(2024) 05 GAU CK 0013

In the Gauhati High Court

Case No : Writ Petition (C) No. 2546 Of 2015

Raj Sobhan Goswami APPELLANT

Vs

State Of Assam And 2 Ors RESPONDENT

Date of Decision : 14-05-2024

Acts Referred:

Assam (Discipline and Appeal) Rules, 1964 — Rule 9
Indian Stamp (Assam) (Amendment) Act, 2004 — Section 27A(1), 27A(3)
Indian Stamp Act, 1899 — Section 27, 64
Registration Act, 1908 — Section 32, 34

Citation : (2024) 05 GAU CK 0013

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : B. Kaushik, S. Dutta, Cs Hazarika

Final Decision : Allowed

Judgement

1. An order dated 12.11.2013 of imposition of the penalty of withholding of three numbers of increments with cumulative effect in a disciplinary proceeding is the subject matter of challenge in this writ petition. The challenge is based on the procedural irregularities as well as on the merits of the allegations made against the petitioner delinquent.

2. The facts projected in the writ petition are that at the relevant point of time, the petitioner was serving as a Sub-Register in the office of the Deputy Commissioner, Kamrup (Metro). Vide an order dated 15.03.2008, the petitioner was placed under suspension. However, the said order of suspension was revoked and the petitioner was reinstated in service on 24.09.2009. In the meantime, the show-cause notice under Section 9 of the Assam (Discipline and Appeal) Rules, 1964 was served upon the petitioner on 10.09.2018. The principal allegation was of undervaluing 15 numbers of Deeds which were registered by the petitioner as the Registering Officer. It was alleged that there was violation of Section 27A (1) of the Indian Stamp (Assam) (Amendment) Act 2004. Reference

has also been made to a communication from the Revenue Department to the Deputy Commissioner, Kamrup (M) dated 05.12.2003 on the aspect of valuation of land in Greater Guwahati. The petitioner had submitted his written statement wherein he had taken the defence that the communication dated 05.12.2003 was never served in the office of the petitioner and therefore he was not aware of the same. It was further stated that the same was merely an inter-office communication which could not have been acted upon to the detriment of the petitioner. After completion of the enquiry, the enquiry officer had furnished an enquiry report wherein a finding was arrived at that the petitioner being a responsible Government officer ought to have the knowledge of the communication dated 05.12.2003. The petitioner was served with the second show-cause notice which he had replied. After consideration of the same, the disciplinary authority had issued the impugned order on 12.11.2013 whereby the penalty of withholding of three numbers of increments with cumulative effect has been imposed. As indicated above, it is the legality and validity of the order of penalty which is the subject matter of challenge in this writ petition.

3. I have heard Shri B. Kaushik, learned counsel for the petitioner. I have also heard Shri S. Dutta, learned Standing Counsel, Revenue Department, who has also produced the records in original of the departmental proceeding.

4. The learned Counsel for the petitioner has submitted that the allegations, as such are not sustainable inasmuch as, the same are based on a communication dated 05.12.2003 issued by the Revenue Department to the Deputy Commissioner, Kamrup (M) fixing valuation of land at Greater Guwahati. It is submitted that the said communication was never brought to the office knowledge of the petitioner as the same was never served in the petitioner’s office.

5. Attention of this Court has been drawn to the written statement of defence, more particularly the statement made in paragraphs 3 and 4 thereof wherein the aforesaid aspect of not serving the communication dated 05.12.2003 in the office of the petitioner and that the same was a mere inter-office communication have been highlighted. By referring to Section 27 of the Indian Stamp Act, 1809 it has been submitted that the duty is casted upon the incumbent to state the full and true facts in the instrument which would affect the chargeability or the amount of duty to be charged. Section 64 has also been referred which stipulates imposition of penalty for omission to comply with the aforesaid provision of Section 27. Reference has also been made to Section 27A of the Indian Stamp (Assam Amendment) Act, 2004, as per which, the registering officer may refer the matter to the Collector if he has reasons to believe that there has been undervaluation of the property vis-à-vis the market value. Under Section 27A(3), a suo moto power is also vested upon the Collector to examine the instrument with regard to the valuation within a period of two years from the date of registration. It is submitted that firstly there were no materials before the petitioner so as to enable him to have reasons to belief regarding any

undervaluation and secondly, the Collector himself was vested with the power to re-examine the aspect of proper valuation. It is submitted that from the date of registration of the instruments in question, two years were yet to expire, in spite of which, the disciplinary proceeding was initiated on 15.03.2008 when the petitioner was put under suspension.

