

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on 03.10.2016)

DATED : 07.10.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.33029 of 2016
and
W.M.P.No.28535 of 2016

G.Srinivasan

... Petitioner

Vs.

1.The Deputy Inspector General of Police,
Vellore Range,
Vellore.

2.The Enquiry Officer-cum-
Additional Superintendent of Police,
Head Quarters,
Thiruvannamalai District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the entire records relating to C.No.118/ADSP/HQ/TVM/2015, dated 13.08.2016, and to quash the same and consequently, to direct the respondents to permit the petitioner to engage a counsel to conduct a oral enquiry in respect of disciplinary proceedings in P.R.No.78 of 2015 dated 04.11.2015 issued by the 1st respondent.

For Petitioner : Mr.r.Ezhilarasan
For respondents : Mr.R.Rajeswaran, Spl GP.

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Certiorarified Mandamus, to call for the entire records relating to the proceedings of the 1st respondent in C.No.118/ADSP/HQ/TVM/2015, dated 13.08.2016, and to quash the same and consequently, to direct the respondents to permit the petitioner to engage a counsel to put forth his defence in the oral enquiry in respect of disciplinary proceedings in P.R.No.78 of 2015 dated 04.11.2015 initiated by the 1st respondent.

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

2-1.While the petitioner was working as Inspector of Police, he was falsely implicated in a criminal case registered in Crime No.5 of 2014 on the file of the Vigilance and Anti-Corruption Department, Tiruvannamalai, on the allegation that he had demanded illegal gratification of Rs.10,000/- from one P.Ravi for releasing the motor-cycle bearing No.TN 25 AF 1592 involved in a theft case. Subsequently, the petitioner was placed under suspension from service on 31.08.2014. Thereafter, the 1st respondent issued a charge-memo to him in P.R.No.78 of 2015 on 04.11.2015. The said criminal case was taken on file in Spl.C.C.No.13 of 2015 on the file of the learned Chief Judicial Magistrate, Tiruvannamalai. While so, the petitioner had filed a writ petition in W.P.No.26612 of 2016 before this Court seeking to keep the disciplinary proceedings initiated by the 1st respondent, in abeyance till the disposal of the criminal case. While disposing the said writ petition, by order dated 05.08.2016, this Court directed the 2nd respondent to pass appropriate orders within a time limit.

2-2.Now, it is stated by the petitioner that he is ready to co-operate for the disciplinary proceedings; however, he needs the assistants of an Advocate/counsel during the enquiry. Hence, on 03.08.2016, the petitioner sent a representation to the respondents to permit him to engage an Advocate to get legal assistance during the enquiry. But, the said request of the petitioner was rejected by the 1st respondent by the impugned order. Hence, the petitioner has filed the present writ petition before this Court.

3.When the matter was taken up for consideration, the learned counsel appearing for the petitioner, by relying upon a decision of this Court reported in (2010) 1 MLJ 427 [S.Selvam Vs. DIG of Police], and submitted that in an identical situation, this Court has directed the respondents therein to permit the petitioner therein to have the assistance of a Lawyer during the enquiry.

4.But, the learned Special Government Pleader appearing for the respondents, by relying upon the decisions reported in AIR 1997 SC 2982 (F.C.I. Vs. Bant Singh) and 1996(1) SLR (P&H) 353 (K.B.Rai Vs. State of Punjab), and submitted that where the charges against the employee, being neither complex nor complicated and the Officer presenting departmental proceedings, not being a legally trained person, refusal of assistance of a lawyer to the delinquent, would not result in the violation of the principles of natural justice. Thus, he opposed to grant the relief sought for by the petitioner.

5.Keeping the submissions made on either side, I have carefully gone through the materials available on record.

