

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.04.2019

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.33288 of 2018  
and  
W.M.P.No.38634 of 2018

G.Devarajulu

...Petitioner

vs

The Joint Commissioner of Police  
(Head Quarters)  
Greater Chennai Police,  
Vepery,  
Chennai - 600 007.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to show cause notice in P.R.No.PR I(1)/130/32229/2017 dated 20.11.2018 on the file of the respondent and quash the same.

For Petitioner : Mr.M.S.Soundara Rajan

For Respondent : Mr.A.N.Thambidurai  
Special Government Pleader

O R D E R

The Show Cause Notice issued under Rule 3(c) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 in proceedings dated 20.11.2018 is under challenge in the present writ petition.

2.The writ petitioner, who was holding the post of Sub Inspector of Police, Armed Reserve, Greater Chennai was prosecuted under the provisions of the Prevention of Corruption Act 1988. The criminal case registered by the Vigilance and Anti-Corruption was pursued and the competent Court namely, the Special Court for the cases of vigilance and Anti-Corruption convicted the writ petitioner to undergo Rigorous Imprisonment for a period of two years with a fine of Rs.2000/- and in default to undergo Rigorous Imprisonment for a period of 6 months for the offence u/s.7 of Prevention of Corruption Act,

1988 and to undergo Rigorous Imprisonment for a period of 6 months with a fine of Rs.1000/- and in default to undergo Rigorous Imprisonment for a period of 3 months for the offences u/s 13(2) r/w 3(1) (d) of Prevention of Corruption Act, 1988.

3.The order of conviction was communicated to the competent authority/respondent, who in turn, issued the show cause notice by invoking the powers under Rule 3(c) (i) (1) of the TNPSS(D&A) Rules, stating that the writ petitioner is convicted by the competent Criminal Court of law and therefore, the authority have proposed to impose the penalty of dismissal from service/removal from service specified in Rule 2 of TNPSS (D&A) Rules. It is clearly mentioned in the impugned show cause notice that the competent authority proposes to impose the dismissal of service / removal of service. Such a proposal can never be considered as a final decision of the competent authority. The proposal remains only as a proposal and the authorities competent are empowered to modify the proposals on receipt of the explanations from the writ petitioner. However, a decision is to be taken judiciously and strictly in accordance with the rules and considering the gravity of the offences as well as the conviction imposed by the Criminal Court of Law.

4.The learned counsel for the writ petitioner mainly attacked the impugned show cause notice on the ground that the competent authority / respondent cannot suggest the punishment of dismissal from service / removal from service as the rule contemplates imposition of other punishments, including compulsory retirement etc., When the Rule stipulates more than one punishment, which can be imposed, based on the conviction by the Criminal Court of Law, the respondent ought not to have decided the nature of punishment to be imposed even at the state of show cause notice.

5.This Court is of the considered opinion that in the event of proposing such punishment, it would be possible for the delinquent official to submit his explanations with reference to the proposed punishment.

6.For example, if no punishments are proposed, then also, the writ petitioner may file a writ petition by stating that no reasons are stated in the Show cause Notice nor the authorities have not taken a decision by the competent authorities. Thus, in the event of not stating the reasons, the writ petitions are filed on the ground that the order is non-speaking. In the event of passing a speaking order, the writ petitions are filed by stating that the authorities have already decided the issue. Either way, the delinquent officials are tempted to approach the Court of law by taking the ground in this way or that way. However, the legal principles to be decided is that whether the

show cause notice is issued, based on the materials available on record.

7. As far as the present lis on hand is concerned, the writ petitioner, admittedly, is convicted by the competent Court of law under the Prevention of Corruption Act, 1988. He was sentenced to undergo Rigorous imprisonment for a period of two years with a fine of Rs.2000/-. This being the nature of the conviction, the provisional decision and the proposal stated in the impugned show cause notice cannot be construed as infirm nor can be held as violative of the provisions of the Rules itself. The authorities are at liberty to come to a provisional conclusion and communicate the same to the delinquent official, enabling them to submit their explanations in a serious manner. In this context, based on the conviction, the authorities competent have proposed to impose the punishment of removal from service and it is left open to the writ petitioner to submit his explanations/objections with proposed punishment. On receipt of the explanations/objections from the writ petitioner, the authorities competent are bound to consider the explanations to be submitted by the writ petitioner and the materials available on record and take a decision on merits and in accordance with law. This being the principles to be followed, the grounds raised in the writ petition to assail the impugned show cause notice is not only flimsy, but certainly untenable. This being the factum of the case, the writ petitioner is directed to submit his explanation/objections on the show cause notice with reference to the judgment of the Criminal Court of Law as well as the other grounds, if any to be raised and on receipt of such explanations/objections, the respondent is directed to pass final orders on merits and in accordance with law as expeditiously as possible.

8. With these observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

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Sd/-

Assistant Registrar(AD IV)

//True Copy//

Sub Assistant Registrar

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To

The Joint Commissioner of Police  
(Head Quarters)  
Greater Chennai Police,  
Vepery,  
Chennai - 600 007.

+1cc to M/S.S.Soundararajan, Advocate Sr.37850  
+1cc to the Government Pleader sr.38856

W.P.No.33288 of 2018

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srg 30/05/2019



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