IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.19159 of 2015

N.Thangaiyan ... Petitioner

Vs.

1. The Principal Secretary to Government,
Commercial Taxes & Registration Department,
Fort St.George, Chennai - 600 009.

2.The Inspector General of Registration,
Santhome, Chennai. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the first respondent in G.O.(D) No.482 Commercial Taxes and Registration (M2) Department dated 11.12.2014 and quash the same and consequently direct the respondents to reinstate the petitioner with full backwages and other consequential monetary and service benefits including pension and other pensionary benefits.

For Petitioner : Mr.R.Prem Narayan
For Respondents : Mr.Stalin Abimanyu
Additional Government Pleader

ORDER

This writ petition is filed seeking a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the first respondent in G.O. (D) No.482 Commercial Taxes and Registration (M2) Department dated 11.12.2014 and quash the same and consequently direct the respondents to reinstate the petitioner with full backwages and other consequential monetary and service benefits including pension and other pensionary benefits.

2. The petitioner herein was subjected to disciplinary proceedings on the following charge :

"Thiru M.Kittappa, Sub-Registrar, Nannilam, Thiruvarur District demanded Rs.1,500/- as bribe from Thiru M.Haji Mohammed Ali through Thiru M.Krishnamoorthy (Retired Office Assistant) on 10.10.2005 and on 17.10.2005

for registering the marriage held to his brother Thiru M.Jahaber Sadiq Batcha with Tmt.Barakkathi alias Shakila Banu on 02.06.2003 at Karaipakkam Village. In pursuance of said demand, Thiru Krishnamoorthy had reiterated his earlier demand on 18.10.2005 and at the same time Thiru Haji Mohammed Ali had paid the amount of Rs.1,100/- to Thiru M.Kittappa and Rs.100/- to you directly on demand."

Thereby you had committed grave official misconduct and failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming a member of Government Service and violated Rule 20(1) of the Tamil Nadu Government Servants' Conduct Rules 1973."

and he was placed before the Tribunal for disciplinary proceedings to face the charge.

3. The Tribunal for disciplinary proceedings after having conducted an enquiry into the matter, submitted a report dated 15.11.2011 to the second respondent / disciplinary authority holding that the charge levelled against the petitioner as not proved. Then the second respondent having considered the said report of the Tribunal for

disciplinary proceedings issued a Memo No.60944/V2/2005 dated 04.04.2012 disagreeing with the findings of the TDP and holding that the charge against the petitioner as proved, communicated the report of the Tribunal for disciplinary proceedings, along with the reasons for disagreeing with the findings of the TDP an annexure. The reason assigned in the annexure for deviating with the findings of the TDP reads as under:

> *"Government witness has clearly stated the incident of giving money to Sub Registrar and Office Assistant and they having accepted money." என்ற நிலையில் இக்குற்றச்சாட்டு நிரூபணமாவதாக கருதப்படுகிறது."*

4. From the above, it is noticed that the reason assigned is only that the Government witnesses have clearly stated that the incident of giving money to the Sub Registrar and Office Assistant and that they have accepted the money. Basing upon the same the second respondent assumed that the charge is proved against the petitioner herein. The TDP having enquired into the matter after examining various witnesses recorded factual findings. Hence, in case, if the second respondent is not

inclined to agree with the conclusions arrived at by TDP, it is always open for the second respondent to assign sufficient reasons for deviating from the view taken by TDP. But in the instant case, as noticed above, the second respondent has not found fault with the findings recorded by the TDP except stating that the second respondent is not agreeing with the findings of the TDP. No reasons were assigned for deviating from the view taken by the TDP. The only reason assigned for holding that the charge as proved is Government witnesses have spoken about the incident. If any action is intended to be taken which has serious civil consequences, the same can be based upon sufficient material. But under no circumstances, it can be based upon assumptions.

5. In the instant case, the second respondent only assumed that the charge as proved on the ground that the Government witnesses have clearly spoke about the incident of giving money to Sub Registrar and Office Assistant. Mere statement by Government witness is not sufficient to establish the charge and it is only on close scrutiny of veracity and reliability of the said statement, a conclusion can be arrived at. But in the

instant case, the second respondent has not made any such effort before holding the charge as proved or assuming the charge as proved against the petitioner herein. It was thereafter, inspite of the petitioner raising an objection against the views of the second respondent, the first respondent issued the impugned order vide G.O.(D) No.482 dated 11.12.2014 dismissing the petitioner from service.

