



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2021

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CORAM:
THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.10930 OF 2014
AND
MP NO.2 OF 2014

K.R.Vivekanandan

...Petitioner

Vs.

1.The Deputy Inspector General of Police
Tamilnadu Police Academy
Umanenchery,
Chennai - 127.

2.The Deputy Superintendent of Police
cum Enquiry Officer
Tamilnadu Police Academy
Umanenchery,
Chennai - 127.

3.Tr.Mugilan
Deputy Superintendent of Police
cum Enquiry Officer
Tamilnadu Police Academy
Umanenchery,
Chennai - 127.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondents in connection with the impugned order passed by the proceedings of the 2nd respondent in PR No.9/2005 dated 29.11.2013, 19.12.2013 and 30.12.2013 and confirmed by the 1st respondent in E1/198/3863/2004 in PR No.9/2005 dated 07.03.2014 and quash the same and further direct the respondents to change the enquiry officer namely the respondents 2 and 3 herein and appoint some other enquiry officer to proceed with the oral enquiry by examining the witnesses mentioned in the impugned charge memo and conclude the proceedings.

For Petitioner : Mr.K.Venkatramani
Senior Counsel for Mr.M.Muthappan

For Respondents: Mr.C.Selvaraj
Government Advocate (Civil Side)



O R D E R

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The order under challenge in this writ petition is the order passed by the Enquiry Officer calling the previous Enquiry Officer as witness in view of the fact that witnesses who deposed in disciplinary proceedings refused to appear before him.

2.It is well settled procedure that the prosecution shall introduce its witnesses and defense shall introduce their own witnesses. If the witnesses of the prosecution turns hostile, the Enquiry Officer is bound to record the same and proceed on the basis of the available materials.

3.In the instant case, the enquiry was concluded by the previous Enquiry Officer on the ground that all the prosecution witnesses turned hostile. The respondents have decided to conduct a denovo enquiry and appointed a new Enquiry Officer. Before the new Enquiry Officer, the witnesses have stated that they have already deposed before the previous Enquiry officer and they have nothing more to say and they are not willing to appear in the enquiry. In that circumstances, the Enquiry Officer newly appointed to conduct the denovo enquiry, on his own, added the previous Enquiry Officer as a second witness on the side of the prosecution. Such procedure is contrary to the settled procedures. It is for the prosecution to introduce any witnesses to speak about the conduct of the delinquent for the purpose of proving the charges. The Enquiry Officer who plays a role of a Judge cannot be asked to depose or let in evidence to explain as to what had happened, while he was conducting the enquiry. Therefore, the procedure adopted by the new Enquiry Officer is not correct and sustainable.

4.In that view of the matter, the order dated 29.11.2013 passed by the second respondent adding the previous Enquiry Officer as second witness is set aside. However, the respondents are directed to conclude the enquiry proceedings, following the settled procedure of law and pass orders, within a period of three months from the date of receipt of a copy of this order. The petitioner is directed to cooperate with the enquiry, without bringing in any new impediments.



5.The writ petition is disposed of with the above observation and direction. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

TK

To

1.The Deputy Inspector General of Police
Tamilnadu Police Academy
Umanenchery,
Chennai - 127.

2.The Deputy Superintendent of Police
cum Enquiry Officer
Tamilnadu Police Academy
Umanenchery,
Chennai - 127.

3.Tr.Mugilan
Deputy Superintendent of Police
cum Enquiry Officer
Tamilnadu Police Academy
Umanenchery,
Chennai - 127.

+lcc to M/s.M.Muthappan, Advocate, S.R.No.35163
+lcc to the Government Pleader, S.R.No.35624

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SR II(CO)
KKV/13/08/2021