

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2016

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.8949 of 2016

and

W.M.P.Nos.7954 and 7955 of 2016

U.Perumal

vs

.. Petitioner

1. The Secretary to Government
Municipal Administration and
Water Supply Department
Secretariat, Chennai-9.

2. The Commissioner
Corporation of Chennai
Ripon Building, Chennai -3.

3. Tribunal for Disciplinary Proceedings
Kuralagam
Chennai.108

.. Respondents

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 pertaining to the file relating to the impugned rejection order dated 02.02.2016 passed by the third respondent in TDP case No.2/2011 and 6/2011; to quash the same and consequently to direct the third respondent to recall the witnesses namely, R.Mohan, Madhusudhan Auditor, Mr.M.Thomas, Branch Manager, T.N.Industrial Development Corporation, K.Shanmugam, Komalavalli, Dharmarai, Pasupathy, Pethaperumal, Thangappa, P.V.Kubendran and Investigation Officer's for cross examination.

For Petitioner : Mr.U.Karunakaran

For Respondents: Mr.S.Gunasekaran
Additional Government Pleader
for RR1 and 3

O R D E R

Mr.V.Perumal has brought this writ petition challenging the impugned order dated 02.02.2016 passed by the third respondent.

2. According to the petitioner, while he was serving as Assistant Executive Engineer during the year 2002 to 2005, based on certain anonymous letters, vigilance enquiry was ordered in the year 2005 and pursuant to the same, the Department of Vigilance has also conducted an elaborate enquiry and thereupon recommended for further departmental proceedings. After enquiry, charges were also framed. Subsequently, on 28.01.2014 the enquiry was commenced. 60 witnesses were mentioned in the proceedings to be enquired into. Out of the said 60 witnesses, 43 were examined by the prosecution. In the process when the Chief Examination of the Investigating Officers were completed on 12.01.2016, the junior counsel has requested for cross examination of the Investigating Officer, but this was refused by the learned Tribunal; however it directed the said counsel to file a memo to that effect. Again when the matter was posted on 26.01.2016, the petitioner's counsel filed a memo for recalling some of the witnesses including the Investigating Officers. However, after receiving the memo, the learned Tribunal posted the case for orders on 02.02.2016. According to the petitioner, inadvertently, when he filed the memo on 26.01.2016, for recalling some of the witnesses, he has failed to mention the name of the witnesses to be recalled. Therefore, he has filed another memo on 02.02.2016 stating that some of the witnesses viz., R.Mohan, Madhusudhan Auditor, M.Thomas Branch Manager, T.N.Industrial Development Corporation, K.Shanmugam, Komalavalli, Dharmarai, Pasupathy, Pethaperumal, Thangappa, P.V.Kubendran and the Investigating Officers are to be recalled in the interest of justice, at the cost of the petitioner. At this stage, presuming that the petitioner's side has been taking time to prolong the enquiry, the learned Tribunal has passed the impugned order, rejecting the request of the petitioner causing grave prejudice to the petitioner.

3. The learned counsel for the petitioner would submit that, if the petitioner is not permitted to take part in the enquiry by cross examining the witnesses, including the Investigating Officers by recalling them, great prejudice and irreparable injury would be caused to him and as such prayed for an opportunity to cross examine the relevant witnesses.

4. Heard both sides.

5. This Court, after reading the impugned order finds it difficult to accept the case of the petitioner. The reasonings given by the learned Tribunal show that after all the process were over, the learned Senior counsel appeared and sought to

recall the Investigating Officer. Thereafter, he has sent his junior to recall the witness list. Finding that a delaying tactics is devised, the learned Tribunal has come to the conclusion that the petitioner's side is planning to waste the time of the Tribunal by filing recall petition. The learned Tribunal also supported its view by stating that recalling a witness is a special opportunity to be given under exceptional circumstances.

6. I fully agree with the reasonings given by the learned Tribunal, while the dismissing the petition filed by the petitioner to recall some of the witnesses. However considering the facts and circumstances of the case and in the interest of justice, this Court permits the petitioner to re-examine only the two Investigating Officers mentioned in his petition. To this extent, the learned Tribunal is directed to recall the Investigating Officers concerned and permit the petitioner to cross examine them. Thereafter, it is open to him to produce the defence witness. It is made clear that the petitioner shall not ask for any more adjournment on any ground.

7. With the above direction, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Municipal Administration and
Water Supply Department
Secretariat, Chennai-9.
2. The Commissioner
Corporation of Chennai, Ripon Building, Chennai -3.
3. Tribunal for Disciplinary Proceedings
Kuralagam, Chennai.

+1cc to Mr.U. Karunakaran, Advocate, S.R.No.17887

+1cc to the Government Pleader, S.R.No.17420

CTK(CO)

EU(27/04/2016

W.P.No.8949 of 2016