

THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 28.08.2019

Order Pronounced on : 21-01-2020

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH

and

THE HONOURABLE MR. JUSTICE C. SARAVANAN

Writ Petition No. 14656 of 2017

K. Jeyaraj

.. Petitioner

Versus

1. The High Court of Judicature at Madras
represented by its Registrar General
High Court, Chennai - 600 104
2. The Registrar (IT-cum-Statistics)
represented by its Registrar General
High Court, Chennai - 600 104
3. The Principal District Judge cum Enquiry Officer
Office of the District Court
Sivagangai District, Sivaganga ... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the proceedings dated 25.04.2017 in ROC No.932/2011/B3/MB/,8363/B2 & 865/2014/VC/B2 (C No 4/2015/VC) on the file of the second respondent and the accompanying enquiry report of the third respondent dated 20.02.2017 and quash the same as illegal and without jurisdiction.

For petitioner : Mr. V. Raghavachari

For respondents : Mr. C.T. Mohan

ORDER

R. Subbiah, J

This writ petition is filed by the petitioner questioning the validity and/or correctness of the order dated 25.04.2017 of the second respondent, enclosing the copy of the enquiry report dated 20.02.2017 of the third respondent, on the ground that such an order dated 25.04.2017 has been passed by the second respondent without jurisdiction.

2. The petitioner joined the Tamil Nadu State Judicial Service on 10.12.1999. Prior to the petitioner getting selected to the Tamil Nadu State Judicial Service, he was practicing as Advocate in the Courts at Madras. According to the petitioner, when he was practicing as an advocate, in the year 1996, a first information report came to be registered in Crime No. 418 of 1996 on the file of Thallakulam Police Station, Madurai for the alleged offences punishable under Sections 366, 343, 506 (ii) read with Section 109 of the Indian Penal Code. In the said case the petitioner was allegedly arrayed as seventh accused. According to the petitioner, at no point of time, he had any knowledge of the registration or pendency of the criminal case against him and he has not received any notice either from the police or from the competent Court dealing with the criminal case. This, according to the petitioner, could be evident from the charge sheet filed by the investigation officer indicating the name of the seventh accused as Jayaraj, Son of Krishnamoorthy, whereas, the name of the petitioner is Jayaraj, Son of R.M. Krishnaswamy. Even otherwise, the criminal case ended in acquittal in the year 1999 on the ground that the complainant, father of the victim girl and the victim girl themselves have admitted that no such incident had taken place, as portrayed in the first information report. Thus, according to the petitioner, at the time when he entered into Judicial service on 10.12.1999, he was clueless about the pendency of the criminal case against him. Therefore, in the application for appointment to the post of Civil Judge, in the column meant for disclosing the pendency of criminal case, if any, he has simply stated 'No'. The petitioner also further contends that he was discharging his duties sincerely and honestly for about 19 years without giving any room for any complaint.

3. During the year 2004, when the petitioner was working as a District Munsif cum Judicial Magistrate at Paramathi Vellore, Namakkal District, an anonymous complaint was received by the first respondent herein, based on which, a discreet enquiry was ordered to be conducted against the petitioner, however, after enquiry, the complaint received against the petitioner was closed as false and frivolous. However, again in the year 2006, yet another anonymous complaint was given against the petitioner to the High Court when he was working as Judicial Magistrate II, Udumalpet. On the basis of such complaint, an Official Memorandum dated 08.06.2006 was issued to the petitioner calling upon him to submit his explanation with respect to the allegations made in the said complaint received against him. The petitioner also submitted his explanation stating that he has nothing to do with the allegations raised in the complaint and that the complaint is motivated. Accepting the said explanation, the complaint was once again ordered to be closed.

4. Notwithstanding the earlier two complaints, again, in the year 2007, yet another anonymous letter was received by the High Court for the same allegations based on which the petitioner was directed to submit his explanation. The petitioner also submitted his explanation denying the averments made in the complaint. Again, after four years, in the year 2011, a similar complaint was received by the High Court based on which the then Principal District Judge, Tirunelveli called upon the petitioner to submit his explanation. The petitioner also submitted his explanation and a detailed enquiry was conducted. Ultimately, it was found that there is no merit in the allegations contained in the complaint and therefore, a report to that effect was sent by the then Principal District Judge, Tirunelveli to the first respondent herein.

