IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WRIT PETITION No.10469 of 2015
and
M.P. No. 1 of 2015
and
W.M.P.No. 22406 of 2016 & 15549 of 2017

M.Janaki ... Petitioner

Vs.

1. The Additional Director of Survey & Land Records,
   Survey House, Chepauk, Chennai - 600 005.

2. The Regional Deputy Director of Survey & Land Records,
   Coimbatore.

3. The Assistant Director of Survey & Land Records,
   Coimbatore.

4. The Assistant Director of District Employment Office,
   Coimbatore. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Notification issued in Roc.No.A8/1954/2015 dated 10.03.2015 by the third respondent and quash the same and to issue consequential direction to the third respondent to regulate the petitioner's appointment.

For Petitioner : Mr.M.Gnanasekar
For Respondents : Mr.C.C.Rangarajan
Government Advocate

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O R D E R

The show cause notice Na.Ka.No.A8/1954/2015 dated 10th March 2015 is under challenge in this writ petition.

2. The order of cancellation of regularisation dated 9th March 2015 is also under challenge. It is pertinent to note that the services of the writ petitioner were regularised and subsequently, it was found that the rules relating to the

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regularisation contemplated in G.O.Ms.No.142, Personnel and Administrative Reforms Department, dated 14.10.2009 and G.O.Ms. No.55, (Personnel and Administrative Reforms Department), dated 08.04.2010 had not been followed. Thus, the Assistant Director has cancelled the regularisation granted holding that there was an irregularity while ordering for regularisation. Consequent to the cancellation of regularisation order in proceedings dated 9th March 2015, a show cause notice was issued to the writ petitioner in notice dated 10th March 2015. On receipt of the notice the writ petitioner submitted his explanation on 19th March 2015. At this stage, the present writ petition was moved challenging both the cancellation of regularisation as well as the show cause notice.

3. At this stage it need not be entertained by this Court in view of the fact that the explanation was already submitted by the writ petitioner and it is for the competent authority to consider all the merits and demerits and the grounds /objections submitted by the writ petitioner and take a final decision in this regard. Even before such an exercise is done by the competent authority, the writ petitioner has moved this writ petition only to protract and prolong the issue. The show cause notice issued based on the order of cancellation of regularisation is to be allowed to reach its logical conclusion. This Court under Article 226 of the Constitution of India, at this stage, more so, in the stage of show cause notice, cannot adjudicate the matter on merits. It is for the competent authority to consider the merits and pass orders on the show cause notice. Every competent authority, who initiated one or the other proceedings under the rules, should be allowed to consider the merits and demerits and take a decision. Intermediate intervention in such matters are not desirable.

4. Show cause notice can be challenged on the limited grounds of jurisdiction, incompetency and malafides and if the same is in violation of statutory rules. In the case of raising an allegation of malafides, the authority against whom such an allegation is raised is to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any one of these legal grounds, no writ can be issued against the show cause notice.

5. In the case on hand pursuant to the show cause notice, an explanation was also submitted by the writ petitioner and therefore, it is for the competent authority to consider all the documents and the grounds raised in the explanation in accordance with Rules. By obtaining an interim order in this writ petition, the petitioner is continuing in service for about 2 years.

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6. Under these circumstances, further continuance by virtue of an interim order granted in this writ petition is absolutely undesirable. The Court has to allow the competent authority to take a decision in accordance with law. Intermediate intervention has to be exercised cautiously and cannot be done in a routine manner. Judicial review against the show cause notice under Article 226 of the Constitution of India is certainly limited.

7. The learned counsel appearing for the writ petitioner contended that the rules had not been followed and the authorities has not considered the grounds /objections applicable under the rules and it is not the fault of the writ petitioner. All such explanation /objections are raised in the explanation submitted by the writ petitioner and it is for the competent authority to consider all those objections in accordance with law.

8. Thus, this Court is of the clear opinion that no further adjudication on merits in this writ petition at this stage needs to be undertaken and accordingly the writ petition stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are also closed.

-s/d-
Assistant Registrar(CS-J)

True Copy

Sub-Assistant Registrar

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To

1. The Additional Director of Survey & Land Records,
   Survey House, Chepauk, Chennai - 600 005.

2. The Regional Deputy Director of Survey & Land Records,
   Coimbatore.

3. The Assistant Director of Survey & Land Records,
   Coimbatore.

4. The Assistant Director of District Employment Office,
   Coimbatore.

+1 CC to Mr.M. Gnanasekaran, Advocate sr 56475
+1 CC to Govt. Pleader sr 57448.

W.P. No.10469 of 2015

SP(28/08/2017)

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