6. Reference to the Registration Act, 1908 has also been made, more particularly Sections 32 and 34 which pertain to the persons who are to present the documents for registration and the enquiry to be done before registration. It is submitted that the scope of enquiry does not extend to the aspect of valuation. He has also referred to a communication dated 28.11.2005 issued by the District Registrar, Kamrup to the Guwahati Resettlement Officer whereby it was clarified that the aspect of valuation cannot be looked into by the Registering authority in absence of any provision in the Indian Registration Act.

7. The learned counsel for the petitioner has submitted that no Presenting Officer was appointed and nothing could be established in the enquiry and the findings are based on presumption. He reiterates that while the registrations of the concerned Deeds were done in March, 2007, the show-cause notice was issued before expiry of two years without there being any attempt to invoke the suo moto power of the Collector under Section 27A(3) of the Indian Stamp (Assam Amendment) Act, 2004. The impugned order has also been assailed on the ground that the same is not based on any tenable materials to establish the guilt of the petitioner.

8. The learned counsel for the petitioner has lastly submitted that during the pendency of this writ petition, the petitioner has retired on attaining the age of superannuation on 30.09.2023 and because of the impugned order, his pensionary benefits are being adversely affected.

9. In support of his submission, the learned counsel for the petitioner has placed reliance upon the following case laws-

i. (1972) 1 SCC 726 [Himalalya House Company Ltd. Bombay Vs. Chief Controlling Revenue Authority]

ii. (2009) 2 SCC 570 [Roop Singh Negi Vs. Punjab National Bank & Ors.]

10. In the case of Himalalya House Company Ltd. (supra), the Hon'ble Supreme Court while dealing with the provisions of Section 27 of the Stamp Act has held that it is the duty of the party to set forth in the document full and true facts and there is no provision that empowers the Revenue to make an independent enquiry on the value of the property involved.

11. In the case of Roop Singh Negi (supra), the Hon'ble Supreme Court has been held that though there is no strict application of the provisions of the Evidence Act in a departmental proceeding, the same being a quasi judicial one, the principles of natural justice are required to be adhered to.

12. Per contra, Shri S. Dutta, learned Standing Counsel of the Revenue Department, by referring to the affidavit-in-opposition filed on 24.08.2015 has submitted that the Presenting Officer was indeed appointed in the enquiry against the petitioner. It is further submitted that the petitioner was a Gazzetted Officer posted as Sub-Registrar and the explanation that he was unaware of the direction contained in the communication dated 05.12.2003 is wholly unacceptable. By referring to the averments made in paragraph 11 of the affidavit-in-opposition, the learned Standing Counsel has submitted that the Revenue loss caused by the misconduct of the petitioner is Rs.28,70,350/- By drawing the attention of this Court to the reply of the petitioner submitted to the show-cause notice, it is contended that the only explanation was that the registration was done in good faith and in paragraph 2 thereof, there is an admission of the omission. The learned Standing Counsel has also highlighted the similar stand taken by the petitioner regarding acting in good faith in the reply to the second show-cause notice.

13. The learned Standing Counsel accordingly submits that no case for interference has been able to be made out and accordingly the writ petition should be dismissed.

14. In support of his submission, the Department has relied upon the case of State of Haryana and Ors. Vs. Rattan Singh reported in (1977) 2 SCC 491 wherein it has been laid down that in a domestic enquiry, there is no strict application of the sophisticated Rules of evidence. A distinction has also been carved out between a situation of "some evidence" and "no evidence".

15. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

16. There is no manner of doubt that the charge / allegation against the petitioner is grave wherein the aspect of loss to the State exchequer of a huge amount is involved. In fact, the amount has been quantified as Rs.28,70,350/- involving 15 nos. of Deeds registered by the petitioner as the registering officer wherein there were gross undervaluation of the properties involved.

17. The contention raised on behalf of the petitioner that he was not aware of the communication dated 15.12.2003 issued by the Revenue Department on the aspect of valuation of properties in Greater Guwahati and that the said communication is an inter-office communication and was not served in the office of the petitioner, may not prima facie appear to be acceptable. The said communication was an existing communication for the last about 5 years when the Deeds in question were registered. The petitioner who was a Sub-Registrar at Guwahati at that point of time and it being on record that he was posted at Guwahati in the year 2004 as stated in paragraph 2 of the writ petition, it is appeared unreasonable to feign ignorance of the said communication dated 05.12.2003. This Court is also not inclined to accept the submission that no role was to be performed by the registration officer regarding valuation in terms of

the letter dated 28.11.2005. This Court is also not inclined to accept the submission that there being a suo moto power of the Collector under Section 27A(3) of the Assam Amendment of the Stamp Act, 1809, the charge is not liable to be leveled against the petitioner.

18. Having observed that, it is however required to be examined as to the manner how the disciplinary proceeding and the enquiry was initiated and held. This Court however remind itself that such examination by this Court is on the prima facie aspect as this Court plays a secondary role in matters of disciplinary proceeding wherein the primary role is of the disciplinary authority.

19. The show-cause notice dated 10.09.2008 and the statement of allegations had mentioned 4 nos. of documents and two nos. of witnesses. The enquiry report submitted would reveal that while witness Pobitra Kumar Das had appeared and his statements were recorded, the other witness Shri Bipin Goswami had refused to make any statement. Further, the enquiry officer has recorded that in the statement of witness, Pobitra Kumar Das, he had denied having any knowledge about the subject as his work was on different aspects. The enquiry officer has in fact made the following observation so far as the aforesaid witness as “therefore, his statement is not of very essential in this case”.

This Court has also looked into the original records of the enquiry produced, from which it reveals that the said witness Pobitra Kumar Das did not say anything towards the culpability of the petitioner qua the charges.

20. It appears that the enquiry officer had come to a conclusion of establishment of the allegation only on the presumption that the petitioner was expected to have knowledge about the communication dated 15.12.2003. This Court is of the view that such presumption could not have been drawn as the categorical defence of the petitioner was that he was not aware of the said communication and the same was never served in his office. Even assuming that such defence was factually incorrect, the same was required to be prima facie established in the enquiry through the witnesses who were named and as observed above, the same was not done.

21. As regards the order of penalty dated 12.11.2013, the disciplinary authority appears to have proceeded on an entirely incorrect perspective with regard to the burden of proof. It has been held by the disciplinary authority as follows:

“it reveals from the enquiry report that the charged officer could not produce any evidence / documentary proof that he was not guilty in any way”

22. The aforesaid approach of the disciplinary authority is contrary to the provision of law as the burden of proof, though may not be in strict conformity with the Indian Evidence Act has to be discharged by the Department which has leveled the allegation against the delinquent officer and there was a denial of the allegation by the said officer on record. A disciplinary proceeding cannot be

culminated with an order of penalty only on the ground that such denial of the allegation is not acceptable and in fact it is only when the allegation is denied the same is required to be proved in an enquiry. However, in the instant case, the same was not done at all in the enquiry held.

23. In view of the aforesaid facts and circumstances, this Court is of the considered view that the impugned order of penalty dated 12.11.2013 passed by the Revenue and DM Department, Government of Assam of withholding three increments with cumulative effect is unsustainable in law and accordingly, the same is set aside. Consequently, the benefits of the aforesaid three increments are to be released to the petitioner. Further, since the petitioner has already been stated to have been retired from service on 30.09.2023, it is directed that his pensionary and other post retirement benefits are to be calculated on the correct rate of his salary at the time of his retirement.

24. The writ petition accordingly stands allowed. Cost made easy.

25. The records in original are returned back to the learned Standing Counsel.