5. While so, the first respondent issued a Memorandum dated 18.05.2016 calling upon the petitioner to submit his explanation with respect to the allegations raised in the complaint received during the year 2011 alleging that the petitioner had suppressed the pendency of criminal case registered against him. The charge memorandum contains three charges. The first charge is to the effect that the petitioner, by suppressing the pendency of the criminal case against him in P.R.C. No. 19 of 1997 on the file of Judicial Magistrate No.II, Madurai relating to Crime No. 418 of 1996 has conducted serious misconduct and acted with a dishonest intention to gain undue advantage to obtain appointment in the Tamil Nadu State Judicial Service in violation of Rule 20 of The Tamil Nadu Government Servants' Conduct Rules, 1973. The second charge against the petitioner proceeds to the effect that the petitioner, in his explanation dated 15.06.2011 submitted to the Madurai Bench of Madras High Court, Madurai has intentionally mentioned as if the name mentioned in the charge sheet is not his name and thereby failed to maintain absolute integrity and devotion to duty which is in violation of Rule 20 of The Tamil Nadu Government Servants' Conduct Rules, 1973. The third charge against the petitioner is that petitioner evaded the process of law and thereby dragged the court proceedings for nearly about 19 years, thereby making mockery of criminal justice delivery system which is violative of Rule 20 of The Tamil Nadu Government Servants' Conduct Rules, 1973.

6. According to the petitioner, the charge relating to imputation of knowledge with respect to pendency of criminal case is baseless inasmuch as he never received any notice at any time about the pendency of criminal case. Furthermore, the Criminal Court has not declared the petitioner as a proclaimed offender, besides, there is no evidence to show that the petitioner was aware of the criminal proceedings. According to the petitioner, the records relating to the split-up case in

P.R.C. No. 31 of 1997 on the file of Judicial Magistrate-II, Madurai would only indicate that there is no evidence to show that the petitioner has been aware of the allegations made against him in the complaint. However, in the enquiry report dated 20.02.2017, the third respondent proceeded as if the petitioner was fully aware of the pendency of the criminal proceedings against him. By annexing the report of the enquiry officer dated 20.02.2017, the second respondent issued the proceedings dated 25.04.2017 calling upon the petitioner to submit his explanation to the report of the enquiry officer. It is the contention of the petitioner that a person cannot be made to be vexed over and over again on the basis of vexatious complaints made by disgruntled elements to gain unlawful enrichment. When already similar anonymous complaints made against the petitioner were enquired and closed, the present attempt on the part of the respondents to impute knowledge against the petitioner towards the pending criminal proceedings is without any basis. It is in those circumstances, the petitioner has filed the present writ petition before this Court to quash the notice dated 25.04.2017 issued by the first respondent calling upon the petitioner to submit his explanation to the report dated 20.02.2017 of the Enquiry Officer.

7. Mr. V. Raghavachari, learned counsel for the petitioner would contend that absolutely there is no material evidence to show that the petitioner was aware of the pendency of criminal proceedings against him. No evidence is made available to show that the criminal court, in a case said to be pending for several years, declared the petitioner as a proclaimed offender as required under Section 82 of the Code of Criminal Procedure. The respondents relied on the unsubstantiated version of a police officer who had stated that he attempted to serve summons in the year 2010 but he was informed that the petitioner is a Judicial Officer. In any event, the petitioner was clueless about the pendency of the criminal proceedings against him, while so, the respondents are whimsically attempting to attribute motive to impute knowledge of the criminal proceedings against the petitioner after 19 years.

