

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.16185 of 2012

N.Ulagaraj

... Petitioner

Vs.

1.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,
Chennai – 600 028.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the orders of the first respondent in G.O.(D).No.40, Commercial Taxes and Registration (K) Department, dated 07.02.2011, and the proceedings of the second respondent in Pro.No.38802/AA1/2006-2 dated 18.12.2007 and to quash the same and to issue consequential directions to the respondents to reinstate the petitioner in service with all consequential benefits of back pay, continuity of service etc.

For Petitioner : Ms.Porkodi Karnan
for M/s.Polax Legal Solutions

For Respondents : Mr.P.Mahendran
Additional Government Pleader
for Mr.V.Anand
Government Advocate

ORDER

The writ petitioner joined in the Registration Department as an Office Assistant on 29.09.1986. On account of the allegation of demanding and acceptance of bribe, Departmental Disciplinary Proceedings were initiated against the writ petitioner as well as the Sub-Registrar concerned and a charge memo was issued by the Competent Authority. The Disciplinary Proceedings were referred to the Tribunal for Disciplinary Proceedings, Tirunelveli, in proceedings dated 11.12.2006 and the following charges are framed.

“Charge-1: That on 06.11.2004, he accompanied Tmt.T.Jeyajothi, formerly Sub-Registrar, Melapalayam, for the purpose of building inspection at Ward No.35, Melapalayam and there at about 11.50 a.m., on the direction of Tmt.Jayajothi, he received the bribe amount of Rs.500/- from

witness Tr.Mohideen Lebbai for and on behalf of Tmt.Jeyajothi for inspecting the building and thus he abetted Tmt.Jeyajothi to receive the bribe.

Charge-2: That on 02.11.2004 at about 2.25 p.m., at the S.R.O.Melapallayam, he received the bribe amount of Rs.500/- for and on behalf of Tmt.Jeyajothi from witness Tr.Syed Hussain for registering a sale deed. On 06.11.2004 at about 1.15 a.m., at South Mohideen Pallivasal Street, he received the bribe amount of Rs.500/- for and on behalf of Tmt.Jeyajothi from witness Tr.Syed Hussain for inspecting the building and also received Rs.50/- as illegal gratification for himself from the said witness.

Charge-3: That on 18.10.2004, at about 4.15 p.m., at the S.R.O.Melapalayam, he received Rs.2000/- as illegal gratification from Tr.Kamal for and on behalf of Tmt.Jeyajothi, Sub-Registrar for registering a sale deed and further on 25.10.2004, when he went to Peria Kothpa Pallivasal Therku Keela Theru, Melapalayam, along with Tmt.Jeyajothi, Sub-Registrar for inspecting the property, at about 11.15 a.m., he received Rs.250/- as illegal gratification from Tr.Kamal for and on behalf of Tmt.Jeyajothi knowing well that it was the bribe amount.”

2. The Tribunal for Disciplinary Proceedings conducted trial and submitted its final enquiry report on 27.03.2007. Based on the enquiry

report of the Tribunal for Disciplinary Proceedings, Tirunelveli, the Disciplinary Authority/second respondent passed the final orders on 18.12.2007 removing the writ petitioner from service. The writ petitioner filed an appeal to the first respondent on 25.01.2008 and the major penalty of removal from service was modified by the first respondent and the punishment of compulsory retirement was issued in proceedings, dated 07.02.2011. Challenging the original order of punishment of removal as well as modified punishment order of compulsory retirement, the present writ petition is filed.

3. The learned counsel appearing on behalf of the writ petitioner vociferously contended that absolutely there is no evidence for demand and acceptance of bribe. In the absence of any evidence, there is no reason whatsoever to impose the punishment of removal as well as the modified punishment of compulsory retirement. The case of the writ petitioner is a fair case for exoneration from the charges. The allegation was mainly against the Sub-Registrar and the writ petitioner was an Office Assistant. Simply because the Office Assistant accompanied the Sub-Registrar, the allegation of bribe cannot be thrust on the writ petitioner. Thus, the entire

charges are baseless and there is no evidence to establish the allegations against the writ petitioner and based on the presumption that the writ petitioner accompanied the Sub-Registrar, the penalty of removal as well as the modified punishment of compulsory retirement was issued.

