

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.29060 of 2012

Mr.G.Anand

... Petitioner

Vs.

The Secretary, Law Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent vide charge memo issued in Letter No.9514/Admn/2008, dated 27.08.2008 and G.O. Vide G.O.Ms.632 of 2012, dated 10.09.2012 and consequently, quash the same and direct the respondent to issue the certificate of renewal of Notary Practice to the petitioner from the period 2012 to 2017.

For Petitioner : Mr.R.Muthukumarasamy,
Senior Counsel
for M/s.A.Jenasenan

For Respondent : Mr.V.Jayaprakash Narayanan,
Spl.Govt.Pleader

ORDER

This writ petition has been filed by the petitioner praying for issuance of a writ of Certiorarified Mandamus, to call for the records pertaining to the Letter No.9514/Admn/2008 dated 27.08.2008 issued by the respondent and also the Government Order in G.O.Ms.No.632 of 2012, dated 10.09.2012 and to quash the same and consequently, to direct the respondent to issue the certificate of renewal of Notary Practice to the petitioner for the period from 2012 to 2017.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows:-

2-1.The petitioner is an Advocate, practicing at the Tanjore Bar since 1991. He was appointed as Notary Public to practice through out the town of Tanjore, for a period of five years, vide G.O.Ms.311, dated 22.05.2002. The appointment was valid for five years and it was to be renewed thereafter.

2-2.After five years, the petitioner had forwarded an application to the respondent to renew his appointment as Notary Public for a further period of five years and accordingly, the respondent renewed the petitioner's appointment as Notary Public, for a further period of five years vide G.O.Ms.No.90 of 2007 on 03.05.2007, with effect from 22.05.2007. The petitioner has been practicing as a Notary Public without any adverse remarks.

2-3.As a Notary Public, many people used to approach the petitioner seeking attestation. On 06.03.2008, a lady by name Fauzia Banu, Muslim, residing at Vallam Post, approached the petitioner to obtain an Authorised Attestation and Notary Public Seal in an Affidavit sworn in by her for the purpose of obtaining Passport from the Passport Office, Trichy. On the said day, ie., on 06.03.2008, there was heavy crowd in his advocate office and he had lot of other court works and he had lot of cases to be attended on that particular day. The petitioner ensured that the deponent for the swearing in affidavit by name Fauziya Banu, who had approached the petitioner to obtain attestation, and the petitioner made an entry in the Notarial Register which he maintains. The said deponent, in the presence of the petitioner, affixed her photograph and her signature and also gave details of her full name and address. That was made as an Entry vide Serial No.78 on 06.03.2008 (Form XV Notarial Register) and that was done in accordance and in strict compliance with Rule 11(2) of the Notarial Rules, 1956. The said deponent Fauziya Banu also paid the Notarial Fee and affixed the stamp and also paid the Prescribed Fees as Charged as per the Notarial Rules, 1956. An entry to that effect was made in the ledger (Form XV Notarial Register) maintained by the petitioner in accordance with Rule 11(2) of the Notarial Rules, 1956. At that time, there was heavy rush and crowd in his office. Believing the words and trusting the deponent, due to over sight, the petitioner had put his signature and Notary Public Seal in the affidavit of the deponent Fauzia Banu. The said Fauziya Banu went to the Passport Office, Trichy and submitted the said affidavit before the Passport Officer, Trichy. The Passport Officer, Trichy, upon finding that the signature of the deponent is missing in the affidavit, he retained the affidavit dated 06.03.2008 and instructed the deponent Fauziya Banu to produce another affidavit for obtaining the Passport. The said Fauziya Banu again approached the petitioner on 13.03.2008 and after obtaining the entry from her in the register maintained by him and scrutinizing the documents and completing other formalities as prescribed in the Notarial Rules, 1956, the petitioner attested another affidavit on 13.03.2008.

2-4.The very next day ie., on 14.08.2008, the Passport Officer, Trichy sent a communication to the respondent herein stating that the affidavit dated 06.03.2008

does not bear the signature of the deponent and that the petitioner had violated the Notaries Act and requested the respondent to take action against the petitioner by revoking the license given to the petitioner to act as Notary.

2-5. Pursuant to the same, on 27.08.2008, charges were framed against the petitioner by the Joint Secretary, Law Department, Government of Tamil Nadu, vide his letter No.9514/Admn/2008, under Sub-Rule (4A) of Rule 13 of the Notaries Rules, 1956 holding that the petitioner had attested the said affidavit of the deponent dated 06.03.2008 with expression 'signed before me on March, 2008', but the deponent had not signed in the affidavit in his presence. According to the respondent, the said action of the petitioner is in violation of the Rule 11(8) of the Notarial Rules and the said non-compliance of the rules amounts to misconduct. Thereafter, the petitioner was called upon to file a written statement of defence as required under Sub-rule (5) of Rule 13 of the said rules, for the said misconduct and he was called upon to submit a written statement within 14 days from the date of receipt of the said letter dated 27.08.2008. On 15.09.2008 the petitioner sent a detailed reply in the form written statement, stating that he was innocent and the charges framed against him were baseless.

