

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.18070 of 2017
and W.M.P.No.19619 of 2017

Tmt.B.Thenmozhi

.. Petitioner

Vs.

1.The Chief Metropolitan Magistrate
Allikulam Complex
Egmore
Chennai.

2.The III Metropolitan Magistrate
George Town
Chennai - 600 001.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, to call for the records of the 1st respondent in Con.No.41A/2014A dated 27.04.2017 and consequently direct the 1st respondent to pass orders on the basis of the finding given by the learned XV Metropolitan Magistrate.

For Petitioner : Mr.V.Bhiman

For Respondents : Mr.Haja Mohideen Gisthi

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner herein is working as Grade II Bench Clerk. Charges have been framed against the petitioner on the ground that the original cheque was not found on the case bundle. Having found that the explanation is unsatisfactory, in pursuant to the charges framed, an Enquiry Officer was appointed. The Enquiry Officer exonerated the petitioner.

2. The Disciplinary Authority, on a perusal of the records including verification with the IV Metropolitan Magistrate,

factually informed that the petitioner was officiating as Bench Clerk in the Court of XVII Metropolitan Magistrate from 15.05.2012 to 10.04.2013 and therefore, the finding of the Enquiry Officer that as the petitioner joined duty only on 10.04.2013, she is entitled to be exonerated cannot be factually correct. Incidentally, it was found that based upon the above said factual finding, which according to the Disciplinary authority is wrong, the Enquiry Officer did not go into the further facts governing the case. Under those circumstances, a de novo enquiry was ordered, which is put into challenge.

3. Mr.V.Bhiman, learned counsel appearing for the petitioner would submit that Law does not provide for de novo enquiry. The petitioner was not informed of the reasons behind ordering de novo enquiry. Therefore, the order requests interference.

4. The learned counsel appearing for the respondents would submit that reasons have been recorded in the note file. The same is also have been incorporated in the counter affidavit. In view of the aforesaid note, what is required is for a further enquiry. Since the earlier Enquiry Officer has already given his finding, it deem it fit to appoint a new one, who was assisted by the Presenting Officer. Therefore, no interference is required.

5. Enquiry report given by the Enquiry Officer is meant to assist the Disciplinary Authority to come to a conclusion. In other words, it at best, a piece of evidence to be appreciated by the Disciplinary Authority. Now the Disciplinary Authority found that the report is not sufficient, as it was closed on the premise that the petitioner was not even serving at the relevant point of time. Therefore, to verify this fact, further report was called for and on that basis, further enquiry was ordered. Therefore, the Disciplinary Authority found that in as much as the enquiry report did not go into the factual aspects other than the one which was wrongly recorded, further enquiry was recorded. Though the order shows that de novo enquiry is required, it is nothing but a further enquiry. Since earlier Officer has given a report, it was thought fit to have a new officer in order to avoid embarrassing him to be assisted by the Presenting Officer.

6. In such view of the matter, we do not find any error in the order. After all the petitioner cannot be termed to be prejudiced at this stage. It is only a procedure adopted by the Disciplinary Authority to give a proper conclusion as to whether the charges levelled against the petitioner is proved or not. In such view of the matter, we do not find any error in the impugned order warranting interference.

7. Accordingly, the writ petition stands dismissed. However, it is made clear that the new Enquiry Officer will have to furnish a copy of the report of the IV Metropolitan Magistrate, to the petitioner, based upon which an opinion was formed by the Disciplinary Authority for ordering further enquiry. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The Chief Metropolitan Magistrate
Allikulam Complex
Egmore
Chennai.

2.The III Metropolitan Magistrate
George Town
Chennai - 600 001.

+lcc to Mr.V.Bhiman, Advocate Sr.43341

+lcc to Mr.S.Hajamohideen Gisthi, Advocate Sr.43299

सत्यमेव जयते

W.P.No.18070 of 2017
and W.M.P.No.19619 of 2017

WEB COPY

vg II[co]
srg 19/07/2018