

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.29594 of 2014

&

M.P.No.1 of 2014

P.Venkatramanan

... Petitioner

vs.

The Secretary to Government
Law (Admn) Department
Secretariat, Chepauk
Chennai - 600 009

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records culminating in the order dated 28.10.2014 bearing No.G.O.(Ms) No.144 passed by the respondent and quash the same and to forbear the respondent from removing the name of the petitioner from the Register of Notaries maintained by the respondent.

For Petitioner : M/s.Rajeni Ramadass
For Respondent : Mr.S.Gunasekaran
Government Advocate

ORDER

Heard Mr.S.Rajeni Ramadass, learned counsel for the petitioner and Mr.S.Gunasekaran, learned Government Advocate appearing for the respondent.

2. The petitioner is an advocate practicing in Pudukkottai District and the challenge in this writ petition is to an order dated 28.10.2014 made in G.O.(Ms) No.144 in and by which Certificate of Practice issued by the Tamil Nadu Government appointing the petitioner as Notary Public was cancelled and his name was removed from the list of notaries maintained by the State Government under Section 4 of the Notaries Act, 1952.

3. The learned counsel for the petitioner elaborately referred to the factual matrix and submitted that the petitioner was not guilty of any professional negligence as required under Section 10(d) of the Act which states that the Government appointing any notary may, by order, remove from the Register maintained by it under Section 4 the name of the notary, if he has been found upon inquiry in the prescribed manner, to be guilty of such professional or other misconduct as, in the opinion of the Government, renders him unfit to practice as a notary.

4. It is submitted that the petitioner is not guilty of such professional misconduct or other misconduct since the petitioner did not complete the attesting process of the affidavit and stopped attesting the document after he came to know that deponent of the affidavit has not signed the same and deponent was not present before him. Learned counsel further submitted that the Principal District Judge, Pudukottai, who considered the matter submitted a report stating that it is a case of negligence. Therefore, the learned counsel would submit that the negligence will not fall within the scope of professional or other misconduct in terms of Section 10(d) of the Act. In this regard, the learned counsel relied upon the meaning in Stroud's Judicial Dictionary giving a meaning of the word "negligence" and stated that acts of negligence does not constitute such "misconduct".

5. An elaborate counter affidavit has been filed by the respondent justifying the impugned order and the averments made therein has been referred by the learned Government Advocate. Further it is submitted that enquiry was properly conducted and the averments in the petition shows that the petitioner was prejudiced on account of non-supply of the report of the enquiry officer and mere non-supply of the report of the enquiry officer itself will not be a ground to quash the impugned order. In this regard, the learned Government Advocate referred to the decision of the Hon'ble Supreme Court in Haryana Financial Corporation and another Vs. Kailash Chandra Ahuja reported in (2008) 9 SCC 31.

6. After hearing the learned counsel for the parties, this Court does not propose to convert itself into a second appellate authority. However, this Court is inclined to consider one aspect of the matter. The punishments, which could be imposed on the Notary Public, are stipulated under Rule 13(12)(b) of the Notaries Rules, 1956 and the same is extracted hereunder:

"13(12)(b) If after considering the report of the competent authority, the appropriate Government is of the opinion that action should be taken against the notary the

appropriate Government may make an order -

- (i) cancelling the certificate of practice and perpetually debaring the notary from practice; or
- (ii) suspending him from practice for a specific period; or
- (iii) letting him off with a warning, according to the nature and gravity of the misconduct of the notary proved."

7. In terms of the above rule, there are three categories of punishment which the appropriate Government may pass. The first being cancellation of Certificate and debaring the notary from practice. This power has been exercised and the impugned order has been passed. There are other two punishments, which could have been imposed, namely suspension of practice for a specific period or issuing a warning. This Court of the view that punishment to be imposed should be according to the nature of gravity of the misconduct of the notary which has been proved. After referring to the report of the Principal District Judge, Pudukottai wherein the Principal District Judge has stated that the petitioner has acted mechanically under the impression that everything found in the affidavit would be correct and the deponent had signed the document, the Government has passed the impugned order imposing punishment on the ground that the petitioner, without exercising due verification of the parties, attested the affidavit and the said act of the Notary constituted infraction of the provisions of the Notaries Rules, 1956, The respondent, while considering the issue relating to imposition of punishment, after considering the factual position as well as the report submitted by the Principal District Judge, Pudukottai has not specifically stated that the misconduct of the petitioner is so grave warranting punishment under Rule 13(12) (b) (i).

8. The petitioner has completed 15 years of practice and it is stated that there is no complaint earlier against the petitioner for any negligence or misfeasance or malfeasance. Therefore, it is submitted that the Government should be directed to reconsider the issue relating to the punishment imposed on the petitioner in the light of the report submitted by the Principal District Judge, Pudukottai wherein only negligence is attributed against petitioner.

9. In the light of the above, while declining to interfere with the finding rendered by the first respondent in the impugned proceedings and upholding the impugned order, this Court is inclined to interfere only with that portion imposing the major penalty of Cancellation of Certificate as per Rule 13(12) (b) (i). Only to that extent, the impugned order is set aside and the matter is remanded

back to the respondent for fresh consideration to consider as to whether the allegations which have been proved in the instant case warrants action either under 13(12)(b)(i) or (ii) or (iii). The respondent is directed to consider the quantum of punishment to be imposed on the petitioner in terms of the above said provision within three months from the date of receipt of a copy of this order.

10. The writ petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

The Secretary to Government
Law (Admn) Department
Secretariat, Chepauk
Chennai - 600 009

+1cc to Mr.S.Rajeni Ramadass, Advocate, S.R.No.14365
+1cc to the Government Pleader, S.R.No.14527

W.P.No.29594 of 2014 &
M.P.No.1 of 2014

TEJ(CO)
CA(19/03/2015)

सत्यमेव जयते

WEB COPY