2-6. On 11.12.2009, the petitioner received a notice from the Principal District Judge, Tanjore, the competent Authority, calling upon him to appear for an enquiry on 04.01.2010. The petitioner attended the said enquiry on 04.01.2010 before the Principal District Judge, Tanjore and submitted his affidavit contending that the charges framed against him were baseless. The Principal District Judge, Tanjore submitted the Inquiry Report vide Letter A.161/2009/A1, dated 18.06.2010 to the Registrar (Admin), Madurai Bench of the Madras High Court.

2-7. After a period of one year from the Enquiry Report dated 18.06.2010, the respondent vide his letter dated 20.06.2011 served a copy of the Enquiry Report to the petitioner. The respondent in his letter dated 20.06.2011 stated that the Government has proposed to take action against the petitioner under Rules 13(12)(b) of the Notaries Rules, 1956 and hence, an opportunity was given to the petitioner to make a further representation within 14 days from the date of receipt of the letter. On 07.07.2011, the petitioner sent a detailed reply to the letter of the respondent dated 20.06.2011, explaining his innocence. Since petitioner's notary appointment period came to an end on 22.05.2012, he sent an application for renewal on 01.03.2012 along with necessary fee for renewal. The respondent did not come forward to issue renewal of practicing. Hence, the petitioner had filed a writ petition in W.P.No.24681 of 2012 before this Court seeking to direct the respondent to issue renewal certificate of practice as Notary Public for Tanjore Town, for

a further period of five years from 2012-2017. When the said writ petition came up for hearing on 13.09.2012, the Government Advocate produced the impugned order vide G.O.Ms.No.632 of 2012 dated 10.09.2012 passed by the Law Secretary to Government of Tamil Nadu, wherein it was stated that in exercise of powers conferred under Sub-Rule 12(b)(i) of Rule 13 of the Notaries Rules, 1956, the Governor of Tamil Nadu cancelled the Certificate of Practice issued to the petitioner and perpetually debar the said notary from practice and also in exercise of the powers conferred by under Clause (d) of Section 10 of the Notaries Act, 1952 (Central Act LIII of 1952), removed the name of the petitioner, Notary in Tanjore from Register of Notaries maintained by the Government under Section 4 of the said Act, since he has been found upon inquiry to be guilty of misconduct. A notification to that effect was also issued in the said G.O.; however, he was not served a copy of the order date 10.09.2012 issued by the government. Subsequently, the said writ petition filed by the petitioner was dismissed. Hence, challenging the impugned order as well as charge memo, the petitioner has come forward with the present writ petition before this Court.

3. Opposing the prayer of the petitioner, the respondent has filed a detailed counter, inter alia, contending that the petitioner had attested the affidavit without the signature of the deponent, thereby he contravened the procedure laid down in the Notaries Act and Rules.

4. Heard the learned counsel appearing for the petitioner as well as the learned Special Government Pleader and perused the materials available on record.

5. It is submitted by the learned counsel for the petitioner, by inviting the attention of this Court to the finding rendered by the competent authority viz., the Principal District Judge, Tanjore District, submitted that the act of the petitioner will not amount to misconduct and it will amount only as negligence. The relevant portion of the findings rendered by the learned Principal District Judge, Tanjore District, in his report, reads as follows:-

"As has already been stated that failure to obtain the signature of the deponent in the affidavit was neither wilful nor wanton. It is also proved that the deponent viz., Selvi Fouzia Banu came to the office of the delinquent Advocate on the particular date and has also signed in the Notaria Register. The failure to obtain the signature or failure to see whether the affidavit is duly signed by the deponent before attesting the affidavit at the best will amount to negligence and the same will not amount to misconduct as

defined in the Notaries Rules. Hence, I concluded that the charge against the delinquent Advocate under Rule-11(8) of the Notaries Rules 1956 is not proved."

By relying upon the said finding rendered by the learned Principal District Judge, Tanjore District, the learned counsel for the petitioner submitted that the competent authority has rendered a finding that the act of the petitioner would not amount to misconduct and it would amount to "negligence" alone. The said findings of the competent authority was not considered by the respondent, before passing the impugned order. But, by the impugned order, the respondent has cancelled the Certificate of Practice issued to the petitioner and perpetually debarred him from practicing as Notary Public.

6.Considering the facts and circumstances of the case as well as the findings rendered by the competent authority viz., the Principal District Judge, Tanjore, I am of the opinion that the punishment of cancellation the Certificate of Practice issued to the petitioner, thereby perpetually debarring him from practicing as Notary Public, is unwarranted.

7.Hence, the writ petition is allowed and the impugned orders are quashed. The petitioner is at liberty to apply for fresh renewal of the Certificate of Practice as Notary Public. No costs.

ssv

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Secretary, Law Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
 2. The Principal District Judge, Tanjore.
- + 1 cc to M/s.A.Jenasenan, Advocate Sr 18120

KR/11/4/16

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