8. By highlighting the charges framed against the petitioner, the learned counsel would contend that all the three charges relates to suppression of the pendency of criminal proceedings at the time of entering into judicial service purportedly on the ground that the petitioner was made aware of the same. There is no semblance of evidence brought into record to prove that the petitioner was at any point served with any notice regarding the criminal case. When the foundation for framing of the charge goes, the three charges framed against the petitioner will not have any legs to stand. A similar explanation offered by the petitioner was also accepted by this

Court during the year 2006 and 2007 and it was subsequently accepted by the three Chief Justices of this Court. While so, the present enquiry is being held against the petitioner purportedly on the ground that the person shown in the charge sheet as A-7 is that of the petitioner, even though it was specifically stated that the name of the petitioner is K. Jayaraj, Son of R.M. Krishnasamy and not Jayaraj, Son of Krishnamoorthy. Such an explanation offered by the petitioner is also substantiated from the service records of the petitioner maintained by the respondents. Further, the investigation officer, during the pendency of the criminal proceedings has not taken any efforts to alter the charge sheet with respect to the name of the seventh accused therein. Furthermore, the case in Crime No. 418 of 1996 was registered on 13.03.1996 in which six persons were arrayed as accused. Subsequently, the charge sheet was filed on 04.09.1996 in which the name of Jayaraj was included as A-7. On 10.12.1999, the petitioner was appointed as Civil Judge and till such time, he did not receive any notice or summons for his appearance in the Criminal Court. Therefore, at the time of his entering into service as a Civil Judge in the Tamil Nadu State Judicial Service, the petitioner was unaware of the pendency of criminal proceedings against him and therefore, it cannot be said that the petitioner has suppressed his involvement in the criminal case allegedly registered against him at the time of his entering into Judicial Service.

9. The learned counsel for the petitioner also contended that the very same complaints made against the petitioner during the year 2004, 2006 and 2007 and which were enquired and closed has not been considered by the Enquiry Officer. According to the petitioner, when once the Court has acquitted the accused in the criminal case, it will have a bearing in the departmental proceedings, but the enquiry officer has grossly failed to consider this legal aspect. Moreover, the enquiry officer has not rendered any finding with respect to imputation of knowledge against the petitioner towards the pendency of criminal proceedings against him at the time of entering Judicial Service. In this context, the learned counsel for the petitioner relied on the decision of the Honourable Supreme Court in the case of Manohar Reddy vs. Union of India reported in (2013 (3) Supreme Court Cases 99) wherein it was held by the Honourable Supreme Court that the alleged criminal case was never known to the learned Judge in that case at any point of time. According to the counsel for the petitioner, the facts in the present case are akin to the facts dealt with by the Honourable Supreme Court in Manohar Reddy case mentioned above and the said judgment squarely applies to the facts of the case. Further, the decision in Manohar Reddy case was also followed by this Court in the order dated 15.07.2016 in WP No. 23776 of 2014 to hold that the investigation officer in that case, while

filing the final report, ought to have applied his mind and given proper description of the accused but he failed to do so. Therefore, in all probability, the accused might not have been aware of the fact that they are arrayed as accused. Therefore, in similar circumstances, it was held that the fourth respondent in that case has not deliberately suppressed the pendency of the criminal case said to be pending against him. According to the counsel for the petitioner, unless personal knowledge is attributable to the petitioner with respect to the pendency of the criminal case non-furnishing of details about the said criminal case at the time of entering into judicial service will not amount to suppression of material facts.

10. The learned counsel for the petitioner proceeded to contend that the present enquiry is being conducted for the fourth time against the petitioner and the complainant, who could not succeed in the earlier three complaints, in order to wreck vengeance against the petitioner, had sent the present vexatious and oppressive complaint. In the earlier occasion, in 2007, this Court has given a clean chit in favour of the petitioner while closing the complaint preferred against him. It was held by this Court that the Registrar (Vigilance) in the report has stated that the accused in the criminal case is a different person with the same name as that of the Judicial Officer (petitioner herein) and therefore closed the complaint. This report was also endorsed by two other learned Judges of this Court and subsequently approved by the Chief Justice of this Court on 26.04.2011. While so, the present disciplinary proceedings against the petitioner is nothing but an attempt to re-open the case against the petitioner besides attempting to get over the order passed by the Chief Justice of this Court on 26.04.2011. In order to buttress his submissions further, the learned counsel relied on the decision of the Honourable Supreme Court in the case of High Court of Judicature of Madras vs. R. Perachi reported in (2011) 12 SCC 137 wherein it was observed that the Chief Justice is the master of the administrative side of the High Court and thus set aside the decision of the Division Bench of this Court rendered to the effect that the Chief Justice has unilaterally transferred the appellant outside the Court and that such a decision ought to have been taken either by the Full Court or a committee appointed by the Full Court. By citing the aforesaid decision, the learned counsel would submit that the decision to re-open the complaint against the petitioner is against the decision of the Chief Justice of this Court and it is without jurisdiction.

