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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2022

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.30892 of 2022 &
W.M.P.No.30287 of 2022

S.Jeevarathinam ... Petitioner

Vs

1.Director General of Police,
Tamil Nadu,
Chennai - 600 004.

2.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai - 600 007.

3.The Deputy Inspector General of Police,
Kancheepuram Range,
Kancheepuram. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the impugned order passed by the third respondent herein in his proceedings C.No.A1/12596/2018 dated 27.10.2022 and quash the same.

For Petitioner ... M/s.G.Bala and Daisy

For Respondents ... Mr.L.S.M.Hasan Fizal,
Special Government Pleader

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O R D E R

This writ petition has been filed challenging the show cause notice dated 27.10.2022 issued by the third respondent to the petitioner directing him to submit an explanation with regard to the proposal to delete his name in Sl.No.7 (A) of the 'C' List Head Constables (AR) fit for promotion to the post of Sub-Inspectors of Police (AR) for the year 2004 and revert him as Head Constable from the date on which his immediate Senior and Junior were reverted as Head Constable.

2. Mr.L.S.M.Hasan Fizal, learned Special Government Pleader accepts notice on behalf of the respondents. By consent of both the parties, this writ petition is taken up for final disposal in the admission stage itself.

3. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

4. Learned counsel for the petitioner would now submit that the third respondent does not have the jurisdiction and authority under law to issue show cause notice as per Rule 5 of the Tamil Nadu Police Subordinate Service Rules. According to him, since the impugned show cause notice has been issued after a lapse of 17 years from the date when the petitioner was

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promoted as Sub Inspector of Police, the impugned show cause notice will have to be issued by the State Government and the third respondent does not have the power. Even though the learned counsel for the petitioner has submitted the aforesaid submissions in his arguments while seeking for stay of the impugned order, the same has not been raised as a ground for challenge in the affidavit filed in support of this writ petition.

5. Learned counsel for the petitioner drew the attention of this Court to the Division Bench Judgment of this Court dated 16.12.2015 passed in W.A (MD).No.35 of 2013 batch in the case of The District Elementary Educational Officer and another vs. M.Kamala and others and would submit that in the aforesaid decision, the Division Bench has held, following various decisions that the Hon'ble Supreme Court has repeatedly held that the Court cannot unsettle settled things and cannot unscramble a scrambled egg.

6. The contention of the learned counsel for the petitioner can be decided only if the matter is decided on merits. Admittedly, the present writ petition has been filed challenging the show cause notice. However, the authority of the third respondent to issue the impugned show cause notice

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has to be decided only after the petitioner submits an explanation to the same as directed by the third respondent within a time limit fixed therein.

7. Learned Additional Government Pleader appearing for the respondents has disputed the submissions made by the learned counsel for the petitioner and would submit that the third respondent is the person who had promoted the petitioner to the post of Sub Inspector of Police and therefore, he has got the jurisdiction and authority under law to issue show cause notice.

8. This Court after giving due consideration to the rival submissions, is of the considered view that being a show cause notice and that too, when there are disputed questions of fact and law involved, it is for the third respondent to consider the contentions of the petitioner on merits and in accordance with law, once the petitioner submits an explanation to the same. The contentions that have been raised in this writ petition could very well be considered by the third respondent, while passing the final orders based on the petitioner's explanation to be submitted to him.

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9. It is settled law that a show cause notice can be challenged only when the same has been issued without jurisdiction and without authority under law. As observed earlier, since there are disputed questions of fact and law involved with regard to the impugned show cause notice as to whether the third respondent is having the authority or not, this Court at this stage, cannot interfere with the show cause notice as the one that is impugned in this writ petition.

10. For the foregoing reasons, this Court directs the petitioner to submit an explanation to the third respondent within a period of ten days from the date of receipt of a copy of this order and also grants liberty to the petitioner to raise all the contentions that were raised in this writ petition in the said explanation and on receipt of the said explanation, the third respondent shall pass final orders on merits and in accordance with law, after giving due consideration to the contentions raised by the petitioner in his explanation.

11. With the aforesaid direction, this writ petition is disposed of. No

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costs. Consequently, connected miscellaneous petition is closed.

18.11.2022

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Index: Yes/ No
Speaking Order/Non-speaking Order

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ABDUL QUDDHOSE, J.

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W.P.No.30892 of 2022

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https://www.mhc.tn.gov.in/judis