



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.12.2016
CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

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W.P.(MD) No.24321 of 2016
W.M.P.(MD) No.17567 of 2016

S.Gopinathpandian

... Petitioner

-vs-

1. The Inquriy Officer/Additional Superintendent of Police,
Prohibition Department, Dindigul,
Dindigul District.

2. The Inspector of Police,
Control Room,
Dindigul,
Dindigul District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order vide C.No.43/A/ADSP-PEW/DGL/2016 dated 08.12.2016 on the file of the 1st respondent, quash the same and consequently direct the 1st respondent to permit him to engage a lawyer to defend the departmental enquiry vide P.R.No.41 of 2016 on his file.

For Petitioner : Mr.R.Venkateswaran
For Respondents : Mr.A.K.Baskara Pandian
Spl.Govt.Pleader

O R D E R

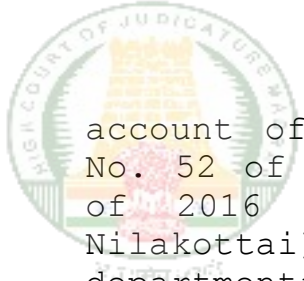
This petition has been filed, seeking to quash the impugned order of the 1st respondent dated 08.12.2016 passed in C.No.43/A/ADSP-PEW/DGL/2016, by which, the request of the petitioner to engage a Lawyer of his choice to defend him in the departmental proceedings has been declined. The petitioner also sought a direction to the 1st respondent to permit him to engage a lawyer to defend the departmental enquiry being conducted in P.R.No.41 of 2016.

2. Heard the learned counsel on either side and on consent, this writ petition is taken up for final disposal at the stage of admission itself.

3. The facts leading to filing of this writ petition are as under:

<https://hcservices.courts.gov.in/hcservices/>

1) the petitioner, who worked as the Inspector of Police, Control Room, Dindigul, has been placed under suspension on



account of registration two criminal cases against him in Crime No. 52 of 2016 under Section 392 IPC (taken on file in C.C.No.34 of 2016 on the file of the learned Judicial Magistrate, Nilakottai) and Crime No.55 of 2016 under Section 395 IPC; that departmental enquiry has also been initiated for the grave charges involving major penalties; that since the Enquiry Officer happens to be a Law Graduate, he filed a petition before the 1st respondent, seeking permission to allow him to engage a Lawyer to cross examine the list of witnesses, which was denied by the 1st respondent and therefore, aggrieved by the same, the petitioner is before this Court seeking the above relief .

4. Learned counsel for the petitioner would submit that since the charges levelled against the petitioner are serious in nature, assistance of an Advocate is required and that as the enquiry officer happens to be a Lawyer, the petitioner must be given an opportunity to defend himself effectively before the enquiry officer with the assistance of an Advocate in the domestic enquiry.

4.1. In support of his submission, learned counsel for the petitioner relied upon the following two judgments of the Hon'ble Apex Court;

i) Ramesh Chandra vs University Of Delhi & Ors., reported in 2015 (5) SCC 549, wherein the Apex Court has held that the Departmental inquiries conducted against the appellant therein were in violation of rules of natural justice, because the Inquiry Officer appointed therein, being a retired Judge of the High Court was a person of vast legal acumen and experience and the Presenting Officer therein also had sufficient experience in presenting case before Inquiry Officer.

ii) In yet another case in Board of Trustees of the Port of Bombay vs. Dilipkumar Raghvendra Nath Nandkarni and others, reported in (1983) 1 SCC 124, the Apex Court has held that if the rules prescribed for such an enquiry did not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the Enquiry Officer whether looking to the nature of charges, the type of evidence and complex [pic] or simple issues that may arise in the course of enquiry, the delinquent employee in order to afford a reasonable opportunity to defend himself should be permitted to appear through a legal practitioner.

5. A reading of the judgments, referred to above, would disclose that the Hon'ble Apex Court, while considering the facts of the case therein, came to the conclusion that a Lawyer should be permitted to assist the delinquent employee, who had to face enquiry before a retired High Court Judge as well as before a legally trained person.



6. In the present case on hand, it is admitted on both sides that the Presenting Officer is not a legally trained man and the ground raised that the enquiry officer is a Law Graduate cannot be the valid ground for seeking the assistance of a Lawyer to defend him in the enquiry.

7. The Hon'ble Supreme Court in the case of Padmasundara Rao (Dead) & others vs. State of Tamil Nadu and others, reported in (2002) 3 SCC 533 observed that if it is found that the facts of the cited judgment of the Higher Forum totally differs with the one on hand, then there is no compulsion for the subordinate courts to blindly rely on the same to arrive at a conclusion. It is appropriate to extract the relevant paragraph of the said judgment, which reads as follows:

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington vs. British Railways Board (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

8. In view of the above, this Court is of the view that the judgments relied on by the learned counsel for the petitioner has no relevancy to the facts of the present case of the petitioner. Therefore, finding no merits in the writ petition, the same is liable to be dismissed.

9. Accordingly, the Writ Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petitions is closed. The respondents are directed to proceed with the enquiry on day to-day basis without adjourning the matter beyond seven working days at any point of time and to bring the issue to a logical conclusion.

Sd/-
Assistant Registrar(CSII)

/True Copy/

Sub Assistant Registrar

To:

1. The Inquiry Officer/Additional Superintendent of Police,
<https://hcservices.ecourts.gov.in/hcservices/>
Prohibition Department, Dindigul,
Dindigul District.



2. The Inspector of Police,
Control Room,
Dindigul,
Dindigul District.

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+1cc to Mr.R.Venkateswaran, Advocate Sr.No.82669

+1cc to M/S THE SPECIAL GOVERNMENT PLEADER, SR.NO.82309

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20.12.2016

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