

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-04-2018

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11499 of 2018

And

W.M.P. No.13444 of 2018

R.Marimuthu

.. Petitioner

Vs.

1.The State Represented by
The Principal Secretary,
Police Department,
The Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.

2.The Inspector General of Police,
Armed Police,
Armed Police Head Quarters,
Lutheral Garden,
Kilpauk,
Chennai-600 010.

3.The Deputy Inspector General of Police,
Armed Police,
Armed Police Head Quarters,
Lutheral Garden,
Kilpauk,
Chennai-600 010.

4.The Commandant,
TSP, III Batttalion,
Veerapuram,
Chennai-600 055.

5.Assistant Commandant-I
and Enquiry Officer,
TSP, XIII Battalion,
Vaishinavi Nagar,
Chennai-600 109.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, calling for the records in the orders passed in Bn.PR.No.40 u/r 3(aa) dated 1.11.2017 passed by the fifth respondent and quash the same as illegal and incompetent.

For Petitioner : Mr.N.R.P.Ayyanar

For Respondents: Mr.V.Kadhirvelu,
Special Government Pleader.

O R D E R

The second show cause notice issued against the writ petitioner in proceedings dated 1.11.2017, enclosing the copy of the enquiry report of the Enquiry Officer is under challenge in this writ petition.

2. The writ petitioner is now working as Sub-Inspector of Police in Tamil Nadu Special Police III Battalion. On account of certain allegations, a criminal case was registered against the writ petitioner in FIR No.1661 of 2017 dated 1.8.2017. A case was registered under Sections 498(A), 495, 294(b), 323, 506(1) of IPC and Section 4 of Dowry Prohibition Act and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. During the pendency of the criminal case, the departmental disciplinary proceedings were initiated against the writ petitioner and a charge memo was issued. The writ petitioner had submitted his explanations and a domestic enquiry was conducted.

3. The Enquiry Officer submitted his Final Report on 1.11.2017, enclosing the copy of the enquiry report, the Disciplinary Authority issued a second show cause notice in proceedings dated 11.12.2017, directing the writ petitioner to submit his further representation, within a period of 15 days from the date of the Minutes. Instead of submitting his further explanations, the writ petitioner has chosen to move the present writ petition, challenging the very second show cause notice issued by the Disciplinary Authority.

4. The learned counsel, appearing on behalf of the writ petitioner, states that the findings of the Enquiry Officer is unconstitutional on the ground that he has not furnished the findings based on the evidences and the records. Contrarily, the findings are given based on certain presumptions and assumptions. Therefore, such a report cannot form a basis for the purpose of imposing the punishment. In view of this fact, the Final Report itself is liable to be scrapped.

5. This Court is of an opinion that no writ petition can be entertained against the second show cause notice, providing an opportunity to the delinquent to submit his further representation in respect of the findings of the Enquiry Officer. Judicial review against the second show cause notice issued by the Disciplinary Authority is certainly limited. The

authority competent on initiation of departmental disciplinary proceedings shall be allowed to continue the same and conclude in all respects and to pass final orders. A writ against a show cause notice shall be entertained by this Court under Article 226 of the Constitution of India. If such show cause notice is issued by an authority having no jurisdiction or if allegation of mala fides are raised or if the same is in violation of statutory rules in force. 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. In the absence of any one of these legal grounds, no writ proceedings can be entertained against the show cause notice and provide an opportunity to the writ petitioner to submit his further representation in respect of the findings of the Enquiry Officer in the enquiry report.

6. In the present case, the writ petitioner is already facing the criminal case which is now pending before the Competent Court of Law. Further, the departmental disciplinary proceedings initiated against the writ petitioner is now concluded and the Disciplinary Authority on receipt of the further explanation from the writ petitioner has to pass final orders in the departmental disciplinary proceedings.

7. Thus, the present writ petition is not only premature but also the writ petitioner has not established any legal grounds, so as to entertain the present writ petition, challenging the show cause notice issued for the purpose of providing further opportunity to the writ petitioner to submit his explanations/objections in respect of the enquiry report.

8. This being the factum of the case, it is left open to the writ petitioner to submit his further explanations/objections, if any, on the enquiry report and the authorities competent on receipt of such explanations/objections from the writ petitioner, are at liberty to take a decision and pass final orders in the departmental disciplinary proceedings without causing any undue delay. Thus, the writ petition is devoid of merits and it stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

Svn

To

- 1.The Principal Secretary,
Police Department,
Government of Tamil Nadu,
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+1cc to Mr.N.R.P.AYYANAR, Advocate, S.R.No. 32624

WP 11499 of 2018

TR(09/05/2018)

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