4. Mr.P.Mahendran, learned Additional Government Pleader appearing on behalf of the respondents representing Mr.V.Anand, learned Government Advocate disputed the said contentions by stating that there are sufficient evidence to establish that the writ petitioner acted on behalf of the Sub-Registrar and he also abetted the offence of demand and acceptance of bribe. Thus, the punishment of compulsory retirement itself is a lenient view taken by the Government and therefore, no further leniency is required and the writ petition is liable to be dismissed.

5. Let us now consider the enquiry report submitted by the Tribunal for Disciplinary Proceedings, Tirunelveli, in which, examination of accused officials and witnesses were separately recorded. The deposition of PW.2- one Mr.Abu Bakkar reads as under:

“PW.2 has stated that Tr.Mohideen is his paternal uncle and now he is in Dubai. He had purchased

one house in Melapalayam from one Tmt.Mohideed Lebbai Mariam Beevi. He along with Tr.Mohideen Lebbai had gone to the S.R.O., Melapalayam, during October 2004. At that time, the A.O.1 was in Sub-Registrar Office, Melapalayam. The A.O.1 has informed that the document was deficit in stamp duty and the document could not be registered on that day. The documents can be registered only if the full stamp duty was paid. P.W.2 had requested to register the documents on that day itself. The A.O.1 had informed that if they prepared to give Rs.2000/-, the documents can be registered on the day itself. For this, he agreed and the document was registered Mohideen Lebbai had signed in the Register (Ex.P.6).

A.O.2 had also accompanied A.O.1 at the time of field inspection during November 2004; after inspection, the A.O.1 had demanded Rs.2000/- from Tr.Mohideen. Tr.Mohideen had informed that he had not brought Rs.2000/- and he was having Rs.500/- only. The A.O.1 had asked him to hand over Rs.500/- to the A.O.2. The PW.2 has further stated that one Tr.Syed Hussain purchased a cattle shed from Saleem Beevi for this he and Syed Hussain had gone to the S.R.O., Melapalayam. During November, 2004, A.O.1 had registered the documents and inspected the cattle shed on 06.11.2004 and the A.O.2 had also accompanied the A.O.1. After inspection, the A.O.1 had demanded money and Syed

Hussain had given the money to A.O.2 and he was not aware of the exact amount. P.W.2 and Mohamed Mohideen are running the medical shop as partners. PW.2 along with Mohamed Mohideen had gone to S.R.O., Melayapalayam during December 2004 for registering the document in favour of Mohamed Mohideen. After registration, A.O.1 had demanded Rs.3000/- from Tr.Mohamed Mohideen and he along with the registration fee had given the amount to A.O.2. PW.3 has stated that he had purchased a land from Saleem and he had gone to Melapalayam S.R.O. On 02.11.2004 and presented the documents to A.O.1 for registration. A.O.1 had demanded Rs.500/- for herself and Rs.100/- for A.O.2 for registering the document. PW.3 has given Rs.2200/- as fee and the receipt was given for this amount (Ex.P.7) and PW.3 had signed in the register. After 4 or 5 days A.O.1 and A.O.2 have demanded Rs.500/- for them. PW.3 had asked them that the amount was already given and why they are again demanding Rs.500/-. The A.O.2 has informed that unless he give Rs.500/- the documents will not be returned to him. PW.3 had given Rs.500/- to A.O.1 and Rs.50/- to A.O.2. Afterwards, he got the documents (Ex.P.8).”

6. The Tirunelveli Tribunal for Disciplinary Proceedings have elaborately considered the documents as well as the oral evidence of the

witnesses and made a finding regarding the charges and analysed the evidences and documents. The findings of the Tribunal for Disciplinary Proceedings reveals that both the Accused Officer.1 (Sub-Registrar) and the Accused Officer.2 (writ petitioner) were inspected the building of one Mohideen Lebbai, at that time, the said Mohideen Lebbai and PW.2-Abu Bakkar were present and the Sub Registrar-A.O.1 demanded Rs.2000/- from Mr.Mohideen Lebbai telling him to give the amount to A.O.2, then Mohideen Lebbai gave Rs.500/- to A.O.2. The Tribunal made a categorical finding that A.O.2 knew that the said amount was bribe amount and he aided the A.O.1/Sub-Registrar to receive the bribe amount. Further, it is found that A.O.1-Sub-Registrar demanded Rs.300/- and on her direction PW.6 gave Rs.1025/- (Rs.625/- towards fees; Rs.100/- towards computer fee and Rs.300/- bribe) to A.O.2-writ petitioner, who immediately on receiving the amount handed over the amount to A.O.1-Sub-Registrar in his presence. PW.2-Abu Bakkar was also present and the evidence of PW.2 is corroborated with the evidence of PW.6. Thus, the Tribunal had arrived at a conclusion that the PW.2 and PW.3 are the relevant witnesses and PW.3 Mr.Syed Hussain has stated that on 02.11.2004, he along with PW.2 went to Sub-Registrar Office for registering the sale deed-Ex.P.8 in his name for