11. The learned counsel for the petitioner also relied on various decisions to contend that the enquiry was conducted in flagrant violation of principles of natural justice. According to him, the Annexure III of the charge memo does not contain the

particulars of the witness statement and the non-supply of such statement vitiates the departmental proceedings against the petitioner. It is further stated that such a lacuna in the procedural aspect has been simply brushed by the enquiry officer while submitting his report to the second respondent. Further, neither in the charge memo nor in the anonymous petition, there was any mention made with regard to the criminal case. Therefore, there was no reason for the petitioner to respond to such anonymous petitions. Further, merely because the relatives of the petitioner were involved in the criminal case, it cannot be presumed that the petitioner is fully aware of the pendency of criminal proceedings and he has wantonly evaded and avoided to participate in the same. The present disciplinary proceedings against the petitioner is nothing but a harassment and therefore, this Court has to interfere with the disciplinary proceedings against the petitioner. In support of this contention, the learned counsel relied on the decision of the Honourable Supreme Court in the case of Allahabad Bank vs. Krishna Narayan Tewari reported in (2017) 2 Supreme Court Cases 308 to contend that this Court in exercise of power under Article 226 of The Constitution of India can interdict a charge memo or flawed departmental enquiry. In cases of procedurally flawed enquiries, the High Court, in exercise of power under Article 226 of The Constitution of India, can go into the merits of the matter and quash the charge memo to avoid any further harassment and humiliation to the delinquent officer. The learned counsel for the petitioner therefore prayed for allowing the writ petition as prayed for.

12. Countering the submissions made by the learned counsel for the petitioner, the learned counsel for the respondents would contend that the disciplinary action against the petitioner was initiated after the explanation was submitted by the petitioner and other records were perused by the Portfolio Judge concerned and thereafter it was directed to be placed before the Administrative Committee. The Committee passed an order directing to place the matter before the Chief Justice of this Court and only after obtaining appropriate orders from the Chief Justice of this Court, the departmental proceedings against the petitioner were initiated. Further, even before the charge memorandum has been issued to the petitioner, necessary orders have been obtained from the Administrative Committee of this Court. After obtaining appropriate orders from the Committee, the charge memorandum dated 18.05.2016 was issued to the petitioner. On receipt of an explanation from the petitioner to the charge memo dated 18.05.2016, once again, the records were placed before the Administrative Committee, which directed appointing an Enquiry Officer as well as Presenting Officer to conduct departmental enquiry against the petitioner. Therefore, it cannot be said that without application of mind

with respect to the earlier complaints received against the petitioner, the departmental proceedings have been initiated against the petitioner.

