

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WRIT PETITION No.38115 of 2016

and

W.M.P.No.32670 of 2016

and

W.M.P.No.751 of 2017

V.Srinivasan

... Petitioner

Vs.

1. Union of India,
Rep by its Secretary,
Ministry of Culture,
Shastri Bhavan,
New Delhi - 110 115.

2. The Chairman,
Governing Board,
Kalakshetra Foundation, A-1, Uttarvedi,
No.7, Second Seaward Road,
Valmiki Nagar,
Thiruvannamiyur,
Chennai - 41.

3. The Director,
Kalakshetra Foundation A-1,
Uttarvedi,
No.7, Second Seaward Road,
Valmiki Nagar,
Thiruvannamiyur,
Chennai - 41.

4. The Kalakshetra Foundation,
Rukmani Devi College of Fine Arts,
Thiruvannamiyur,
Chennai - 41.

5. Chief Vigilance Officer,
Ministry of Culture,
Shastri Bhavan,
New Delhi - 110 115.

...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of

the 3rd Respondent dated 12.09.2016 in No.KF/vig/2016 and quash the same.

For Petitioner :Mr.Krishna Prasad R

For Respondents :M/s.S.Meenakumari
for R1
Mr.Karthik mukundan
for R2 to R4
Mr.P.Saravanan
for R5

O R D E R

The memorandum dated 12th September, 2016 is under challenge in this writ petition.

2. On perusal of the memorandum, it is clear that on account of certain informations regarding the allegations against the writ petitioner, a preliminary enquiry was conducted by the competent authorities namely, the Central Vigilance Commission and pursuant to the reports submitted by the Central Vigilance Commission, a impugned memorandum was issued by the 3rd respondent in this writ petition dated 12th September, 2016, directing the writ petitioner to submit his explanations for the omissions and commissions for the lapses detailed in the memorandum within a period of 15 days from the date of receipt of a copy of the memorandum. Even before, submitting their explanations/objections to the memorandum, the writ petitioner has moved this writ petition under Article 226 of the Constitution of India.

3. The learned counsel appearing for the writ petitioner contended that the Head of the Department has to issue the memorandum. Contrarily, the director has issued the memorandum.

4. The learned counsel appearing for the respondent rebutting the contention stated that the Director is the Head of the institution and moreover, he is the appellate authority under the rules. Thus, the memorandum issued by the Director is well within his Jurisdiction and the point raised in this writ petition is erroneous and contrary to the rules of the respondent Foundation.

5. Thereafter, the learned counsel for the writ petitioner contended that the allegations set out in the memorandum are false and in fact, the respondents came to the conclusion with regard to the commissions and omissions alleged to have been stated in the memorandum without any enquiry.

6. On a perusal of the memorandum, the argument advanced by the learned counsel for the petitioner is incorrect since a preliminary enquiry was conducted by the Central Vigilance Commission and based on the report, had come to the conclusion that there is a prima facie case, and the memorandum was issued against the writ petitioner directing him to submit his explanations.

7. The argument advanced that the memorandum impugned was issued after taking a decision cannot be accepted, in view of the affidavit filed by the 3rd respondent on 6th November, 2016. In paragraph 24 of the affidavit, the position regarding the memorandum is clarified which is extracted hereunder:

"24. Insofar as Ground(b) is concerned, the same is untenable. The contention of the Petitioner is based on an erroneous premise that the impugned Memorandum is a disciplinary proceeding initiated under the disciplinary rules(i.e) CCS (CCA) Rules, 1965. In fact, it is a stage prior to that. The impugned memorandum has been issued in exercise of the disciplinary control which the 3rd Respondent has over its employees and it is a fact finding exercise so as to arrive at a proper decision with regard to further course of action which includes initiation of disciplinary proceedings under the disciplinary rules. By issuance of the show cause notice neither any prejudice has been caused nor has any substantive right of the Petitioner been violated."

