IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **18.10.2024**

CORAM:

THE HONOURABLE MRS.**JUSTICE N.MALA**

W.P.No.8921 of 2017
and WMP.No.9840 of 2017

G.Dhakshnamoorthy ... Petitioner

Vs.

1.The Secretary to the Government,
Commercial Tax and Registration Department,
Fort St.George,
Chennai – 600 009.

2.The Inspector General,
Office of the Inspector General of Registration,
No.100, 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 Certiorari, directing the 1st respondent to call for the records relating to the G.O.(D).No.170 Commercial Tax and Registration (H) Department dated 28.04.2014 against the petitioner and quash the same.

For Petitioner : Mr.D.Veerasekaran

For Respondents : Mr.T.Chezhiyan
Additional Government Pleader

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O R D E R

This Writ Petition is filed for a writ of certiorari, to direct the 1st respondent to call for the records relating to the G.O.(D).No.170 Commercial Tax and Registration (H) Department, dated 28.04.2014 and quash the same.

2.The petitioner was appointed as Junior Assistant by Tamil Nadu Public Service Commission in the Registration Department on 19.01.1973. The petitioner was given promotions and on 07.08.1998, the petitioner was promoted as District Registrar. The petitioner was issued with a charge memo under Rule 17(b) of Tamil Nadu Government Servant (Discipline & Appeal) Rules by the first respondent on 21.04.2003. The charge was that he had not computed proper stamp duty and the Registration fee for a sum of Rs.8,59,681/- relating to family partition deed in Document No.1960 of 1999. The petitioner gave his explanation to the charge memo to the second respondent on 20.06.2003. On 05.08.2003, the second respondent appointed an Enquiry Officer, Thiru.P.K.Gunasekaran, who was in the cadre of Assistant Inspector General of Registration, Chennai Central. The Enquiry Officer submitted his findings on 18.10.2003, holding that the charge against the petitioner was proved. The petitioner was asked to submit his comments to the findings of the

Enquiry Officer's report on 01.03.2004. The petitioner submitted his written explanation on 26.05.2004, stating that as the appeal preferred by the parties to the partition deed was pending, the enquiry proceedings may be kept in abeyance till the disposal of the appeal. The parties to the partition deed preferred an appeal against the deficit stamp duties and the said appeal was dismissed on 17.03.2009. Meanwhile, the petitioner was allowed to retire from service on 30.11.2009, without prejudice to the disciplinary proceedings. Thereafter, the first respondent on 21.12.2011, after a lapse of 8 years, called the petitioner to make further representation to the findings of the enquiry report dated 18.10.2003. The petitioner submitted his explanation to the findings on 22.03.2012. The first respondent intimated to the petitioner about the proposed punishment on 11.01.2013, and the petitioner submitted his reply to the proposed punishment on 16.04.2013. The Government/Disciplinary Authority called for the opinion from the Tamil Nadu Public Service Commission relating to the disciplinary proceedings against the petitioner on 22.07.2013. The Tamil Nadu Public Service Commission on 11.02.2014 opined to the Government that the request made by the petitioner to relieve him of the charge may be rejected. Thereafter vide the impugned order dated 28.04.2014, the first respondent imposed the punishment of recovery of an amount of Rs.8,59,681/-, by deducting Rs.5,41,101/- from Gratuity amount of the petitioner and waiving the remaining sum of Rs.3,18,580/- and also imposed the punishment of deduction of Rs.1,000/- from pension for 1 year under Rule 17(b) of the Tamil Nadu Government Servant (Discipline & Appeal) Rules. Aggrieved by the impugned order the petitioner has filed the above writ petition.

3.The respondents filed their counter denying all the allegations and contentions raised in the writ petition. The respondents stated that the petitioner levied insufficient stamp duty for the Document No.1960 of 1999, registered the document and returned the same to the concerned parties. As the petitioner failed to collect the actual stamp duty and as the petitioner caused a revenue loss of Rs.8,59,681/- to the Government, disciplinary proceedings were initiated under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules and a charge memo was issued to the petitioner. The respondents stated that as the petitioner had not performed his duty properly and had caused revenue loss to the Government, the punishment was imposed and hence there was no infirmity in the impugned order and the same did not call for any interference. The respondents therefore stated that the writ petition deserved to be dismissed.

4.The learned counsel for the petitioner submitted that there was inordinate and unexplained delay of 11 years in concluding the disciplinary proceedings and therefore the impugned order deserved to be set aside on the short ground of delay. The learned counsel for the petitioner relied on the order dated 16.02.2023 of this Court in W.P.Nos.39568 of 2016 and 9739 of 2017, in support of his contention.

5.The learned Additional Government Pleader on the other hand submitted that admittedly the petitioner had caused a revenue loss of Rs,8,59,681/- to the Government exchequer by collecting insufficient stamp duty for document No.1960 of 1999 while registering the same. The learned counsel submits that based on the audit report dated 06.05.2002, disciplinary proceedings were initiated. The learned counsel further submitted that the Chief Revenue Controlling Authority and the Inspector General of Registration also confirmed that deficit stamp duty was paid by the parties to the said deed in the appeal of the parties. The learned Additional Government Pleader therefore submitted that under the circumstances the punishment imposed by the respondent was justified and did not call for any interference.

