

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.19351 of 2018

and

WMP.No.22747 of 2018

G.Kamalakaran

...Petitioner

Vs

The Joint Registrar of Co-op. Societies,
Krishnagiri Region, Krishnagiri District.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Certiorari, calling for the records of the show-cause notice in Na.Ka.No.5582/2017/Pa.tho dated 21.05.2018 on the file of the respondent quash the same.

For Petitioner :Mr.M.S.Palaniswamy

For Respondents : Mr.L.P.Shanmugasundaram
Spl.Govt.Pleader (Co-op)

O R D E R

The show-cause notice issued by the respondent in proceedings dated 21.05.2018, providing an opportunity to the writ petitioner to submit his objections/explanations within a period of 7 days in respect of the order of conviction passed against him by the criminal court of law is under challenge in the present writ petition.

2. The impugned notice was issued by the respondent by invoking the Rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The writ petitioner was appointed as Junior Inspector of Cooperative Societies and thereafter, promoted to the post of Senior Inspector of Cooperative Societies. On account of certain allegations, a criminal case was registered against the writ petitioner and the criminal court of law convicted the writ petitioner under Sections 109,408,465,471 IPC. In view of the fact that, an order of conviction was issued by the competent criminal court of law at Placode. The Competent Authority issued a show-cause notice under Sections 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

3. 17(c) of the said Rules reads as follows:- The Rule enumerates the procedure to be followed when a Government servants convicted on criminal charge. Under these circumstances, the Competent Authority has to issue notice for the purpose of providing a reasonable opportunity for making any representation and accordingly, the impugned show-cause notice has been issued enabling the writ petitioner to avail an opportunity and to submit his explanations/objections, if any in respect of the order of conviction now with the knowledge of the Competent Authority.

4. The learned counsel for the writ petitioner is of an opinion that, the offence in CC No. 184 of 2004 was under the Probation of Offenders Act and the lapses are only regarding the supervising capacity of the writ petitioner and not otherwise. The accused had already made good the loss to the Society and therefore, the writ petitioner is not guilty of any misappropriation.

5. Section 12 of the Probation of Offenders Act is also relied upon by the writ petitioner. This apart, in the judgement, the learned Judicial Magistrate in CC No.184/2004 made it clear that, the future official life of the writ petitioner will not get affected in anyway by the application of the Probation of offenders Act. However, the writ petitioner filed a Criminal Appeal No.24 of 2018 on the file of the Additional District cum Sessions Judge, which is now pending. Under these circumstances, the writ petitioner is constrained to move the present writ petition challenging the show-cause notice.

6. The question raised by the learned counsel for the writ petitioner is that, when the case of the writ petitioner falls under the Probation of Offenders Act, whether the Competent Authorities are empowered to invoke Rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The issue was considered by the High Court of Delhi in the case of Riaz Munir Ahmad Vs. Union of India and Ors reported in CDJ 2015 DHC 52, held as under:-

"It will be clear from these provisions that the release of the offender on probation does not obliterate the stigma of conviction. Dealing with the scope of Sections 3, 4 and 9 of the Probation of Offenders Act, Fazal Ali, J., in The Divisional Personnel Officer, Southern Railway and Anr. Etc.v.T.R. Challappan, [1975] 2 SLR 587 at 596 speaking for the Court observed:

These provisions would clearly show that an order of release on probation comes into existence only

after the accused is found guilty and is convicted of the offence. Thus the conviction of the accused or the finding of the Court that he is guilty cannot be washed out at all because that is the sine qua non for the order or release on probation of the offender. The order of release on probation is merely in substitution of the sentence to be imposed by the Court. This has been made permissible by the Statute with a humanist point of view in order to reform youthful offenders and to prevent them from becoming hardened criminals. The provisions of Section 9(3) of the Act extracted above would clearly show that the control of the offender is retained by the criminal court and where it is satisfied that the conditions of the bond have been broken by the offender who has been released on probation, the Court can sentence the offender for the original offence. This clearly shows that the factum of guilt on the criminal charge is not swept away merely by passing the order releasing the offender on probation. Under Sections 3, 4, or 6 of the Act, the stigma continues and the finding of the misconduct resulting in conviction must be treated to be a conclusive proof. In these circumstances, therefore, we are unable to accept the argument of the respondents that the order of the Magistrate releasing the offender on probation obliterates the stigma of conviction."

8. On similar lines in the decision reported as AIR 1998 SC 788 Harichand v. Director of School Education the Supreme Court held as under:-

"In our view, Section 12 of the Probation of Offenders Act would apply only in respect of a disqualification that goes with a conviction under the law which provides for the offence and its punishment. That is the plain meaning of the words "disqualification, if any, attaching to a conviction of an offence under such law" therein. Where the law that provides for an offence and its punishment also stipulates a disqualification, a person convicted of the offence but released on probation does not, by reason of Section 12, suffer the disqualification. It cannot be held that, by reason of Section 12, a conviction for an offence should not be taken into account for the purposes of dismissal of the person convicted from government service."

