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WP.No.33135 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

W.P.No.33135 of 2012

and

M.P.Nos.2/2012 & 1/2013

C.Devandiran

...

Petitioner

Vs.

The Deputy Inspector General of Police,
Villupuram Range,
Villupuram.

...

Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the respondent in connection with the impugned order passed by the respondent in C.No.B3/Review 70/12 dated 30.10.12 and quash the same and grant such other further relief as this Court may deem fit in the circumstances of the case.

For Petitioner	: Mr.K.Venkatramani, Senior counsel for Mr.M.Muthappan.
For respondent	: Mr.S.Rajesh, Govt. Advocate



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ORDER

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The show cause notice issued in C.No.B3/Review 70/12 dated 30.10.12 by the respondent is under challenge.

2. Heard Mr.K.Venkatramani, the learned senior counsel appearing for Mr.M.Muthappan for the petitioner and Mr. S.Rajesh, the learned Government Advocate appearing for the respondent.

3.Facts leading to filing of this Writ Petition is set out herewith:

The petitioner was appointed as Sub-Inspector of Police on 22.5.2010. Due to the pendency of the charge memo, the promotion as Inspector of Police became due. Claim for promotion was deferred. The promotion panel for the post of Inspector of Police was published on 4.7.12.

3.1.The petitioner served as Sub Inspector of Police, Chinnasalem police station, from 04.07.2011 to 11.03 2012. He joined the Chinnasalem Police Station, he has conducted prohibition raids in



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Block spot villages, viz. Thengiyanatham, Thagarai, Paithandurai, Nakuppam, Kallanatham, Latchiyam, and all the prohibition villages, and booked cases against the prohibition offenders. He also enforced dry law in his jurisdiction very strictly.

3.2. He would further submit that apart from them, there was also a Prohibition Enforcement Wing in the district, whose job is to eradicate the prohibition offenders. While so, the petitioner was issued with a charge memo in PR No.24/12 dated 08.03.12 by the Deputy Superintendent of Police, Kallakurichi Sub-Division, under Rule 3(a) of the Tamil Nadu Police Subordinate Service (Discipline & Appeals) Rules for an allegation that "Neglect of duty in not conducting regular prohibition raids and failure to enforce Dry law effectively.

3.3. Upon receipt of his explanation, the Deputy Superintendent of Police, Kallakurichi, has given a finding that the charges were not proved. He sent a not-proved minute on the above charge. On receipt of the said not-proved minute, the Superintendent of Police, Villupuram,



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passed an order agreeing with the findings of the Minute Drawing Officer and dropped further action against the petitioner.

3.4. On receipt of the above-mentioned orders passed by the Superintendent of Police, Villupuram, in PR No. 24/12 under Rule 3(a) of the Tamil Nadu Police Subordinate Service (Discipline & Appeals) Rules 1953 against the petitioner Devandiran, the Deputy Superintendent of Police, Kallakurichi Sub Division took up *suo moto* review and issued impugned show cause notice. Hence, this Writ Petition.

4. Mr.K.Venkatramani, the learned senior counsel appearing for the petitioner, would strenuously argue that the show cause notice shall be cancelled on the following grounds:

- (i) for not furnishing the copies of Ex.P1 and P2, which are relied upon by the respondent;
- (ii) as per the law mandated by the Hon'ble Supreme



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Court in *Lav Nigam Vs. Chairman and MD, ITI Ltd and another* reported in (2006) 9 Supreme Court Cases 440 in contending that if the appellate authority does not concur with the findings of the enquiry officer, he is bound to give a notice setting out his tentative conclusions on the charged employee, and it is only after the hearing of the said employee that the disciplinary authority can arrive at a final finding of guilt.

4.1. He would further contend that thereafter the employee has to be served with a notice relating to the punishment proposed.

5. Per contra, Mr. S.Rajesh, the learned government advocate appearing for the respondent, would inter alia contend that on 22.9.2011 the Additional Superintendent of Police, (Crime) in charge of prohibition in Viluppuram district had conducted prohibition raids between 20.09.2011 and 22.9.2011 at Na.Kuppam, Pandiyan Kuppam



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(po), Kallakurichi Taluk, Sethiyanathal, and Thengiyathanam villages in Chinnasalem Police Station, limits within the jurisdiction of Chinnasalem Police Station, and the Inspector of Police, Chinnasalem, and the Inspector of Police PEW Kallakurichi took part in the raids. The police party was able to detect six cases.

5.1. He would further contend that as the officers of Chinnasalem Police Station were found to have failed to enforce the dry law effectively in the jurisdiction, Tr.Selvaraj Inspector of Police, and the petitioner, C. Devendran, Sub Inspector of Police, were dealt with on charges under Rule 3(a) of TNPSS (D&A) Rules-1953.

5.2. The petitioner was issued with a show cause notice in PR.No.24/2012 dated 8.3.2012 for the following delinquencies:

"Neglect of duty in not conducting regular prohibition raids and failure to enforce dry law effectively, in his jurisdiction, i.e., in Chinnasalem PS limits."



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5.3. He would further contend that upon receiving his explanation, the Deputy Superintendent of Police, Kallakurichi, determined that the charges were not proven and issued a "not-proved" minute regarding the charge. The Superintendent of Police, Villupuram, then reviewed this "not-proved" minute, concurred with the findings, and decided to drop further action against the petitioner.