6.I have heard the learned counsel for the petitioner and the learned Additional Government Pleader and I have perused the materials placed on record.

7.The undisputed fact is that when the petitioner was working as a Sub Registrar, Mylapore, he registered a family partition deed in Document No.1960 of 1999, which was kept pending in Document No.p.360/1998 dated 13.05.1998 by his predecessor. The petitioner registered the document and returned the same to the concerned parties by collecting deficit stamp duty and registration fee of Rs.75,300/-. On the objection of the Accountant General Audit team that the actual stamp duty of Rs.8,59,681/- was not collected by the petitioner the disciplinary proceedings were initiated. The petitioner was issued with a charge memo on 21.04.2003, the enquiry officer was appointed and the Enquiry officer submitted his report on 18.10.2003, holding that the charge levelled against the petitioner was proved. Thereafter, the impugned order of punishment was passed imposing the punishment of recovery of the amount of Rs.8,59,681/-, by deducting Rs.5,41,101/- from Gratuity amount, waiving the remaining sum of Rs.3,18,580/- and also deducting a sum of Rs.1,000/- from the petitioner's pension for 1 year under Rule 17(b) of the Tamil Nadu

Government Servant (Discipline & Appeal) Rules. The only contention advanced by the learned counsel for the petitioner is that the impugned order is vitiated as there was inordinate delay of 11 years in concluding the disciplinary proceedings. To find out if the contention is sustainable, the facts are appraised with respect to the chronology of events. On the basis of the Audit report, dated 06.05.2002, disciplinary proceedings were initiated against the petitioner.

8.It is seen that the Enquiry Officer submitted his report on 18.10.2003. On 01.03.2004, the petitioner was asked to submit his report to the enquiry report. The petitioner submitted his written explanation to the Enquiry Officer's report on 26.05.2004, praying that the enquiry proceedings be kept in abeyance till the disposal of the appeal filed by the parties to the document. The parties to the partition deed preferred an appeal against the deficit stamp duty and the said appeal was dismissed on 17.03.2009, under the Indian Stamp Act. Meanwhile, on 30.11.2009, the petitioner was allowed to retire from service, without prejudice to the disciplinary proceedings. After the dismissal of the appeal, the first respondent gave further opportunity to the petitioner on 21.12.2011, by calling for his explanation to the enquiry officer's report. The petitioner submitted his explanation on 22.03.2012, and thereafter the first respondent vide communication dated 11.01.2013, directed the petitioner to submit his reply to the proposed punishment and the petitioner submitted his reply to the proposed punishment on 16.04.2013. After getting the opinion of the Tamil Nadu Public Service Commission the Government/Disciplinary Authority passed the impugned order. From the above it is clear that the disciplinary proceedings were concluded 11 years after the enquiry officer's report, dated 18.10.2003. As rightly contended by the learned counsel for the petitioner that there is no justifiable explanation for the inordinate delay in passing the impugned order. Assuming that a part of the delay is attributal to the petitioner, as it was the petitioner, who sought to keep the disciplinary proceedings pending till the disposal of the appeal filed by the parties concerned, the delay thereafter is solely imputable to the respondents. The private parties appeal before the Chief Revenue Controlling Authority and the Inspector General of Registration concluded as early as on 17.03.2009 and thereafter there was a delay of 5 years in passing the impugned order dated 28.04.2014. The Hon'ble Supreme Court in the case of ***P.V.Mahadevan Vs. M.D. Tamil Nadu Housing Board*** reported in ***2005 (4) CTC 403*** held as follows:

> *"The protracted disciplinary enquiry against a government employee should, therefore be avoided not only in the interest of the government employee but in*

public interests and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

15.We therefore, have no hesitation to quash the charge issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefits shall be disbursed within three months from this date. No cost."

9.In the absence of any plausible explanation for the inordinate delay of 5 years in passing the punishment order, the punishment imposed by the respondents vide the impugned order dated 28.04.2014, deserves to be interfered with. In my view, the unexplained and inordinate delay of 5 years in concluding the disciplinary proceedings cannot be countenanced. It is further pertinent to mention here that even though the Inspector General of Registration, in the appeal of the parties, passed an order confirming the deficit stamp duty of Rs.8.59,681/-, the amount has not been collected till date. The learned Additional Government Pleader submitted that no steps were taken to recover the said amount. It therefore appears that the respondents instead of recovering the amount from the parties are trying to recover it from the petitioner. The said aspect is just another way of viewing the matter. In any event, as there is unexplained delay of 5 years from the date of disposal of the appeal by the Inspector General of Registration, in passing the impugned order, I am of the view that the impugned order cannot be sustained and the same deserves to be set aside. The impugned order is therefore set aside. It is made clear that this order will not stand in the way of the respondents in recovering the deficit stamp duty from the parties to the document.

10.The Writ Petition is accordingly allowed. The respondents are directed to refund a sum of Rs.5,41,101/- recovered from the DCRG of the petitioner and Rs.12,000/- recovered from the petitioner from the pension for a period of 1 year should be paid within six weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

18.10.2024

Index : Yes/No

Internet : Yes/No
Speaking Order/Non-speaking order
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To

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Commercial Tax and Registration Department,
Fort St.George,
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2.The Inspector General,
Office of the Inspector General of Registration,
No.100, Santhome High Road,
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N.MALA,J.

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