document can be dealt with by way of initiating disciplinary proceedings. The reason for which the disciplinary proceedings has been initiated against the petitioner is justifiable since the petitioner has registered documents admittedly for unapproved plots when there is a specific bar under law.

14. In the light of the above discussion, the disciplinary proceedings initiated against the petitioner under Rule 17(b) of the Rules is not sustainable. At the best, proceedings can be initiated against the petitioner only under Rule 17(a) of the Rules. The charge memo that has been issued against the petitioner shall be treated as one under 17(a) of the Rules. The petitioner shall be provided with an opportunity to submit his explanation and the disciplinary proceedings itself shall be concluded within a period of eight weeks from the date of receipt of a copy of this order.

15. Insofar as the promotion that has been sought for by the petitioner, the same shall be considered in line with the present order passed in this writ

petition and the prevailing rules.

16. In the result, this writ petition is disposed of in the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

**26.09.2024**

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order
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**N. ANAND VENKATESH, J.**

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To
1. The Government of Tamil Nadu,
Represented by the Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai 600 009

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

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