that A.O.1 demanded Rs.500/- for herself and told to give the said amount to A.O.2-writ petitioner. PW.3 gave the amount to A.O.2-writ petitioner. The receipt of the Ex.P.7 has been marked and he has further stated that 4 or 5 days thereafter at about 11.00 a.m., A.O.1-Sub-Registrar and A.O.2-writ petitioner came for inspection. PW.2-Abu Bakkar was also present during inspection and for inspection A.O.2 demanded Rs.500/- from PW.3 and PW.3 gave Rs.500/- to A.O.2.

7. PW.2-Abu Bakkar has deposed that on 06.11.2004 when A.O.1 and A.O.2 came for inspection of the building purchased by Mohamed Mohideen A.O.1-Sub-Registrar demanded Rs.2000/- for herself and finally reduced the amount to Rs.500/- and she told to give the amount to A.O.2-writ petitioner. A.O.2-writ petitioner received Rs.500/- from the said Mohamed Mohideen. A.O.1 demanded the said amount for herself. A.O.2 was also present there and hence he had the knowledge that the said amount is nothing but bribe amount. Hence, the writ petitioner abetted A.O.1 to receive the bribe.

8. The findings narrated above shows that both A.O.1 as well as A.O.2 have involved in the offence of demanding and accepting the bribe amount. The Authorities also had considered the evidence as well as the documents and the findings of the Tribunal in this regard. The punishment of removal was issued based on the findings of the Tribunal for Disciplinary Proceedings, Tirunelveli. The writ petitioner preferred an appeal to the Government. The Government made the following findings, which reads as under:

“A.O.2:

06) The evidence of PW2, PW3, PW5 establish the guilt of AO2 in relation to charges 1 to 3. PW1 affirms the verity of AO2 having accompanied AO2 for building inspection. PW2 has deposed on the payment of bribe of Rs.500 on 06.11.2004 to AO2 at the instance of AO1. Similarly, PW3 has testified that he had paid Rs.2000 to PW4 who handed over the same to AO2 in his presence. The prosecution witnesses have successfully held on to their stand in chief examinations even in the cross examinations of the defence. The defence has failed to penetrate much less impair the solid evidence of PW2, PW3, PW5 and PW6. Save suggestions, the defence cross examination has not evoked any reply to dislodge the evidence of

the aforesaid prosecution witness.

07) The AO2 has inter-alia argued that he had not induced AO1 and that there is no evidence of his presence at the time of building inspection etc., PW1, PW2,PW3 and PW5 clearly reveal the role of AO2 in the entire operations AO2 pleads that he is not empowered to receive or register or verify a document. All these elements are not necessary to prove abetment or a crime. It is on evidence that AO2 had received illegal gratification at the instance of AO1 for himself and AO1. Instead of refuting the direct evidence which is stronger in his case, AO2 has merely resorted to vague pleas of defence. There is nothing in his argument to discredit the evidence of prosecution.”

9. The above findings in G.O.(D).No.40 Commercial Taxes and Registration (K) Department, dated 07.02.2011, is nothing but the findings arrived by the Tribunal for Disciplinary Proceedings, Tirunelveli. The entire findings of the Tribunal are unambiguous that the charges against the writ petitioner had established beyond reasonable doubt.

10. The public servant is expected to maintain utmost integrity and honesty while discharging his/her public duties and responsibilities.

There should not be any room or scope for such corruption allegations at all. Reading of the entire deposition of witnesses as well as the well considered findings of the Tribunal for Disciplinary Proceedings, this Court is of the considered opinion that the conclusion arrived by the respondents are very much in consonance with the findings recorded by the Tribunal for Disciplinary Proceedings.

11. Corruption is a devil in the society. Corruption is an anti-developmental phenomena. Corruption is the blockage for the developmental activities of our great nation. Corruption causes greater injustice to the society at large, more specifically, to the poors and downtrodden. Large scale corrupt practices in various forms prevailing in public services are causing untold agony and common men are struggling even to get their rightful and legal benefits. It is painful to pen down that for the implementation of beneficial schemes and Government Orders, corrupt practices in various forms are demanded by the public servants and in some cases, by the higher officials and it is painful that the responsible higher officials are absolutely insensitive in controlling the corrupt practices. Corrupt practices are not only demand and acceptance of money, but

corrupt practices are prevailing in various forms. Thus creating more awareness and sensitiveness are all paramount importance in order to deal with the corrupt practices in public services.

