

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

WP.No.901 of 2020

and

WMP.Nos.1085 & 1086 of 2020

M.Kathirvelu

..Petitioner

- Vs -

1. The Commissioner of Treasuries and Accounts,
Office of the Commissioner of Treasuries and Accounts,
Chennai-35.

2. The District Treasury Officer,
District Treasury,
Salem District.

..Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records pertaining to the impugned show cause notice passed by the first respondent in Rc.No.8178/Q2/2007 dated 19.12.2019 and quash the same.

For Petitioner : M/s.Karan and Uday
For Respondents : Mr.A.Zakir Hussain
Government Advocate

ORDER

This writ petition has been filed challenging the impugned notice issued by the first respondent by his proceedings dated 19.12.2019.

2. The petitioner was working as a Superintendent in the second respondent-Treasury Office. At that time, a criminal case came to be registered against the petitioner for the offence under the Prevention of Corruption Act. The petitioner was arrested and remanded to judicial custody.

3. In the meantime, the final report was filed in the criminal case and the petitioner faced trial before the Special Court for Trial cases, Prevention of Corruption Act, Salem in Spl.C.C.No.88 of 2014. The Trial Court, by judgment dated 22.08.2019 found that the charges framed against the petitioner

has been proved and convicted the petitioner for an offence under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and imposed punishment.

4. As against the above judgment, the petitioner has filed an appeal before this Court in CrI.A.No.624 of 2019 and this Court, by order dated 18.09.2019, has suspended the substantive sentence and this Criminal Appeal is pending.

5. In the meantime, the first respondent has issued a show cause notice dated 19.12.2019 by calling upon the petitioner to show cause as to why the penalty of dismissal from service should not be imposed against the petitioner. This notice has become a subject matter of challenge in the present writ petition.

6. The learned counsel for the petitioner submitted that even if the petitioner was convicted by the Criminal Court, that will not result in an automatic dismissal from service. More particularly, since the petitioner filed an appeal before this Court. The learned counsel further submitted that the petitioner must be given an opportunity to give his explanation as contemplated under Rule 17(c) of the Tamil Nadu Civil Service (Discipline and Appeal Rules) and the impugned notice goes on the footing that the first respondent is already predetermined to impose the major punishment of dismissal from service. The learned counsel submitted that in view of the same, the impugned notice issued by the first respondent is vitiated and the same requires interference of this Court.

7. Per contra, the learned counsel for the respondents submitted that the impugned notice is only a show cause that was issued by the first respondent and the petitioner was only called upon to give his explanation. The learned counsel submitted that there is absolutely no predetermination on the part of the first respondent and the first respondent will consider the explanation given by the petitioner and only thereafter, orders will be passed strictly in accordance with law.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. A careful reading of the show cause notice shows that the first respondent has taken note of the fact that the Competent Criminal Court has already convicted and sentenced the petitioner for the offence under the Prevention of Corruption Act. Upon such punishment, the first respondent issued a notice

calling upon the petitioner to give his explanation and to show cause as to why the penalty of dismissal from service should not be imposed to the petitioner. The language in the notice sounds as the first respondent is predetermined the issue. However, this notice can only be taken to be a show cause to the petitioner calling upon him to submit his explanation. The petitioner can always submit his explanation to the first respondent and the first respondent is required to consider the explanation and pass orders. The order must reflect the application of the mind and the explanation given by the petitioner.

10. This writ petition is disposed of with a direction to the petitioner to submit his explanation to the show cause notice issued by the first respondent within a period of four (4) weeks from the date of receipt of a copy of this order. On submission of such explanation, the first respondent shall consider the explanation and pass appropriate orders strictly in accordance with law. The first respondent shall also consider the request made by the petitioner for payment of subsistence allowance, since it is reported that the subsistence allowance has been stopped pursuant to the conviction and sentence of the petitioner by the Criminal Court under the Prevention of Corruption Act. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner of Treasuries and Accounts,
Office of the Commissioner of Treasuries and Accounts,
Chennai-35.
2. The District Treasury Officer,
District Treasury,
Salem District.

+1cc to M/s.Karan & Uday, Advocate SR.NO.3661
+1cc to The Government Pleader SR.NO.3929

AKM/27.01.2020

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