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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2018

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.13081 of 2016

Dr.V.A.Gunasekaran

.. Petitioner

-vs-

The Chairman
Chennai Port Trust
Rajaji Salai
Chennai 600 001

.. Respondent

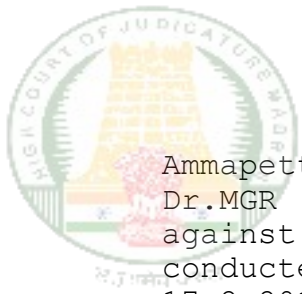
Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records viz., order dated 14.3.2016 Memorandum dated 14.3.2016 and Annexure IV in No.V1/ 3063/2012/Vig on the file of the respondent dated 14.3.2016 and quash the same and further directing the respondent to pass order based on the earlier reply examination of witnesses, written reply, written argument and inquiry reports dated 20.9.2014 and 11.3.2015.

For Petitioner : Mr.A.Ganesh

For Respondent : Mr.G.Rajagopalan
Additional Solicitor General
assisted by Mr.P.M.Subramaniam
Standing Counsel

ORDER

Dr.V.A.Gunasekaran, while working as Senior Medical Officer in Chennai Port Trust, was issued with the charge memo dated 23.1.2013 under Regulation 12 of the Chennai Port Trust Employees' (Classification, Control and Appeal) Regulations, 1988 with the articles of charges alleging violation of Regulation 3(1)(i) and 12 of the Chennai Port Trust Employees' (Conduct) Regulations, 1987. The same was also served on him on 29.1.2013 levelling various allegations that while he was functioning as Senior Medical Officer, during the year 2010, failed to maintain integrity and fraudulently engaged in private employment violating Regulation 3(1)(i) and 12 of the Chennai Port Trust Employees' (Conduct) Regulations 1987, while working in Sri Sathya Sai Medical College and Research Institute,



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Ammapettai, Nellikuppam, which is also affiliated to Tamil Nadu Dr.MGR Medical University. One of the allegations levelled against the petitioner also shows that when an inspection was conducted by the Medical Council of India on 16.2.2010 and 17.2.2010 at Sri Sathya Sai Medical College and Research Institute, Dr.V.A.Gunasekaran was present as the permanent doctor/Assistant Professor of the said medical institution. Finally, the enquiry officer also submitted a report on 20.9.2014 with the conclusion that there is no proper evidence to prove the presence of the charged officer, the petitioner herein in the MCI inspection conducted on 16th and 17th February, 2010 at Sri Sathya Sai Medical College and Research Institute, that there is no proper evidence to prove the CO's signature, that the prosecution witnesses such as P.Ws.2,3,4,6 & 7 have not attended the enquiry proceedings to give their evidence, that there is no proof of money exchanged to the CO, that there is no recovery of money from the CO and that there is no proof that the CO indulged in private employment. On this basis, the enquiry officer gave a finding that the articles 1,2 & 3 are totally baseless and not proved. This was examined by the disciplinary authority, the Chairman, Chennai Port Trust and in his order dated 15.12.2014, finding that the findings given by the enquiry officer that P.Ws.2,3,4,6 & 7 failed to attend the enquiry proceedings who are the relevant witnesses, ordered for fresh enquiry appointing one Mr.P.Shanmuganathan, Chief Mechanical Engineer as the enquiry officer. Again the enquiry officer who conducted enquiry submitted a report on 11.3.2015, finding that the prosecution witnesses such as P.Ws.2,3,4,6 & 7 are irrelevant witnesses, holding that Dr.V.A.Gunasekaran, the Charged Officer has maintained absolute integrity, as a result finally held that the articles 1 to 3 are totally baseless and not proved. This report was again examined by the disciplinary authority, the Chairman, Chennai Port Trust and in his order dated 14.3.2016, finding that some of the relevant documents have not been gone into by the second enquiry officer also, again ordered for the third enquiry. Challenging the same, the petitioner has come to this Court seeking to quash the same with a consequential direction to the respondent to pass orders on the basis of the earlier reply, examination of witnesses and the enquiry reports dated 20.9.2014 and 11.3.2015.

