



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:29.11.2016

CORAM:

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THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition(MD)No.9948 of 2016

and

W.M.P(MD)No.7853 of 2016

P.Kannappan

... Petitioner

Vs.

The Secretary to the Government,
Law (Administration) Department,
Secretariat,
St. George Fort,
Chennai.

... Respondent

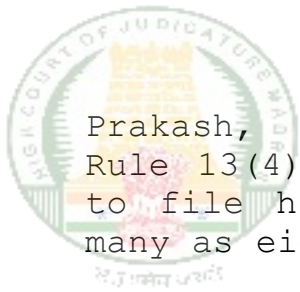
Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus calling for the entire records pertaining to the impugned order passed by the respondent vide his proceedings in G.O.(Ms).No.71, Law(Administration) Department, dated 16.02.2016 and quash the same and consequently direct the respondent to include the petitioner's name as a Notary in the City limit of Tiruchirappalli in the Register of Notaries maintained by the Government under Section 4 of the Notaries Act, 1952, within a stipulated period as prescribed by this Court.

For Petitioner	: Mr.R.Aravind Raj
For Respondent	: Mr.J.Gunaseelan Muthaiah, Government Advocate

ORDER

This Writ Petition has been filed challenging the order passed by the respondent vide proceedings in G.O.(Ms).No.71, Law (Administration) Department, dated 16.02.2016 and quash the same and to consequently direct the respondent to include the petitioner's name as a Notary in the City limit of Tiruchirappalli in the Register of Notaries maintained by the Government under Section 4 of the Notaries Act, 1952, within a stipulated period.

2.According to the petitioner, he is a practising Advocate attached with the Trichirappalli District Bar Association and he was authorised to practice as a Notary in the city limit of Tiruchirappalli for a period of five years with effect from 23.10.2000 and thereafter, the same has been periodically renewed. Subsequently, based on a complaint given by one Mrs.Harini



Prakash, a show-cause notice was issued to the petitioner under Rule 13(4) of the Notaries Rules, 1956, directing the petitioner to file his written statement. According to the petitioner, as many as eight charges have been levelled against him as follows:

1. The seal of the Notary should be 5 cms as per the Rule, but the seal in the document (Sale Agreement) does not show the same.

2. The respondent/Notary, Thiru.P.Kannappan, has attested by noting down the place as Ariyalur as per the copy of the document attached with the complaint.

3. His Serial Number is 1434, during the year 2009. But he has noted the number as 337/95 in the document.

4. The Serial Number of the Notarial Register has not been written in the document in which he attested.

5. Receipt for payment of fees has not been provided.

6. Maintaining of Board denoting the place of service and the fees prescribed.

7. Address in the Gazette varies to the address noted in the document.

8. Maintenance of Notarial Register in Form No.XV.

3. The petitioner has also filed a written statement disputing the above allegations. Subsequently, the matter was referred to the Principal District Judge, Tiruchirappalli District, who is the competent Authority to conduct an enquiry under Rule 13(6) of the Notaries Rules, 1956, wherein the petitioner appeared for the enquiry and disputed the charges levelled against him. But, without considering all these objections properly, the competent authority filed a report before the respondent holding that except the second charge, namely even though the petitioner was permitted to attest document in Trichy District, he attested the document, which was executed in Ariyalur and the other charges are proved and based on the report submitted by the competent authority, now the respondent passed an order under Section 13(12)(b)(i) of the Notaries Rules, cancelling the Certificate of Practice issued in favour of the petitioner and removing the name of the petitioner as a Notary in the City limit of Tiruchirappalli. Aggrieved by the said order, the petitioner has filed this Writ Petition.



4. The respondent filed a detailed counter affidavit stating that the competent Authority, namely, the Principal District Judge, Tiruchirappalli, after conducting enquiry, filed a report holding that except one charge, all other charges were proved and after carefully considering the report and on due application of mind, the punishment was imposed on the petitioner.

5. In the counter-affidavit, it is further stated that the negligence on the part of the petitioner, cannot be treated as an excuse for erring notaries and the negligence can also come well within the ambit of professional misconduct and even according to the learned Principal District Judge, Tiruchirappalli, the petitioner did not maintain the Notarial Register and the same can be termed as negligence. In the above circumstances, the punishment of cancellation of the Certificate of Practising as a Notary, was awarded in accordance with the gravity of offence.

6. I have heard the submissions made on either side and perused the materials available on record.

7. A perusal of the charges levelled against the petitioner discloses that the violations, namely, not maintaining the seal in a proper measurement and also not maintaining the Notarial records properly etc., are minor violations and the same cannot be construed as negligence and it is a violation of mandatory requirements. Even the competent Authority considering the explanation submitted by the petitioner and after thorough enquiry held that all the other charges are proved against the petitioner.

8. In the above circumstances, there is no reason to interfere with the report filed by the respondent. But, insofar as the punishment is concerned, now vide the impugned order, the petitioner's licence has been cancelled and his name has been removed from the list of Notaries in the City limit of Tiruchirappalli in the Register of Notaries maintained by the Government, taking into consideration that all the charges levelled against the petitioner are not serious in nature, major punishment of cancellation is not required. Hence, the punishment imposed on the petitioner is totally disproportionate to the charges levelled against the petitioner.

9. Therefore, this Court is inclined to modify the punishment from cancellation of the certificate of practice into a suspension of certificate of practice. Since the petitioner was suspended from 16.02.2016 till date and the same can be treated as period of punishment.



10. In the result, this Writ Petition is partly allowed and the punishment of cancellation of certificate of practice is modified into suspension of certificate of practice for the period of suspension already undergone. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar

To

The Secretary to the Government,
Law (Administration) Department,
Secretariat,
St. George Fort,
Chennai.

+1cc to Mr.R.Aravind Raj, Advocate SR.No.73743/16
+1cc to special Government Pleader SR.No.73992/16

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W.P (MD) No.9948 of 2016
29.11.2016