6.By placing reliance on the decision of this Court (2010) 1 MLJ 427 [S.Selvam Vs. DIG of Police], it is submitted by the learned counsel for the petitioner that the petitioner is entitled to have the assistance of a lawyer during the enquiry. But, a perusal of the said decision of this Court, it is seen that in the said case, initially, the petitioner therein was permitted to have the assistance of a lawyer during the enquiry; but, subsequently, after permitting the petitioner therein to have the legal assistance, the Enquiry Officer therein prevented the Lawyer from cross-examining the witnesses; only in that background, the impugned order passed by the Enquiry Officer refusing the Lawyer to cross-examine the witnesses, was set aside in that case. But, the factual aspects of the said case are totally different from the present case. In the instant case, the Enquiry Officer has not permitted the petitioner to have the legal assistance. Therefore, as contended by the learned Special Government Pleader, the refusal of assistance of a lawyer to the petitioner/delinquent, would not result in the violation of the principles of natural justice. There is no common law right in a party to a proceedings to be presented by a Lawyer. When the Officer presenting departmental proceedings, not being a legally trained person, the petitioner/delinquent has no right to be represented by an Advocate in the departmental enquiry. Under such circumstances, I am not inclined to entertain the prayer made by the petitioner. The writ petition is liable to be dismissed.

7.Hence, the writ petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

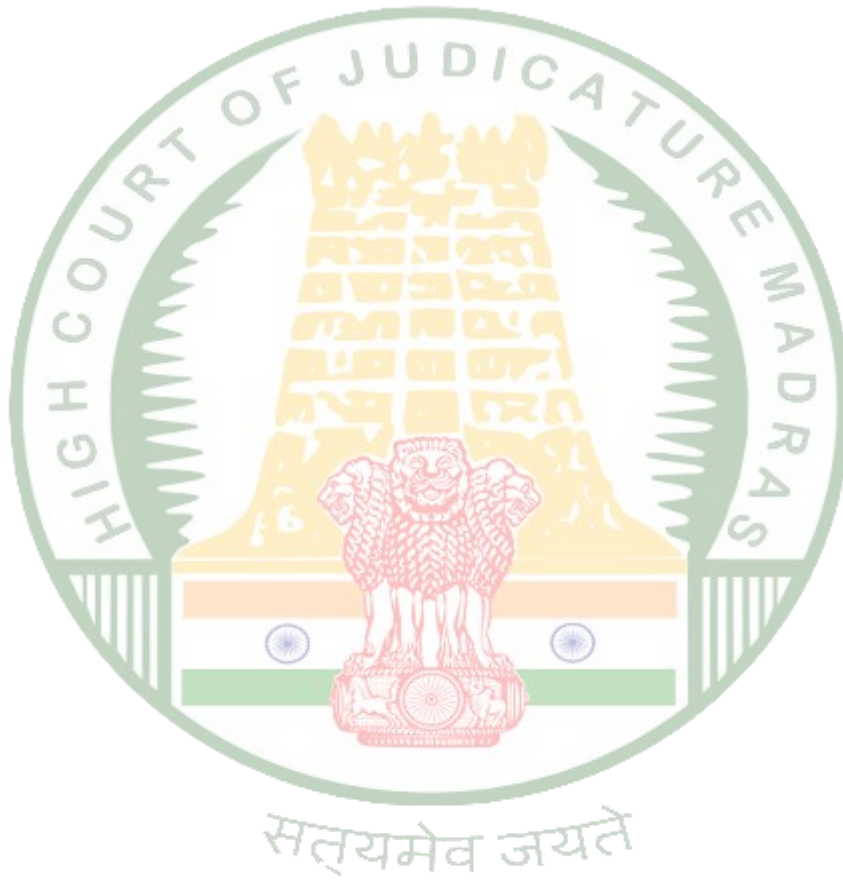
To

- 1.The Deputy Inspector General of Police,
Vellore Range, Vellore.
 - 2.The Enquiry Officer-cum-
Additional Superintendent of Police,
Head Quarters, Thiruvannamalai District.
- +1 cc to MR.R.EZHILARASAN, SR.NO. 58099
+1 cc to Govt. Pleader, SR.NO. 58281

W.P.No.33029 of 2016
and
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SSK (CO)
MMP 12.11.2016

07.10.2016



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