2. Learned counsel for the petitioner submitted that the three allegations made against the petitioner were repeatedly gone into by the enquiry officers. Both of them submitted their enquiry reports dated 20.9.2014 and 11.3.2015 before the disciplinary authority, who, after going through the second enquiry report also, cannot again infinitely order for a third enquiry to be proceeded against the petitioner on the same set of charges, documents and evidences. The petitioner also is prepared to put in his papers seeking voluntary retirement from



the services of the Chennai Port Trust, as they are also not reposing any trust and evidence. Therefore, if a direction is given to consider his representation on the basis of the reports dated 20.9.2014 and 11.3.2015, the evidences placed by both sides, the explanation offered by the petitioner, no prejudice would be caused to the respondent.

3. The learned Additional Solicitor General appearing for the respondent submitted that the main allegation put against the petitioner shows that the petitioner was present at the time of inspection in Sri Sathya Sai Medical College and Research Institute, Ammapettai, Nellikuppam on both days, namely, 16.2.2010 and 17.2.2010. When a case in R.C.No.34(A)/2010 was initially registered against Mr.M.K.Rajagopalan, Chairman, Sri Balaji Educational and Charitable Public Trust, Chennai and three others on 24.9.2010 for commission of certain irregularities pertaining to the second renewal permission, an inspection was conducted by the Medical Council of India on 16/17.2.2010. On completion of the investigation, among others, it was revealed that Dr.V.A.Gunasekaran, while working in the Chennai Port Trust Hospital, Chennai appeared for the MCI inspection without prior intimation and authorisation from the competent authority on 16/17.2.2010 availing leave along with other 26 doctors. This has been noticed and a report also was submitted by the Head of the Branch, CBI-ACB, Chennai on 25.9.2012. Moreover, a declaration form 2010-11 indicating that Dr.V.A.Gunasekaran whose date of birth is 7.8.61 aged about 49 years issued by Sri Sathya Sai Medical College and Research Institute was also placed before the enquiry officer. For the reasons best known to him, it was not properly considered. Even two form no.16, one issued by the Chennai Port Trust and the second issued by Sri Sathya Sai Medical College and Research Institute were also produced before the enquiry officer along with cash payment voucher issued by Sri Sathya Sai Medical College and Research Institute on 5.3.2010 indicating that the petitioner has also received a sum of Rs.39,296/-. This is also supported by the list of names who were appointed and continuously working in Sri Sathya Sai Medical College and Research Institute, Nellikuppam for the academic year 2010-11, in which the name of the petitioner also has been shown in Serial No.13. It is not known how that document also has not been properly considered. For all these reasons, the disciplinary authority, the Chairman, Chennai Port Trust has rightly directed the matter to be properly gone into by appointing the third enquiry officer. Since the petitioner has come to this Court questioning the third enquiry and asks for a direction to the Chairman, Chennai Port Trust to consider the available evidences, namely, the charge memo, reply filed by the petitioner, findings given by the enquiry officers' and other documents placed before the enquiry officer and finally pass an



order either agreeing or disagreeing with the report of the enquiry officer, the petitioner shall not make an objection that the disciplinary authority ought not to have differed from the findings of the enquiry officer.

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4. In reply, the learned counsel for the petitioner also submitted that if the disciplinary authority, on the basis of the report of the enquiry officer, explanation offered by the petitioner and the evidences placed before the enquiry officer, arrives at a conclusion, the petitioner will not raise any objection.

5. Recording his statement, this Court hereby directs the respondent-Disciplinary Authority to consider the report of the enquiry officer along with the explanation offered by the petitioner to the three charges and other evidences placed before the enquiry officer, in the light of Regulation 13 of the Chennai Port Trust Employees' (Classification, Control and Appeal) Regulations, and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai 600 001.

+1 cc to Mr.A.Ganesh, Advocate Sr.No.84329

+1 cc to Mr.P.M.Subramanian, Advocate Sr.No.84618

W.P.No.13081 of 2016

JP(CO)
CSL/30.01.2019