13. The learned counsel for the respondents also brought to the notice of this Court that the enquiry proceedings commenced on 06.10.2016 and concluded on 06.02.2017. During the course of enquiry, at the request of the petitioner, three Advocates were permitted to assist the petitioner in defending the disciplinary proceedings. The petitioner was also permitted to cross-examine the witness examined on behalf of the respondents. The petitioner also examined two witnesses on his side who were also cross examined by the Presenting Officer. Therefore, the enquiry was conducted by adhering to the principles of natural justice and the petitioner was given sufficient and adequate opportunity to defend the enquiry proceedings. The enquiry officer, after analysing the oral and documentary evidence, concluded that the paternal uncle of the petitioner by name Nithyanandam is one of the accused in the very same criminal case and the address of the petitioner is mentioned as that of the accused Nithyanandam. The enquiry officer also taken note of the contradiction in the deposition of PW1 and PW2. According to PW1, father of the petitioner, he is having enmity with his brother Nithyanandam for 30 years. On the other hand, PW2, Nithyanandam says that he is having cordial relationship with his brother, PW1. The enquiry officer also referred to the deposition of PW4, Village Administrative Officer, who has stated that son of PW1 is a Judge and residing at Elumalai Village. Further, by placing reliance on the deposition of PW5, Sub-Inspector of Police, the enquiry officer concluded that PW5 went to Elumalai Village to execute the Non-bailable warrant issued to the petitioner/7th accused however, on coming to know that the petitioner is a Magistrate, he did not serve the Non-bailable Warrant. The petitioner has simply denied the charges that his name is Jayaraj, Son of Krishnasamy and that the name of the 7th accused mentioned in the Criminal Case is Jayaraj, Son of Krishnamoorthy and therefore, he cannot be attributed with imputation of knowledge about the case. However, the enquiry officer rightly concluded that even though the father's name differs, the petitioner could have gone through the complaint and the statement recorded from the witnesses, who are his close relatives and inferred that it is he who was implicated as accused in the Criminal case. Therefore, it was concluded by the enquiry officer that the petitioner cannot take advantage of the wrong mention of his father's name to deny the charges levelled against him. Even otherwise, the enquiry officer made specific reference to the fact that at the time of enquiry, PW5 and PW8 have clearly stated that on enquiry they came to know that the 7th accused in the Criminal case is working as a Magistrate. The enquiry officer further concluded

that the petitioner was fully aware of the Non-bailable Warrant issued to him and also the pendency of criminal proceedings at the time of entering into Judicial Service. Thus, the learned counsel for the respondents would contend that the enquiry officer, on appreciation of the oral and documentary evidence has rightly held that the charges levelled against the petitioner are proved. According to the learned counsel for the respondents, the scope of the enquiry is not as to whether the petitioner has committed the offence but whether he had knowledge or was aware of the pendency of the criminal case at the time of entering judicial service. This was clearly proved by the evidence adduced during enquiry and therefore, the petitioner is guilty of the charges framed against him. In a disciplinary enquiry, unlike a criminal proceedings, preponderance of probability has to be inferred and it has been clearly established in this case.

14. The learned counsel for the respondents further submit that it is true that previous three complaints were closed without any enquiry by accepting the explanation of the petitioner. However, when similar complaint was received by the respondents, after obtaining orders from the Administrative Committee of this Court, departmental proceedings were initiated against the petitioner. Now, the enquiry has been completed and the petitioner has received the second show cause notice. At this stage, the petitioner has come up with this writ petition challenging the second show cause notice and as against a second show cause notice, the writ petition is not maintainable. In this context, the learned counsel for the respondents placed reliance on the decision of the Honourable Supreme Court in the case of (Union of India and another vs. Kunisetty Satyanarayana) reported in (2006) 12 Supreme Court Cases 28 wherein it was held that only in some rare and exceptional cases, the High Court can quash a charge sheet or show cause notice if it is wholly without jurisdiction or otherwise wholly illegal. In the present case, the petitioner participated in the enquiry, examined witnesses on his side and also cross-examined the witnesses examined by the respondents. While so, the petitioner ought to have waited for the final orders to be passed by the respondents in the disciplinary proceedings, however, he has rushed to this Court and filed this writ petition hastily. It is his contention that the departmental proceedings can be categorised into two stages. The first stage relates to conducting a departmental enquiry, recording the evidence of witnesses and submission of a report of enquiry. The second stage relates to acceptance of the report of enquiry to impose the punishment or refusing to accept the report of enquiry by adducing reasons. In the present case, the first stage has been completed, however, even before the disciplinary authority could pass final orders in the disciplinary proceedings, the

petitioner has come up with this writ petition. Therefore, the learned counsel appearing for the respondents 1 to 3 herein submits that the relief sought for in this writ petition is premature and it is liable to be dismissed.

