



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.10435 of 2021

and

W.M.P(MD)Nos.8109, 8110 & 8111 of 2021

WEB COPY

M.Gunasekaran

... Petitioner

vs.

1.The Deputy Inspector General of Police,
Ramanathapuram,
Ramanathapuram District.

2.The Superintendent of Police,
Ramanathapuram,
Ramanathapuram District.

3.The Additional Superintendent of Police,
Offences against Women and Children,
Ramanathapuram,
Ramanathapuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent pertaining to its order bearing Na.Ka.No.B1/3864/2018, dated 15.10.2020 and to quash the same and consequently directing the first respondent to transfer the enquiry proceeding in P.R.No.90 of 2019 on the file of the third respondent to any other officer by considering the representation of the petitioner, dated 01.10.2020.

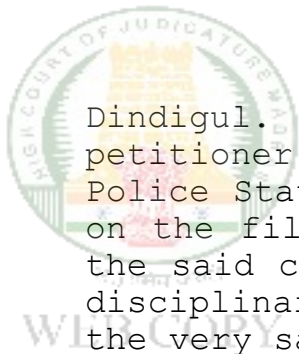
For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.P.Subbaraj
Government Advocate

ORDER

The petitioner has filed the present Writ Petition, to quash the order of the first respondent, dated 15.10.2020 and direct the first respondent to transfer the enquiry proceeding in P.R.No.90 of 2019, on the file of the third respondent to any other officer, by considering his representation, dated 01.10.2020.

2.According to the petitioner, while he was working as a Circle Inspector at Temple Circle Police Station, Rameswaram, due to his illness, he was on medical leave and went to his native place in



Dindigul. At that time, a false case was registered against the petitioner in Crime No.316 of 2018 on the file of Dindigul Taluk Police Station and the same was taken on file in C.C.No.214 of 2018 on the file of the Judicial Magistrate Court No.I, Dindigul. While the said criminal case was pending, the second respondent initiated disciplinary proceedings in P.R.No.90 of 2019, dated 04.12.2019, for the very same charges. After full-fledged trial in the criminal case in C.C.No.214 of 2018, the petitioner was acquitted by Judgment, dated 12.08.2020, by the learned Judicial Magistrate No.I, Dindigul.

3.In the disciplinary proceedings, the third respondent was appointed as an enquiry officer and he commenced enquiry on 07.03.2020. From the day one of the enquiry, the third respondent is conducting the enquiry in a biased manner. The third respondent is not giving any opportunity to the petitioner to cross-examine the witnesses. The third respondent on his own recorded the evidence. The complainant was examined as P.W.6 on 30.09.2020 and the third respondent forced the petitioner to cross-examine the complainant-P.W.6 on the same day. The Investigating Officer was examined as P.W.7 on 03.10.2020, in the absence of the petitioner. When the petitioner requested time for cross-examination, the third respondent refused to give opportunity and marked the petitioner as absent. Hence, the petitioner gave representation on 09.06.2021 to the third respondent to re-call P.W.6 and P.W.7 and to permit him to cross-examine P.W.6 and P.W.7 once again. In the meantime, the first respondent passed the impugned order, dated 15.10.2020, permitting the third respondent to continue the domestic enquiry and directed the petitioner to co-operate with the enquiry. The third respondent, without considering the petitioner's acquittal in the criminal case, is conducting enquiry and prayed to quash the order passed by the first respondent, dated 15.10.2020 and to direct the first respondent to transfer the enquiry proceeding in P.R.No.90 of 2019 on the file of the third respondent to any other officer.

4.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

5.From the materials available on record, it is seen that the disciplinary proceedings initiated against the petitioner was commenced on 07.03.2020. The third respondent is the enquiry officer. According to the petitioner, from the beginning itself, the third respondent conducted enquiry in a biased manner. The third respondent has not recorded the evidence and witnesses as deposed by them and he recorded the same on his own volition. According to the petitioner, the third respondent forced the petitioner to cross-examine the complainant-P.W.6 without furnishing the deposition of P.W.6 in chief on 30.09.2020 itself. Similarly, P.W.7, the Investigating Officer was examined on 03.10.2020 in the petitioner's absence and when he requested time for cross-examination, the third respondent marked the petitioner as absent.



6.Further, from the above materials available on record, it is seen that P.W.6 was examined on 30.09.2020 and P.W.7 was examined on 03.10.2020. The petitioner has requested the third respondent recalling P.W.6 and P.W.7 only in his representation, dated 09.06.2021. Though the petitioner has stated that immediately after examination of P.W.6 and P.W.7, the petitioner requested the third respondent to re-call P.W.6 and P.W.7, the petitioner has not produced any representation to that effect. Further, the first respondent considered the representation of the petitioner, dated 01.10.2020 and passed the impugned order, dated 15.10.2020, permitting the third respondent to continue the domestic enquiry and directed the petitioner to co-operate for early conclusion. If really, the third respondent was conducting domestic enquiry in a biased manner and is not giving proper opportunity to cross-examine the witnesses, the petitioner ought to have taken appropriate proceedings including approaching this Court in this regard at the earliest. Even though the petitioner alleging that the third respondent is conducting enquiry in a biased manner from the beginning ie., on 07.03.2020, the petitioner gave representation to the third respondent only on 09.06.2021 to re-call P.W.6 and P.W.7 and filed the present Writ Petition in June, 2021. Similarly, the first respondent by the impugned order permitted the third respondent to continue the domestic enquiry. The petitioner has not challenged the said order immediately, but participated in the domestic enquiry for more than 8 months. After 8 months, the petitioner has come out with the present Writ Petition.

7.Considering the materials referred to above, the petitioner is not entitled to the relief sought for in the Writ Petition and the same is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To

1.The Deputy Inspector General of Police,
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2.The Superintendent of Police,
Ramanathapuram,
Ramanathapuram District.

3.The Additional Superintendent of Police,
Offences against Women and Children,
Ramanathapuram,
Ramanathapuram District.

+1 CC to M/s.S.C.HEROLD SINGH,Advocate (SR-21248[F] dated 05/07/2021)

+1 CC to M/s.SPL GP (SR-21330[F] dated 06/07/2021)

**W.P (MD) No.10435 of 2021
05.07.2021**

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