12. It is the constitutional mandate that every Government of the day is expected to be efficient, people-friendly and hypersensitive in the matter of dealing with corrupt practices. Corruption eats the welfare of the society like termite. No doubt, Department of Vigilance and Anticorruption is functioning in the State. However the size of the department and the number of officials functioning are not in commensuration with the large scale corrupt practices prevailing in many number of departments. The department of Vigilance and Anticorruption is to be strengthened to a greater extent, so as to ensure periodical surprise inspections and raids are conducted to deal with the corrupt practices in public services. Adequate number of men and women of integrity and honesty must be engaged for this purpose. There must be full fledged coverage for the entire public administration to eradicate the corrupt practices. There should not be any scope for leniency or misplaced sympathy in dealing with the corruption cases. The constitutional Courts across the country have delivered many

number of judgments regarding the procedures and the trials to be conducted in the criminal cases in a speedy manner. Even then, there is a slow down in completing the criminal trials in corruption cases and those areas are also to be taken care of by all concerned.

13. Decent amount of salary has been paid to the public servants. Salary to the public servants now-a-days are institutionally competitive in comparison with their counterparts in private sectors. Public servants are receiving the salary from the tax-payers' money. The responsibility and accountability is the constitutional mandate. Public servants are expected to perform their duties with utmost care and by maintaining absolute integrity and honesty. However, in reality, the state of affairs prevailing in our great nation is the worrying factor. People are frustrated with the large scale corrupt practices in public services.

14. This Court in umpteen number of judgments emphasises the necessity for creating sensitiveness in the matter of corrupt practices. But there is a little scope for improvement in the near future. There must be a drastic change in the attitude on the part of the competent Authorities and

they are expected to work swiftly so as to minimise the corrupt practices currently and to eradicate in future. Debates after debates are conducted in many interesting subjects through medias and in public domain. However, negligible number of debates are being conducted regarding corruption in our great nation. How the corrupt practices are affecting the development of our great nation in a larger extent is to be portrayed in the public domain. The implications of corruption and its evil consequences are to be made available in the public domain. At the outset, creating sensitiveness are more important, which is also a constitutional requirement for efficient and effective Public Administration. This Court is of the opinion that the awareness being created at present is insufficient, so as to cripple down the corrupt practices in public services. For a moment, dream a Public Administration free from corrupt practices. Such a dream itself would give an immense pleasure and happiness. Dream an ordinary citizen can enter into any Government Offices and Public Offices and get his works done in a legal and rightful manner without any difficulty, certainly, such an atmosphere would be a joyful event and the same would lead to fast and greater development of our great nation.

15. The Government of the day is expected to strengthen the Anticorruption wings and periodical and frequent surprise raids/inspections are to be conducted in public offices. Further, the assets and the liabilities of the department servants are to be periodically verified as the Service Rules require every public servant is bound to furnish the details of their assets and liabilities. When the Rule requires such an information to be provided to the Department, the same has not been maintained properly in many Departments by many Higher Authorities. The disproportionate wealth is to be periodically monitored. The genuinity and sanctity of the informations provided by the public servants are to be properly checked.

16. Urgent and stringent measures are warranted and appropriate instructions/guidelines are to be issued to all the Government Offices. The competent Authorities of the Government have choice to obtain suggestions and expert opinions in the field of Anticorruption and accordingly issue comprehensive instructions/directions/guidelines to deal with the corrupt practices in Public Departments. Announcing beneficial schemes alone are insufficient. The implementation of the beneficial schemes must reach the poors and downtrodden in a hustle-free manner. Thus by introducing the

welfare schemes, Government cannot attain success. The implementation of such beneficial schemes so as to take the scheme to the poorest of poor in this country would alone lead to success.

