

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.43388/2016 & W.M.P.No.37246 of 2016

S.Kuttiappan@Kuttipaiyan

.. Petitioner

Vs.

1.The District Collector,
Collectorate,
Dharmapuri

2.The Revenue Divisional Officer,
Revenue Divisional Office,
Dharmapuri

3.The Tahsildar,
Dharmapuri.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the second respondent dated 24.11.2016 vide Lr.No.Roc.No.7767/2008/A1 and to quash the same.

For Petitioner : Mr.S.Vijayakumar

For Respondents: Mr.P.Senthilvel, GA

ORDER

By consent, the writ petition is taken up for final disposal. Mr.P.Senthilvel, learned Government Advocate accepts notice on behalf of the respondents.

2 The petitioner would state that while he was serving as the Village Administrative Officer of Kottampatti Village, Nayakkana Halli Village, Dharmapuri Taluk and District, a complaint was lodged against him on the ground that he had demanded illegal gratification, based on which a case has been registered by the jurisdictional Vigilance and Anti Corruption Detachment and subsequently, the trap was successful and the Investigating Agency, after investigation, has filed the charge

sheet which was taken on file in Spl.CC.No.5/2010 by the learned Special Judge for Trial of Prevention of Corruption Act cases / Chief Judicial Magistrate, Dharmapuri, for the commission of the offence u/s.7 and 13[2] read with 13[1][d] of the Prevention of Corruption Act, 1988 and the petitioner was sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.2,000/-, and in default, to undergo simple imprisonment for three months. The petitioner, challenging the legality of the conviction and sentence filed an appeal in CA.No.802/2016 and pending disposal of the appeal, he filed CrI.MP.No.13066/2016 and this Court, vide order dated 08.02.2016, had suspended the substantive sentence of imprisonment alone and the petitioner was directed to appear before the Trial Court on the first working of every month at 10.30 a.m. until further orders. The petitioner would further state that the 2nd respondent / Disciplinary Authority has issued the impugned notice dated 24.11.2016, in the form of Show Cause Notice, as to why the petitioner should not be dismissed from service in the light of the conviction passed in Spl.CC.No.5/2010 by the Court of Special Judge / Chief Judicial Magistrate, Dharmapuri and challenging the legality of the said order, the petitioner came forward to file the present writ petition.

3 Mr.S.Vijaykumar, learned counsel for the petitioner has drawn the attention of this Court to the impugned order dated 24.11.2016 and would submit that the said notice was issued under Rule 17[c][i][1] of the Tamil Nadu Civil Services [Discipline and Appeal] Rules and though it is said to be a show cause notice, the contents of the same would disclose that the 2nd respondent / Disciplinary Authority has already reached the conclusion to dismiss the petitioner from service and even if the petitioner offers any plausible explanation, that may not be taken into consideration as the 2nd respondent has pre-determined the issue and therefore, prays for appropriate orders.

4 Per contra, Mr.P.Senthilvel, learned Government Advocate appearing for the petitioner would submit that the petitioner has been convicted and sentence of imprisonment alone has been suspended pending disposal of the appeal in CA.No.802/2016 and the petitioner cannot be retained in service and in the light of the above cited rule, an opportunity has been given to the petitioner to put forth his submissions and it cannot be construed as pre-determination of mind on the part of the 2nd respondent / Disciplinary Authority and prays for dismissal of the writ petition.

5 In response to the said submission, the learned counsel for the petitioner has drawn the attention of this Court, to the Judgment reported in 2006 [1] MLJ 40 [M.Devendran Vs. The Director, Tamil Nadu Fire and Rescue Services, Egmore, Tamil Nadu] as well as various interim orders passed by this Court in similar issue and prays for setting aside of the impugned order with a further prayer to remand the matter once again to the 2nd respondent to issue fresh notice and thereafter, for further adjudication in accordance with law.

6 This Court paid its anxious consideration to the rival submissions and also perused the materials placed before it.

7 Admittedly, the status of the petitioner is "Convict" and now, there is a stigma of conviction getting attached to him in the light of the conviction and sentence passed by the Special Court for Trial of Prevention of Corruption Act Cases / Chief Judicial Magistrate, Dharmapuri in Spl.CC.No.5/2010, vide judgment dated 14.11.2016. The made a challenge to the said conviction and sentence by preferring an appeal in CA.No.802/2016 and pending disposal of the same, got his substantive sentence of imprisonment alone suspended. It is also to be pointed out at this juncture, that the conviction recorded by the Trial Court has not been stayed. It is well settled position of law that once a conviction is recorded, unless and until it is set aside by the Court of competent jurisdiction, the stigma of conviction gets attached to the concerned convict and in this case, viz., the petitioner.

8 However, this Court, taking into consideration the submission of the learned counsel for the petitioner that there is a pre-determination of mind on the part of the 2nd respondent / Disciplinary Authority, permits the petitioner to submit his response to the impugned notice dated 24.11.2016 within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the 2nd respondent, without being influenced by the contents of the said notice, is directed to consider the said representation in accordance with law and pass orders within a further period of three weeks thereafter and communicate the decision taken, to the petitioner.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The District Collector,
Collectorate,
Dharmapuri

2.The Revenue Divisional Officer,
Revenue Divisional Office,
Dharmapuri

3.The Tahsildar,
Dharmapuri.

+lcc to Mr.S.Vijayakumar, Advocate sr.73411
+lcc to the Government Pleader Sr.73802

WP.No.43388/2016

kgk[co]

srg 20/12/2016

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