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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.34353 & 34357 of 2019

and

WMP.Nos.35017, 35019 & 35025 of 2019

D.Sunny Lloyd (HC19409)

..Petitioner in both W.Ps.

Vs.

1.The Director General of Police,
R.K.Salai, Mylapore,
Chennai 600 004.

2.The Commissioner of Police,
Greater Chennai Police,
E.V.K.Sampath Road,
Veppery, Chennai 600 007.

3.The Joint Commissioner of Police,
East Zone, Egmore,
Chennai.

4.Thiru.Prabakaran,
Enquiry Officer,
Assistant Commissioner of Police,
O/o.The Commissioner of Police,
Greater Chennai Police,
E.V.K.Sampath Road,
Veppery, Chennai 600 007.

5.The Administrative Officer,
O/o.The Commissioner of Police,
Greater Chennai Police,
E.V.K.Sampath Road,
Veppery, Chennai 600 007.

..Respondents in both W.Ps.

Prayer in W.P.No.34353 of 2019:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the 5th respondent in Rc.No.Estt.II/EZ/1296/20922/2019 EZO No.738/2019 dated 04.12.2019 and to quash the same insofar as the petitioner is concerned and consequently directing the respondents to allow the petitioner to continue to work in the post of Head



Constable, D.1 Police Station, Triplicane, Chennai with all consequential and other attendant benefits.

Prayer in W.P.No.34357 of 2019:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to furnish the documents requested by the petitioner in the representation dated 21.11.2019 to enable the petitioner to defend the charges framed in the charge memo issued by the 3rd respondent Tha.Ko.No.37/Tha.Pi/Ki.Ma/2019 dated 13.11.2019.

For Petitioner : Mr.G.Sankaran
in both W.Ps.

For Respondents : Mr.P.S.Siva Shanmuga Sundaram
in both W.Ps. Special Government Pleader

COMMON ORDER

The petitioner has filed two Writ Petitions. One Writ Petition challenging the order of transfer passed by the 5th respondent and other Writ Petition seeking for documents requested by the petitioner in order to give his explanation on the charges framed against him in the departmental proceedings.

2. It is seen from records that the petitioner was appointed as Grade I Sub-constable in Tamil Nadu Police Subordinate Service in the year 1997 and promoted as Head Constable in the year 2012 and he was posted at D1, Police Station, Triplicane in the year 2018. The petitioner was issued with a charge memo on 13.11.2019 on the ground that he along with other delinquent officer had involved in corrupt practices. It is informed to this Court that the enquiry officer has also been appointed for conducting the enquiry and to submit a report. The petitioner claims that he is innocent and he has been roped in the case only based on news reports in news papers. The grievance of the petitioner is that the petitioner has not been furnished with all the documents in order to enable the petitioner to submit his reply for the charges framed and therefore, W.P.No.34357 of 2019 has been filed for a direction to the respondents to furnish the documents requested by the petitioner based on the representation dated 21.11.2019.

3. In the meantime, the petitioner was issued with an order of transfer dated 04.12.2019 transferring him to Thiruvannamalai District. This order of transfer has been challenged in W.P.No.34353 of 2019.



4. Mr.G.Sankaran, learned counsel appearing on behalf of the petitioner submitted that the petitioner wants to participate in the disciplinary proceedings and come out clean and he is not trying to evade the proceedings. The learned counsel would submit that in order to give an opportunity to the petitioner to meet the charges, the petitioner must be furnished with all the materials and only then a proper explanation can be given. Since the petitioner has not been given with all the materials, the petitioner was forced to file the above Writ Petition.

5. The learned counsel further submitted that the transfer order passed by the 5th respondent is per se illegal. The learned counsel submitted that the order of transfer is in the nature of punishment and by transferring the petitioner to Thiruvannamalai, the petitioner will not be able to effectively participate in the disciplinary proceedings. The learned counsel further submitted that the petitioner ought to have been given an opportunity before the transfer order was passed since it is punitive in nature. Therefore, the learned counsel would submit that the transfer order is liable to be set aside and the respondent must be directed to furnish with all the documents to enable the petitioner to participate in the disciplinary proceedings.

6. Per contra, the learned Special Government Pleader appearing on behalf of the respondents submitted that the charges that have been made against the delinquent police officer is very serious and therefore, all steps have been taken to complete the enquiry as expeditiously as possible. The learned counsel would submit that the order of transfer that was passed by the 5th respondent was a routine transfer which is not punitive in nature and therefore, there is no requirement to afford any opportunity to the petitioner. It was further submitted that the petitioner will be furnished with all the documents to enable him to give his explanation and to defend himself effectively in the disciplinary proceedings. The learned counsel submitted that the Writ Petition challenging the transfer order is liable to be dismissed.

7. This Court has carefully considered the submission made on either side and the materials available on record.

8. A careful reading of the charge memo that has been issued by the 3rd respondent shows that there are very serious allegations that have been made against the delinquent police officers. Whether the petitioner is actually involved in the incident or he has been roped in merely based on paper reports, will get revealed only during the enquiry. The defence taken by



the petitioner in this Writ Petition to the effect that he is innocent, cannot be decided at this stage. It is true that the petitioner must be furnished with all the materials that is relied upon in order to prove the charges and only if the petitioner is given those materials, the petitioner will be able to defend himself effectively in the disciplinary proceedings. At the same time, considering the nature of charges that has been framed against the petitioner and the other delinquent officers, it will be better if the petitioner does not continue in the same police station. Even though, the petitioner terms the transfer order as punitive, this Court does not want to go into the issue and this Court finds no ground to interfere with the order of transfer passed by the 5th respondent. Therefore, the transfer order that has been challenged in W.P.No.34353 of 2019 is liable to be dismissed.

9. Insofar as the relief that has been sought for in W.P.No.34357 of 2019 is concerned, there shall be a direction to the 3rd respondent to give all the relevant materials to the petitioner to enable him to participate in the disciplinary proceedings. It is made clear that sufficient opportunity must be given to the petitioner to face the disciplinary proceedings by the 3rd respondent. In all probabilities, the disciplinary proceedings against the petitioner and the other delinquent officer must be completed within a period of twelve weeks from the date of receipt of a copy of this order.

10. Both the Writ Petitions are disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Director General of Police,
R.K.Salai, Mylapore, Chennai 600 004.

2.The Commissioner of Police,
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+2 cc to M/s.G.Sankaran,Advocate Sr.No. 103070 & 103073
+1 cc to The Government Pleader Sr.No. 103674

AKM/22.01.2020/5P-9C /

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