17. While making observations regarding the corrupt practices in the Public administration of the Government Departments, this Court has to endorse the fact that the judiciary also is not exempted from corrupt practices. The conscious of this Court would not permit, if this Court fails to mention the increasing corrupt practices in Judiciary Department as well as in Court premises. Justice requires equal treatment of all the citizen and consistency in the justice delivery system. Corrupt practices in the judicial system can never be tolerated. It is worse than that of the corruption in public departments. Judicial remedy being the last resort to the common man, effective, efficient and impartial judicial system inconsonance with the constitutional, philosophy and ethos are to be achieved. Building confidence in the minds of the citizen on the judiciary system is the constitutional mandate. Doubts in the minds of citizen will lead to destruction of the constitutional principles. Undoubtedly, judiciary has to strengthen its vigilance wing and the prevailing vigilance system in the

judiciary is insufficient to crush the corrupt practices. Frequent surprise visits and inspection in the judicial departments and premises are needed. It is pertinent to remind that many former Chief Justices of India had lamented that judiciary is not exempted from corrupt practices. Unfortunately, efficient measures are yet to be taken to deal with many kinds of corrupt practices in the judicial system. Making observations in the judgment is one aspect of the matter, but, if such findings are taken in a right spirit by the administrators then alone we can see the development of our great nation. Thus, the administrator must have a heart and spirit to take the issues in a right manner and attempts are to be made sincerely to develop an effective and efficient system.

18. As far as the present writ petition is concerned, as discussed in the earlier paragraphs, the charges against the writ petitioner are proved both before the Tribunal for Disciplinary Proceedings, Tirunelveli and the finding recorded by the Tribunal are considered by the respondents in their order and as such there is no infirmity or perversity in imposing punishment on the writ petitioner. Thus, the writ petition is devoid of merits and accordingly, the writ petition stands dismissed. No Costs.

19. In order to consider and take measures to implement the observations of this Court, the Registry is directed to communicate the copy of the judgment to the Chief Secretary to Government of Tamil Nadu, Fort St.George, Chennai-9 and to the Registrar General, High Court of Madras, Chennai.

05.10.2020

Index : Yes/No
Internet : Yes/No
PJJ

Copy to:

1.The Registrar General,
Madras High Court,
Chennai.

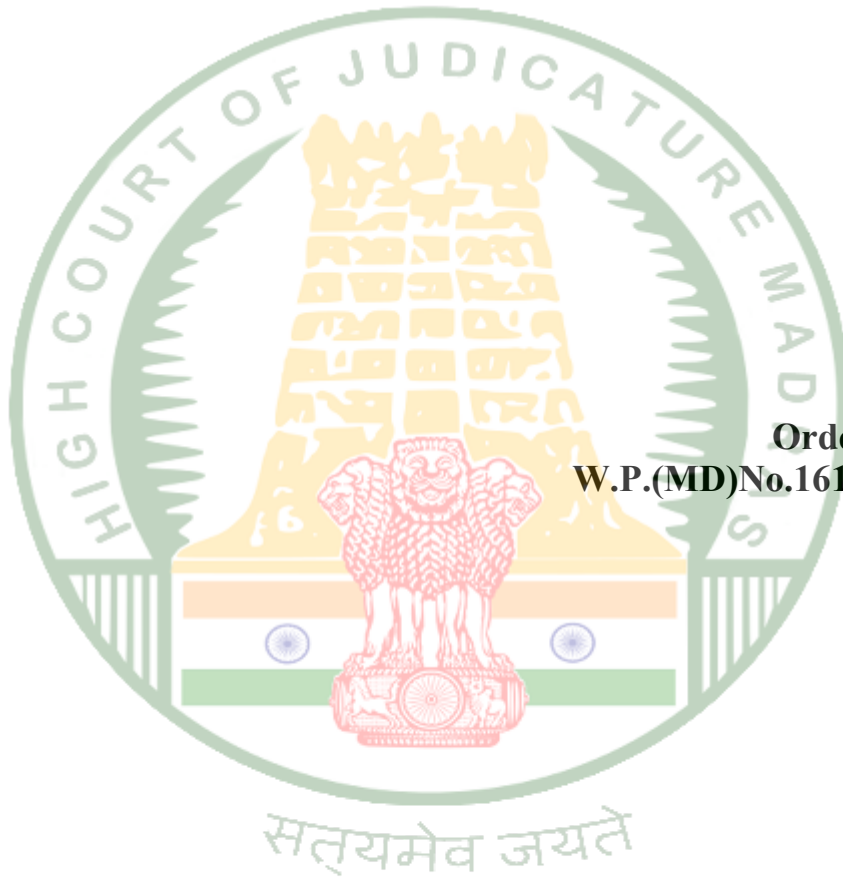
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Fort St.George, Secretariat,
Chennai-9.

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S.M.SUBRAMANIAM, J.

PJL/MPK



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