8. No writ petition is to be entertained against a show cause notice except on the ground of Jurisdiction, incompetency or on mala fides. Even in case of raising the allegations of mala fides, the authority against whom, the allegation is raised is to be impleaded as a party in writ proceedings, in his personal capacity. In the absence of any of these legal grounds, no writ will lie against a show cause notice under Article 226 of the Constitution of India. The writ petition against a show cause notice shall be entertained only under exceptional circumstances and not in a routine manner.

9. All such disciplinary proceedings initiated against public servants has to be proceeded in accordance with the rules and a logical conclusion has to be arrived at. Intermittent intervention in disciplinary proceedings are not preferable.

10. The learned counsel for the respondents states that the disciplinary proceedings have not even commenced and before initiation of disciplinary proceedings, the respondents thought

it fit to issue the impugned memorandum to get explanation from the writ petitioner, so as to take a decision whether any disciplinary proceedings can be initiated or not. Thus, the memorandum was issued only with an idea to provide an opportunity to the writ petitioner to explain his stand on the set of allegations stated in the memorandum.

11. Such being the legal factum of this case, the filing of the writ petition challenging the memorandum, is absolutely misconceived and no further adjudication is required in this writ petition.

12. Accordingly, the writ petition stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

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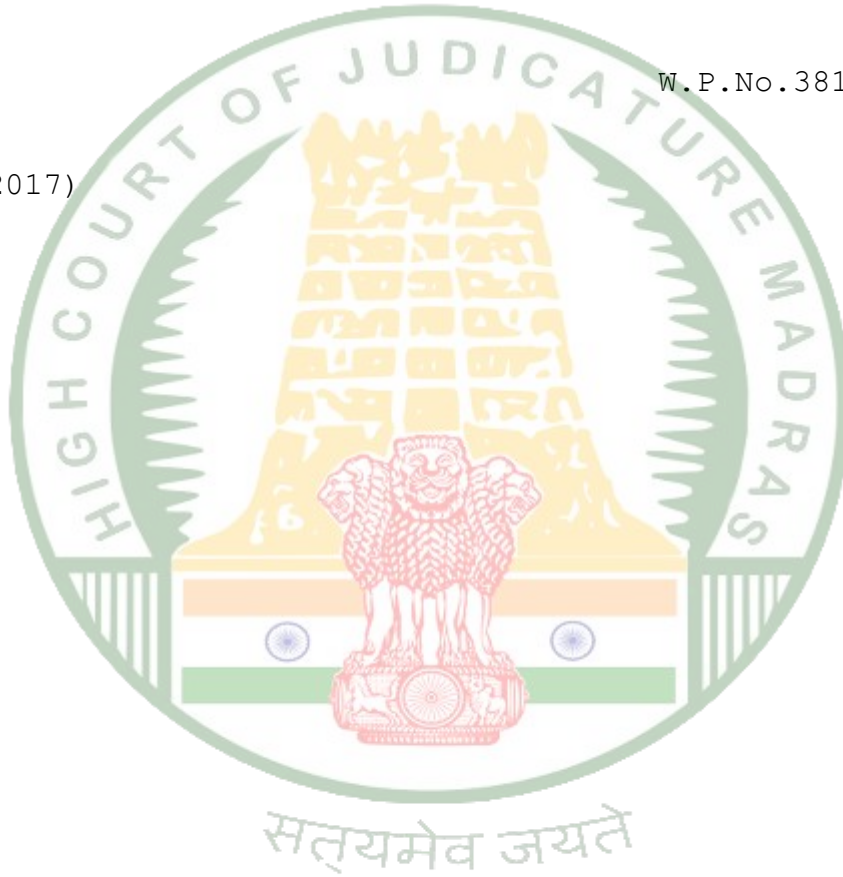
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New Delhi - 110 115.

+lcc to Mr.S.Meena Kumari, Advocate SR.No.55531
+lcc to Mr.Krishnaprasad, Advocate SR.No.55833

W.P.No.38115 of 2016

PVS (CO)
GN(03/10/2017)



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