15. We have heard the counsel for both sides at length and perused the materials placed on record. The petitioner herein was appointed on 10.12.1999 as a Civil Judge in the Tamil Nadu State Judicial Service. Prior to his appointment, the petitioner was practicing as an Advocate in Chennai. At that stage, it appears that a complaint was filed by one Mariappan before the H-1, Tallakulam Police Station alleging that his daughter Sujatha was abducted by A-1 to A-6. Based on such complaint, the case in Crime No. 418 of 1996 for the offences punishable under Sections 366, 343 and 506 (ii) of IPC was registered on 14.03.1996 on the file of H-1, Tallakulam Police Station. A-1 was the boy friend of Sujatha. A-2 and A-3 are parents of A-1. A-4 to A-6 were friends and college mates of A-1 and Sujatha. Subsequently, a charge sheet was filed and numbered as P.R.C. No. 19 of 1997. It is pertinent to mention that the allegation against the seventh accused by name Jayaraj is that he threatened the victim Sujatha to marry A-1. Subsequently, it unfolds that the victim girl, who was examined as PW3, herself has given a statement that she went to her friend's house from the College and went late to her house, however, her father panicked and gave the complaint to the police. In other words, the victim girl has deposed that she was not kidnapped by any one as has been complained by her father. It also unfolds that in the light of the aforesaid statement of the victim girl, the accused 1 to 6 therein were acquitted by a Judgment dated 14.03.2000. However, since the 7th accused could not be served, a Non-bailable warrant had been issued which could not be executed, and therefore, the case was split-up and re-numbered as P.R.C. No. 31 of 1998.

16. While so, on 13.09.2004, an anonymous complaint was received by the respondents herein complaining inter alia that it is not known as to how the petitioner, who was arrayed as one of the accused in Crime No. 418 of 1996, was appointed to Judicial service. On the basis of such complaint, the petitioner was called upon to submit his explanation. Accordingly, an explanation dated 11.08.2006 was submitted by the petitioner stating that he was never charge sheeted in any criminal case as an accused and he had never received any summons from any Court. Accepting such explanation submitted by the petitioner herein, further proceedings on the anonymous complaint dated 13.09.2004 was closed.

17. Again, on 05.03.2007, a similar complaint was sent to the respondents for the second time reiterating that the

petitioner, who was involved in a criminal case, ought not to have been appointed as a Civil Judge. The complaint was forwarded to the then Principal District Judge, Tirunelveli, where the petitioner was working, to cause an enquiry and to submit a report. Accordingly, the then Principal District Judge, Tirunelveli, after conducting an enquiry passed a detailed order dated Nil.11.2011 and forwarded it to the Registrar (Administration) of this Court. In his report, the then Principal District Judge, Tirunelveli has given a clean chit in favour of the petitioner by stating that the complaint was untrue and there was no merits in the complaint. It was further stated that the complaint was malicious in nature intended to tarnish the name and image of the petitioner as a Judicial Officer as also the Judiciary. Accepting the report of the then Principal District Judge, Tirunelveli, the complaint dated 05.03.2007 was closed.

18. Notwithstanding the earlier two complaints, once again, in 2011, yet another anonymous letter containing similar allegations was sent as to how the petitioner, who involved himself in a criminal case, could be appointed to Tamil Nadu State Judicial Service. Here again, an explanation was sought for from the petitioner and on being satisfied with the explanation offered by the petitioner on 15.06.2011 to the Registrar (Administration) of this Court, the third complaint given against the petitioner in the year 2011 has also been closed.

19. While the facts are so as stated above, the instant charge memorandum dated 18.05.2016 was issued to the petitioner containing three charges. All the three charges relates to the registration of Criminal case in Crime No. 418 of 1996 on the file of H-1, Thallakulam Police Station, Madurai in which the petitioner is allegedly arrayed as A-7, the alleged suppression of the criminal case at the time of appointment of the petitioner in the Tamil Nadu State Judicial Service, and thereby violated Rule 20 of The Tamil Nadu Government Servants' Conduct Rules, 1973.

