

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.04.2018

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.11083 of 2014

and

M.P.No.1 of 2014

and

W.M.P.No.No.24479 of 2017

C.Shanmugam ... Petitioner

-Vs-

1. The Inspector General of Registration,
Registration Department,
No.100, Santhome High Road,
Chennai - 600 028.
2. The Commissioner of Disciplinary Proceedings,
Tribunal for Disciplinary Proceedings,
1st Floor, Kuralagam, Chennai - 600 108.
3. The District Registrar,
Cheyyar Registration District,
Registration Department,
Cheyyar (Post),
Thiruvannamalai District,
Pincode - 604 407. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order of the 1st respondent bearing No.9266/V2/2010-3 dated 12.02.2014 quash the same and directing the 1st respondent to reconsider the entire matter as per law after granting an opportunity to the petitioner.

For Petitioner	: Mr.V.Raghupathi
For Respondents	: Mr.J.Ramesh
	Government Advocate

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O R D E R

The second show cause notice issued by the first respondent in proceedings dated 12.02.2014 is under challenge in this writ petition.

2.The writ petitioner was appointed in the Registration Department on 24.10.1985. When the petitioner was working as Junior Assistant in the office of the Sub-Registrar, Arani, Thiruvananthapuram District, an allegation of demand and acceptance of bribe was brought to the notice of the authorities concerned. Accordingly, disciplinary proceedings were initiated against the writ petitioner.

3.A charge memo was issued by the second respondent in proceedings dated 04.08.2011. Since, the allegations are in relation to the corrupt activity, the case was referred to the Tribunal for disciplinary proceedings under the rules. Accordingly, the Tribunal for disciplinary proceedings registered the case of the writ petitioner in Chennai Tribunal for Disciplinary Proceedings Case No.11/2011 and proceeded with the enquiry. The Final report was submitted on 29.10.2013. Based on the findings of the Tribunal for disciplinary proceedings, the respondents issued the second show cause notice in proceedings dated 12.02.2014, seeking further explanations/objections on the enquiry report.

4.The impugned notice dated 12.02.2014 states that the disciplinary authority agrees with the findings of the Tribunal for disciplinary proceedings, insofar as it relates to the charges and the reasons stated. Accordingly, the enquiry report was enclosed along with the copy of the impugned notice dated 12.02.2014, seeking further explanations/objections from the writ petitioner. Instead of submitting explanations/objections on the enquiry report, the petitioner has chosen to file the present writ petition on the ground that the procedures contemplated under Rule 9 has not been followed and further, there is a pre-determination of mind on the part of the respondents in accepting the findings of the Tribunal for the disciplinary proceedings.

5.The grounds raised in this writ petition is that no independent witness was examined. Further, charge-IV and V alone are connected with the writ petitioner and the other charges are no way connected with the writ petitioner. This apart there was no action in respect of other persons from whom the alleged amounts seized by the vigilance police. Therefore, they have discriminated the writ petitioner alone and implicated the persons at their whims and fancies.

6.This Court is of an opinion that the allegations and the grounds set out in the writ petition are in relation to the merits of the case and the writ petitioner had already participated in the enquiry proceedings conducted by the Tribunal for disciplinary proceedings, before the Tribunal for disciplinary proceedings, the writ petitioner had defended his case and completely participated in the process of adjudication.

7.This being the factum of the case, the present writ petition cannot be entertained based on the merits raised in this writ petition. It is for the disciplinary authorities to consider all the discrepancies, if any, in the enquiry report, based on the objections to be submitted by the writ petitioner and pass orders on merits and in accordance with law.

8.No writ petition can be entertained against the second show cause notice in a routine manner. Judicial review against the second show cause notice is certainly limited. A writ proceedings can be entertained if the show cause notice was issued by an authority having no jurisdiction or incompetency or allegation of mala fides. Even in the case of rising the allegation of mala fides, the authority, against whom, such an allegation is raised, has to be impleaded as a party in the writ proceedings in his personal capacity. Even a show cause notice was issued in violation of the statutory rules then also a writ can be filed in the absence of any of this ground. No writ petition can be entertained against the second show cause notice issued for the purpose of providing an opportunity to the writ petitioner to raise his objections and to submit his explanations, in respect of the findings made in the enquiry report.

9.In the present writ petition, the writ petitioner has explained the merits of the matter and challenged the second show cause notice. This Court at this stage cannot consider the merits and demerits of the matter. It is left open to the Competent Authorities to consider all the materials available on records and pass an order after receiving the explanations/objections from the writ petitioner on the enquiry report and pursuant to the show cause notice issued.

10.In this view of the matter the grounds raised in this writ petition in relation to the merits of the allegations cannot be entertained by this Court. It is left open to the writ petitioner to submit his explanations/objections on the enquiry report and thereafter, the disciplinary authority is at liberty to conclude the proceeding in all respects and pass orders.

11.The learned counsel for the writ petitioner made a submission that the final order is to be passed within a time frame. This Court is of an opinion that the writ petition was filed on 15.04.2014 and kept pending for about three years at the instance of the writ petitioner. However, taking note of the seriousness involved in the disciplinary proceedings, this Court is of the opinion that the final order in the disciplinary proceedings is to be passed as early as possible and preferably within a period of twelve weeks from the date of receipt of a copy of this order.

12.Accordingly, the writ petition stands disposed of. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

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3. The District Registrar,
Cheyyar Registration District,
Registration Department,
Cheyyar (Post),
Thiruvannamalai District,
Pincode - 604 407.

+lcc to Mr.V.RAGHUPATHI, Advocate, S.R.No. 28813
+lcc to the Government Pleader, S.R.No. 28882

W.P.No.11083 of 2014

GJ (CO)
TR(04/05/2018)