

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.08.2017

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.19680 and 19681 of 2017
and
WMP.Nos.21234 and 21235 of 2017

Sekar ... Petitioner
in both writ petitions

Versus

The Deputy Inspector General of Police
Coastal Security Group
Chennai 4. ... Respondents
in both writ petitions

Prayer: W.P.No.19680 of 2017 Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari to calling for the records relating to the order passed by the respondent in reference C.No.A1/1183/CSG/2014/CSGO.No.88 of 2017 dated 28.06.2017 and quash the same as invalid, illegal and unauthorized.

Prayer: W.P.No.19681 of 2017 Petition filed under Article 226 of the Constitution of India, praying for the issuance of writ in the nature of declaration and declaring that the show cause notice issued by respondent in RC.No.1183/A1/CSG/2014 dated 30.06.2017 is invalid and against the principles of natural justice.

For Petitioner in
both Writ petitions : Mr.A.Sirajudeen
Senior Counsel for
M/s.R.Rajamani

For Respondent in
both Writ Petitions : Mr.C.C.Ranga Rajan
Government Advocate

C O M M O N O R D E R

The writ petitioner was holding a post of Inspector of Police and challenging the order of suspension and show cause notice is moved.

2. Mr.A.Sirajudeen, the learned Senior Counsel appearing on behalf of the writ petitioner contended that the show cause notice issued by the respondent in proceedings dated 30.06.2017 is infirm, since the penalty of dismissal from service is proposed in the show cause notice. Thus, the disciplinary authorities have already decided the punishment even before considering the explanations to be submitted on the show cause notice. Thus the right of delinquent is deprived of and such an explanation needs to be considered by the disciplinary authority.

3. The writ petitioner was charged with an offence under the provisions of Prevention of Corruption Act, and a criminal case was registered against the writ petitioner in CC.No.19 of 2014 dated 23.05.2017, and after trial the judgment was delivered imposing sentence of one year Rigorous Imprisonment with a fine of Rs.5,000/- in default to undergo six months Simple Imprisonment and two years Rigorous Imprisonment with a fine of Rs.10,000/- in default to undergo Simple Imprisonment of one year. Thirdly, one year Rigorous Imprisonment with a fine of Rs.2,000/- and in default to undergo three months of Simple Imprisonment. The writ petitioner was convicted in three counts and the punishment of Rigorous Imprisonment was imposed and on receipt of the order of conviction, the respondents have initiated disciplinary action and placed the writ petitioner under suspension in proceedings dated 28.06.2017 and thereafter issued a show cause notice on 30.06.2017, providing the opportunity to the writ petitioner to submit his explanations/objections, with regard to the imposition of penalty under the Disciplinary and Appeal Rules.

4. The learned Senior Counsel for the writ petitioner contended that the Police Standing Orders 66 speaks about punishment after conviction, which is extracted hereunder:

66. Punishment after conviction:-(1) A Police Officer convicted of an offence involving moral turpitude and sentenced to undergo imprisonment shall ordinarily be dismissed or removed from service. In cases where a Police Officer is convicted and sentenced to undergo imprisonment for an offence not involving moral

turpitude, he may be compulsorily retired from service by the competent authority. (G.O.Ms.No.1534, Home, dated 25th May 1956).

5. On reading of the said provision, it is unambiguous that a Police Officer convicted and sentenced to undergo imprisonment shall be removed.

6. The learned counsel for the writ petitioner, further contended that the ordinarily used provision should be interpreted as if an amount of discretion is allowed to be exercised by the disciplinary authorities and such discretion shall be exercised after receiving the explanations/objections from the writ petitioner, but not otherwise.

7. This Court is unable to show cause notice such in provision in view of the fact that the punishment on dismissal or removal is the only punishment prescribed in the said standing Order No.66, without the punishment of dismissal or removal alone can be imposed. If the public servant was convicted for offence in following moral turpitude, authorities have not open or otherwise to choose any other punishment contemplated under the Discipline and Appeal Rules. This Court is of the clear opinion that there cannot be any second punishment other than that of the punishment of removal or dismissal. Thus the discretion, even on the part of the disciplinary authority, to impose any other punishment other than removal or dismissal.

8. Questioning of consideration, the explanations/objections are only with regard to the truth of conviction and judgment issued by the criminal Court in this regard if the fact regarding the conviction is accepted and the disciplinary authority has not opened, but to impose the penalty of dismissal or removal.

9. In this view of the matter the argument advanced with regard to the interpretation, standing Order No.66 needs no further consideration.

10. The disciplinary authority, on receipt or on getting knowledge about the conviction of the writ petitioner, has initiated the disciplinary proceedings rightly and there is no

irregularity on that. The order of conviction was very well stated in the order of suspension dated 28.06.2017. Pursuant to that the show cause notice was issued on 30.06.2017, requesting the writ petitioner to submit his explanations /objections. Responding to the same, the writ petitioner submitted his explanation on 30.06.2017. Now, it is for the respondent to consider all these aspects based on the materials available on record and pass final order based on the disciplinary proceedings and under the provision of law.

11. This being the procedure to be adopted, this Court is of the opinion that there is no infirmity either in the order of suspension or in the proceedings of show cause notice. Accordingly, the writ petitions deserve no further consideration and it is left open to the respondent to pass appropriate order for disciplinary proceedings initiated under the discipline and Appeal Rules. In this view of the matter, no further consideration is to be shown on the ground raised in this writ petitions and accordingly the writ petitions stand dismissed. Consequently, connected Miscellaneous Petitions are closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

dna

To

The Deputy Inspector General of Police
Coastal Security Group सत्यमेव जयते
Chennai 4.

+1 cc to the Government Pleader sr 55765
+2 ccs to M/s.R.Rajamani Advocate sr 54750

W.P.No.19680 and 19681 of 2017

rk(co)
aa13/09/2017