20. The petitioner submitted his explanation to the charge memo stating that at no point of time, he was served with any notice regarding the pendency of the Criminal Case in P.R.C. No. 19 of 1997 on the file of the Judicial Magistrate No.II, Madurai and therefore, he was not aware of the pendency of the criminal case at the time of his appointment to Tamil Nadu State Judicial Service. According to the petitioner, the name of the seventh accused in Crime No. 418 of 1996 corresponding to P.R.C. No. 19 of 1997 is mentioned as Jayaraj, Son of Krishnamoorthy, whereas his name is K. Jeyaraj, Son of R.M. Krishnasamy. The petitioner also contended that in all his service records, his name is

recorded only as K. Jeyaraj, Son of R.M. Krishnasamy, while so, it could not be inferred that the petitioner has indulged in criminal activities. The petitioner also made reference to the fact that the case in P.R.C. No. 19 of 1997 (S.C. No. 142 of 1995) which ended in acquittal of the accused on 14.03.2000 and therefore the criminal proceedings can no longer be relied on by the respondents in the departmental proceedings. Moreover, in the first information report registered on 13.03.1996 in Crime No. 418 of 1996, the name of the petitioner was not included as an accused. However, in the charge sheet dated 04.09.1996, the name of one Jayaraj was included as 7th accused. According to the petitioner, he was appointed to Judicial Service on 10.12.1999, but till such time, he has not received any notice or summons relating to the criminal case.

21. Notwithstanding the explanation offered by the petitioner, an enquiry officer was appointed by the respondent pursuant to a third complaint. During the course of enquiry, witnesses were examined and documents were marked. The enquiry officer concluded that the paternal uncle of the petitioner by name Nithyanandam is one of the accused in the very same criminal case and the address of the petitioner is mentioned as that of the accused Nithyanandam. Therefore, the enquiry officer opined that the petitioner would have been aware of the pendency of criminal proceedings against him at the time of his appointment in Tamil Nadu State Judicial Service. The enquiry officer relied on the deposition of PW1, father of the petitioner and PW2, Paternal Uncle of the petitioner, who is one of the accused in the criminal case to impute knowledge of the pendency of the criminal case against the petitioner. The enquiry officer also concluded that the petitioner cannot simply deny the charges merely because his father's name was erroneously mentioned as Krishnamoorthy in the charge sheet. Even if it is so, the petitioner could have gone through the complaint and the statement recorded from the witnesses to infer that it is he who was arrayed as an accused in the criminal case. Therefore, the enquiry officer concluded that all the charges levelled against him are proved. On the basis of the report of the enquiry officer dated 20.02.2017, a second show cause notice dated 25.04.2017 was issued by the second respondent, which are challenged in this writ petition.

22. On appreciation of the above facts, it is clear that for similar charges, the petitioner was called upon to submit his explanation, thrice. The petitioner has also submitted his explanation stating that at no point of time he has received any notice or summons from any Court, much less prior to his appointment on 10.12.1999. In fact, there is no notice or summons issued to the petitioner, where the Criminal proceedings have been pending, is produced before this Court. However, to

impute personal knowledge about the pendency of the criminal case before the appointment of the petitioner to the Tamil Nadu State Judicial Service, reference was made to the relationship between the petitioner and his relatives, who were arrayed as accused in that case and the deposition of the Sub-Inspector of Police, who was examined as PW5 before the enquiry officer, who deposed that he went to Elumalai Village on 05.12.2010 to execute the Non-bailable warrant issued to the petitioner/7th accused however, on coming to know that the petitioner is a Magistrate, he did not serve the Non-bailable Warrant. Thus, if at all any summon was sought to be served on the petitioner, an unsuccessful attempt was made only during 2010. The petitioner also justified his innocence by stating that the name of the seventh accused in the criminal case, though similar, his father's name grossly differs with that of the name of his father and therefore, he was rest contented that the case was not registered against him. It is in such circumstances, the petitioner, apprehending that he may be held guilty of the charges by the respondents based on the report of the enquiry officer and eventually imposed with the punishment by the second respondent, has come forward with this writ petition.

