



WEB COPY



W.P. No. 25909 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. No. 25909 of 2016
and
W.M.P. No. 22164 of 2016**

T.Naganathan

... Petitioner

-VS-

1. Commissioner of Police,
City Police Office,
Chennai – 600 008.
2. Joint Commissioner of Police,
North Zone,
Chennai – 600 011.
3. Superintendent of Police,
District Police Office,
Ramanathapuram.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, to call for records relating to the impugned order passed by the Third Respondent herein in his proceedings C. No. M1/21776/2005 dated 30.03.2015, which was served on the Petitioner on 13.07.2016 and quash the same.



WEB COPY



W.P. No. 25909 of 2016

For Petitioner : Mr. R.Krishna Kumar
For M/s. Bala and Daisy

For Respondents : Mr. G.Ameedius
Government Advocate

ORDER

Heard Mr. R.Krishna Kumar, Learned appearing Counsel for the Petitioner and Mr. G.Ameedius, Learned Government Advocate appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner was working as Police Constable had driven the official vehicle bearing Registration No. TN-65 G-0086 in performance of his duties on 30.08.1995 when it was involved a road accident, and the State Government had deposited a sum of Rs. 3,70,246/- on 11.04.2007 towards compensation awarded to the victims by the Motor Accidents Claims Tribunal, Tirunelveli for the same. The Respondents has issued show cause notice in C. No. M1/21776/2005 dated 30.03.2015 to the Petitioner calling upon him to submit his explanation as to why 10% of the compensation amount of Rs. 3,70,246/- should not be recovered from his pay within 15 days from its receipt in terms of



W.P. No. 25909 of 2016

G.O.(D) No. 393, Home (Transport-IV) Department dated 01.03.1988 issued by

the Government of Tamil Nadu in that regard. The said show cause notice is challenged by the Petitioner in this Writ Petition.

3. This Court, at the time of admission on 26.07.2016, had passed an order of interim stay, which continues to be in force till date.

4. The consistent legal position has been reiterated by the Hon'ble Supreme Court of India in ***Union of India -vs- Kunisetty Satyanarayana*** [(2006) 12 SCC 28] that a charge memo or show cause notice cannot be challenged before the completion of enquiry and the proceedings cannot be interdicted till it reaches its logical conclusion. It would be useful here to extract the relevant passages from the said decision which read as follows:-

*“13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide **Executive Engineer, Bihar State Housing Board -vs- Ramdesh Kumar Singh** [JT 1995 (8) SC 331], **Special Director -vs- Mohd. Ghulam Ghouse** (AIR 2004 SC 1467), **Ulagappa -vs- Divisional Commissioner, Mysore** [2001(10) SCC 639], **State of U.P. -vs- Brahm Datt Sharma** (AIR 1987 SC 943) etc.*



W.P. No. 25909 of 2016

WEB COPY

14. *The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.*



W.P. No. 25909 of 2016

15. *Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.*

16. *No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”*

Having due regard to the aforesaid legal position, as there is nothing which precludes the Petitioner from raising the contentions in this Writ Petition in the reply to be submitted to the Third Respondent, who is bound to deal with the same before coming to any ultimate conclusion, there is no necessity for the Court to interfere at this pre-mature stage of the matter.

5. Learned Counsel appearing for the Petitioner, citing on the ruling of the Division Bench of the Court in ***Tamil Nadu State Transport Corporation (Kumbakonam Dn-II) Ltd. -vs- P.Karuppusamy*** [(2008) 1 MLJ 694], states that the Respondents cannot initiate disciplinary proceedings against the driver of a vehicle involved in an accident when the claim for compensation made by



W.P. No. 25909 of 2016

the victims was defended by contending that the same driver had not been negligent in driving the vehicle. On a perusal of the facts of the said case, it is apparent that it does not pertain to any show cause notice as in this case, but arose from a final decision in disciplinary proceedings on the concerned driver of the vehicle. That apart, the correctness of such view taken has been doubted and the matter had been referred for re-consideration by order dated 29.03.2012 in W.P. No. 39563 of 2004, which is pending before the Full Bench of the Court.

6. In such circumstances, the Court is inclined to pass the following order:-
 - (i) it shall be incumbent upon the Petitioner to submit his explanation to the show cause notice, which is impugned in the Writ Petition, if not done already, to the concerned authority by 31.07.2022;
 - (ii) in the event of not being satisfied with the explanation submitted by the Petitioner, an enquiry shall be conducted following the prescribed procedure after affording full opportunity of personal hearing to the Petitioner to explain his position in that regard and a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated under written acknowledgment; and



W.P. No. 25909 of 2016

WEB COPY (iii) if any adverse decision is taken, the Petitioner may pursue legal remedies in accordance with law and no view has been expressed by the Court on the merits of the controversy involved in the matter.

In fine, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

04.07.2022

gd

Index: Yes/No

Note: Issue order copy by 18.07.2022.

To

1. Commissioner of Police,
City Police Office,
Chennai – 600 008.
2. Joint Commissioner of Police,
North Zone,
Chennai – 600 011.
3. Superintendent of Police,
District Police Office,
Ramanathapuram.



WEB COPY



W.P. No. 25909 of 2016

P.D. AUDIKESAVALU, J.

gd

W.P. No. 25909 of 2016

04.07.2022