6. Thus, it is evident that the reasons assigned by the second respondent for deviating from the views of the Tribunal for disciplinary proceedings is totally arbitrary and does not stand for legal scrutiny including on factual aspects.

7. Be that as it may, the next question that needs to be examined is whether the procedure that was adopted by the second respondent in communicating the report of the TDP to the petitioner, after disagreeing with the views of the TDP and after holding the charge against the petitioner as proved is in accordance with law or not ? The law in this regard is well settled and the Hon'ble Apex Court in the case

of ***Yoginatha D.Bagde vs State of Maharashtra and Another*** reported in ***(1999) Supp.2 S.C.R.*** has held as under :

"We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 which enables the Disciplinary Authority to disagree with the findings of the Inquiring Authority on any article charge. The only requirement is that it shall record its reasoning for such disagreement. The Rule does not specifically provide that before recording its own findings, the Disciplinary Authority will give an opportunity of hearing to a delinquent officer. But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before Disciplinary Authority finally disagrees with the findings of the Inquiring Authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the Inquiring Authority do not suffer from any error and that there was no occasion to take a different view. The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the "Tentative" reasons for disagreeing with the findings of the Inquiring Authority so that the delinquent officer may further indicate that the

reason on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the Inquiring Authority are not germane and the findings of "not guilty" already recorded by the Inquiring Authority was not liable to be interfered with."

8. From the above, it is evident that the disciplinary authority, if at all intends to deviate from the view of the enquiry officer, has to record his reasons for deviating and then afford an opportunity to the delinquent to respond and thereafter, can arrive at a conclusion holding that charge as proved or otherwise. But in the instant case, the second respondent even before communicating his views in deviating from the views of the TDP came to the conclusion that the charge levelled against the petitioner herein as proved and then afforded an opportunity. In the light of the above decision of the Hon'ble Apex Court, such an opportunity is only an empty formality and the same is in violation and principles of natural justice. In the light of the above, the impugned order G.O.(D) No.482 dated 11.12.2014 is liable to be quashed on this ground alone.

9. In the instant case, admittedly the petitioner along with two others was subjected to disciplinary proceedings by placing them before the TDP on defence and in such event in terms of the provisions continued in the Tribunal for disciplinary proceedings Act and rules made there under, it is only the Government which is competent authority to pass final order or to act upon the report of the TDP. But in the instant case, instead of the first respondent acting upon report of the TDP, it is the second respondent who acted upon. Thus there is once again another procedural irregularity which needs to be considered.

10. Be that as it may, the petitioner herein is only an Office Assistant working in the office of the Sub-Registrar. There is no allegations of demand of bribe by the petitioner but the demand is admittedly by Sub Registrar. Only allegations against the petitioner is that he was paid Rs.100/- after the entire work of the complainant was processed and completed by the Sub Registrar. Thus the petitioner, being only an Office Assistant, will not have any major role in the matter of happenings in the office of the Sub-Registrar. Admittedly, the Tribunal

for the disciplinary proceedings have arrived at a conclusion holding the charge levelled against the petitioner as not proved.

11. This Court has already come to a conclusion that the impugned order G.O. (D). No.482 dated 11.12.2014 is liable to be quashed on the ground of violation of principles of natural justice. Having arrived such a conclusion, this Court also carefully examined whether the matter should be remanded back to the respondents for redoing the entire exercise by following the principles of natural justice. By the date of filing the present writ petition, the petitioner herein was aged 59 years and by now he is more than 70 years of age. In view of long lapse of time because of the pendency of this writ petition before this Court for more than a decade, this Court does not intend to remand the matter back at this stage to the respondents for redoing the process from the stage where they have erred. Taking into consideration of the fact that the petitioner is only an Office Assistant, who is now aged 70 years, this Court is of the considered view that it is a fit case were the punishment should be modified instead of remanding the matter back.

12. Accordingly, the impugned punishment imposed on the petitioner dismissing from service is hereby quashed and the punishment of compulsory retirement shall stand substituted in the place of dismissal from service from the date of the impugned G.O. i.e. 11.12.2014 and the respondents are directed to settle all the terminal benefits of the petitioner treating him as retired from service on 11.12.2014 and he shall be granted full pension together with all other benefits without making any deductions. The respondents are also directed to pass appropriate consequential orders and pay the pension and pension arrears etc. as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this order.

13. Accordingly, the Writ Petition is disposed of. No costs.

07.07.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

To

1. The Principal Secretary to Government,
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Fort St.George, Chennai - 600 009.

2.The Inspector General of Registration,
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MUMMINENI SUDHEER KUMAR, J.

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