23. It is strenuously argued by the learned counsel for the petitioner that when similar complaints were received against the petitioner, thrice he was called upon to submit his explanation, which he submitted. The explanation offered by the petitioner was also accepted by this Court and eventually it was also approved by the Chief Justices of this Court. Therefore, the present departmental proceedings initiated against the petitioner is contrary to the order of approval passed by the Chief Justices of this Court. We find considerable force in such submission of the learned counsel for the petitioner. From the records, we find that as per the Official Memorandum of this Court dated 09.10.2014 in R.O.C. No. 26 of 2014, the Honourable the Chief Justice has directed the Registry of the High Court to observe certain guidelines while dealing with the complaints received against the Judicial Officers of the Subordinate Judiciary, which reads as follows:-

"The Hon'ble The Chief Justice, has directed the Registry of the High Court to observe the following guidelines while dealing with the complaints received against the Judicial Officers of the Subordinate Judiciary:

(1) The complaint making allegations against Judicial Officers of the Subordinate Judiciary should not be entertained and no action should be taken thereon, unless it is accompanied by a duly sworn affidavit and verifiable material to substantiate the allegations made therein

(2) If the complaint is not accompanied by a duly sworn affidavit and verifiable material to substantiate the allegations made therein, then a sworn affidavit and verifiable material should be called for from the complainant and thereafter, the same should be submitted before the Hon'ble Portfolio Judge.

(3) If the complaint does not meet the above requirements, the complaint should be filed/ lodged without taking any steps.

The Hon'ble The Chief Justice has further directed this Registry to communicate the above Guidelines issued to this Registry, to all the Judicial Officers of the Subordinate Judiciary.

As directed, the above guidelines are communicated for information and for bringing it to the notice of the Judicial Officers functioning under their control.

The receipt of this Official Memorandum, is required to be acknowledged forthwith."

24. On the date when the Charge Memorandum dated 18.05.2016 was issued to the petitioner herein, the guidelines issued in the above Memorandum dated 09.10.2014 were in force. Therefore, the initiation of departmental proceedings by the respondents was prima facie contrary to the Memorandum dated 09.10.2014. That apart, when the Administrative Committee of this Court directed framing of charges against the petitioner, the contents of the Memorandum dated 09.10.2014 issued by the Honourable Chief Justice of this Court, which were in force by then, were not taken into consideration.

25. Be that as it may, the fact remains that in the departmental proceedings initiated against the petitioner, an enquiry was conducted and the petitioner submitted himself to such enquiry. The petitioner also examined witnesses and cross-examined the witnesses examined on the side of the respondents. Having participated in the departmental proceedings, it is no longer open to the petitioner to contend that the entire departmental proceedings initiated against him are vitiated and it is without jurisdiction. Above all, it is not certain as to whether the second respondent may accept the report of the enquiry officer or differs with the view of the enquiry officer, for any reasons, to be recorded by him. It is therefore premature on the part of the petitioner to have come to this Court with this writ petition when he was called upon to submit his explanation to the second show cause notice dated 25.04.2017 issued by the second respondent. Therefore, at this stage, we are not in a position to interfere with the orders, which are

impugned in this writ petition. The petitioner is therefore directed to submit his explanation to the second show cause notice dated 25.04.2017 issued by the second respondent in which he can raise all the points which are raised in this writ petition for consideration of the second respondent.

26. Subject to the above observation, the writ petition is dismissed. No costs. Consequently, connected WMPs are closed.

Sd/-
Assistant Registrar (CS-III)

// True Copy//

Sub Assistant Registrar

rsh

To

1. The High Court of Judicature at Madras represented by its Registrar General High Court, Chennai - 600 104
2. The Registrar (IT-cum-Statistics) represented by its Registrar General High Court, Chennai - 600 104
3. The Principal District Judge cum Enquiry Officer Office of the District Court Sivagangai District, Sivaganga.

Order in
WP No. 14656 of 2017

VSN II (CO)
CSR: 25.02.2020

सत्यमेव जयते

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