9. In a recent decision in Sushil Kumar Singhal's case (supra), after W P (C) 2372/2010 6 of 12 analysing the law including the judgments referred above the Supreme Court has held as under:-

"9. The sole question involved in this case is whether the benefit granted to the appellant under the provisions of Act, 1958 makes him entitled to reinstatement in service.

The issue involved herein is no more res integra.

In Aitha Chander Rao v. State of Andhra Pradesh, 1981 Supp SCC 17, this Court held:-

"As the appellant has been released on probation, this may not affect his service career in view of Section 12 of the Probation of offenders Act."

10. The said judgment in Aitha Chander Rao (Supra) was not approved by this Court in Harichand v. Director of School Education, (1998) 2 SCC 383, observing that due to the peculiar circumstances of the case, the benefit of the provisions of 1958 Act had been given to him and as in that case there had been no discussion on the words "disqualification, if any attaching to a conviction of an offence under such law", the said judgment cannot be treated as a binding precedent. This Court interpreted the provisions of Section 12 of the 1958, Act and held as under:

"In our view, Section 12 of the probation of offenders Act would apply only in respect of a disqualification that goes with a conviction under law which provides for the offence and its punishment. That is the plain meaning of the words "disqualification, if any, attaching to a conviction of an offence under such law" therein. Where the law that provides for an offence and its punishment also stipulates a disqualification, a person convicted of the offence but released on probation does not by reason of Section 12, suffers the disqualification. It cannot be held that by reason of Section 12, a conviction for an offence should not be taken into account for the purposes of dismissal of the person convicted from government service." (Emphasis added).

7. The High Court of Delhi held that, an order of release on Probation case in to existence only after the accused is found guilty and is convicted of the offence. Thus the conviction of the accused or the finding of the

Court that he is guilty cannot be washed out at all because that is the sine qua non for the order or release on probation of the offender. The order of release on probation is merely in substitution of the sentence to be imposed by the Court.

8. The High Court of Delhi relying on the judgement of the Hon'ble Supreme Court of India held that, "it cannot be held that by reason of Section 12, the conviction of an offence should not be taken in to account for the purpose of dismissal of a person convicted from the services". Thus, it is made clear that, the charges are proved and the writ petitioner was convicted. However, the extension of Section 12 of the Probation of Offenders Act, would not preclude the Competent Authorities, from invoking Rule 12(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The judgement of the Criminal Court of Law for all purpose is a conviction imposed on the writ petitioner and therefore, the show-cause notice issued under Section 17(c) is certainly tenable.

9. No writ proceedings against the show-cause notice can be entertained in a routine manner. Judicial review against the show-cause notices are certainly limited. A show-cause notice can be challenged if the same has been issued by an incompetent Authority having no jurisdiction or an allegations of malafides are raised or if the same is in violation of the statutory rules in force.- Even in case of raising an allegation of malafides, the Authority such whom allegation is raised, should be impleaded as party respondent in his personal capacity. In the absence of any one of the legal grounds, no writ petition can be entertained against the order of show-cause notice.

10. The writ petitioner is bound to submit his explanations/objections on the show-cause notice and in respect of the allegations set out in the show-cause notice. Contrarily, it cannot adjudicate the merits in a writ petition wherein, the very show-cause itself is under challenge.

11. Intermittent interference in such proceedings are certainly restricted. This Court would not interfere with the process of providing opportunity to the employees. The employees must exhaust the remedies provided under the Statute by defending their cases in the manner prescribed under the Rules.

12. This being the principles to be followed, this Court is of an opinion that, the writ petitioner has to submit his explanations/objections on the allegations set out in the show-cause notice and on receipt of the same, the Competent Authority is empowered to consider the materials available on record, pass orders on merits and in accordance with law.

13. However, in the present case on hand, the writ petitioner has not established that the show-cause notice is without jurisdiction or in violation of the Statute. The Rules contemplates, if an employee is convicted, then the Competent Authority shall invoke Rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the procedures to be followed is also prescribed in the Rules itself. Thus, there is no infirmity as such in respect of the impugned show-cause notice and it is left open to the writ petitioner to submit his explanations/objections on the show-cause notice and on receipt of the same, the respondents are bound to consider the materials available on records and pass orders without causing any undue delay.

14. With these observations, the writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS iii)

//True Copy//

Sub Assistant Registrar

Pkn
To

The Joint Registrar of Co-op. Societies,
Krishnagiri Region, Krishnagiri District.

+1cc to Mr. M.S.Palaniswamy, Advocate SR.No. 30227
+1 cc to Government Pleader SR.NO. 27461

W.P.No. 19351 of 2018
A.SK(22/04/2019)