5.4. Subsequently, upon receiving the above-mentioned order from the Superintendent of Police, Villupuram, in PR No. 24/12 under Rule 3(a) of the Tamil Nadu Police Subordinate Service (Discipline & Appeals) Rules, 1955, against the petitioner Devandiran, a *suo moto* review was initiated by the Deputy Inspector General of Police, Villuppuram Range, Villupuram, and an impugned show cause notice was issued, which is under challenge in this writ petition.

6. I have heard the rival submissions made by learned counsels of either side and perused the materials available on record.



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7. In general, as the show cause notice does not infringe on any one, the Writ will not lie; the Writ will lie when some rights of any person are infringed. In general discretion under Article 226 of the Constitution of India will not be originally exercised, although in some exceptional cases.

8. Mr.K.Venkatramani, the learned senior counsel appearing for the petitioner would strenuously argue by citing the judgment of the Hon'ble Supreme Court in the case of *Lav Nigam (cited supra)*. The Hon'ble Supreme Court, in a similar set of facts, has observed that in the case that the statutory authority differs with the first view taken by the enquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed.

9. In the case of *Lav Nigam (cited supra)*, the departmental proceedings were initiated against the appellant. The inquiry officer



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exonerated the appellant in his report dated 10-3-1997 in respect of all three articles of charge. The disciplinary authority passed an order on July 7, 1997, imposing a penalty of removal from service, and he was given the opportunity to make a representation regarding the proposed penalty. In the said show cause notice, the disciplinary authority had provisionally come to the conclusion that the appellant was not a fit person to be retained in the service of the government and that a major penalty of removal from service shall be imposed under Rule 25(f) of the Conduct, Discipline, and Appeal Rules, 1975 of the ITI Ltd. The appellant responded to the show cause notice. The appellant was removed from service by an order dated 22.05.1998. The said order was challenged by filing a writ petition before the High Court, and the High Court held that there was no need to give two separate show-cause notices, one before the disciplinary authority found against the employee while differing with the view of the inquiry officer, and another against the proposed punishment. It was further held that the two notices could be combined into one. The writ petition was accordingly dismissed.



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10. On the above, the Hon'ble Supreme Court has observed that in the case of issuing proposed punishment, where the Statutory Authority differs with the first view taken by the inquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed.

11. A reference was also made to the observations to the Hon'ble Supreme Court in a similar case in *Yoginath D. Bagde v. State of Maharashtra*, reported in 1999 (7) SCC 739. In the said case, Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 does not provide for a disciplinary authority to give an opportunity of hearing to the delinquent officer before differing with the view of the enquiry officer. In this context, the Hon'ble Apex Court has observed that

"But the requirement of 'hearing' in consonance with the



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principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the 'TENTATIVE' reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of 'not guilty' already recorded by the enquiring authority was not liable to be interfered with."

12. The operative portion of the show cause notice is extracted

hereunder:

"3) On Suo-moto review. I have carefully gone the P.R. file.



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containing the charge, findings of the Minute - drawing Officer and orders, passed by the Superintendent of Police, Viluppuram. The charge against delinquent S.I. of Police, is based on the report of Addl. Superintendent of Police. I/c Prohibition Enforcement Wing. Viluppuram. submitted to the Dy.Inspector General of Police, Viluppuram Range, in his C.No.148/ADSP/Pro/VPM/2011, dt.16.10.11 which is marked as Ex.P.1 and the Memo of the Dy. Inspector General of Police, Viluppuram Range, in C.No. 82/16100/2011. dt.11.10.11 which is marked as Ex.P.2. In this P.R. File. But the explanation of the delinquent S.I. of Police, to the charge is not convincing. Yet the Dy. Superintendent of Police. Kallakurichi, Sub-division, being the Minute drawing officer, without analyzing the explanation of the delinquent S.I. of Police, has come to a conclusion as if the charge is "Not Proved" against the delinquent S.I. of Police, which is not acceptable. The Supdt. of Police, Viluppuram, being the Disciplinary Authority without analysing the issue on hand, has accepted the findings of the Minute drawing Officer, in a



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mechanical way and dropped further action on the charge against the delinquent S.1. of Police which I do not agree. But the charge is proved against delinquent 5.1. of Police, through the documentary evidences, let in Ex.P.1 and Ex.P.2, as his explanation to the charge is not convincing nor acceptable."

13. As regards the maintainability of the Writ Petition, in case of issuance of show cause notice, the Hon'ble Supreme Court in **Union Of India And Another vs Kunisetty Satyanarayana** reported in (2006) 12 SCC 28, wherein it has held as under:

"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



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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 petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. 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."

14. In this case, the reviewing authority has relied upon Ex. P1 & P2, and these documents were not furnished to the delinquent official, and the reviewing authority has held that the charges proved against the delinquent through documentary evidence, let in Ex. P1 & P2. Therefore, the show cause notice has been issued in defiance to the principles of natural justice.



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15. In this case, the disciplinary action has dropped the proceedings initiated against the petitioner. When the reviewing authority chooses to disagree with the finding of the inquiry officer, then he has to issue a show cause notice setting his tentative conclusion to the charged employee. In the process, if the documents are relied upon, then it is incumbent on the part of Authority concerned to furnish the copies of the same to the delinquent official. Thereafter, upon receipt of explanation from the delinquent official, the authority may arrive at a final finding. Therefore, two show cause notices have to be issued to the delinquent official relating to the punishment opposed. Only in exceptional cases, the charge sheet or the show cause notice may be quashed. if it found it have been issued without jurisdiction or in defiance to the legal proceedings.

16. In this case, the show cause notice was served to the petitioner without furnishing the copies of the exhibits relied upon by the reviewing authority. In such view of the matter based on the foregoing observations and submissions, the impugned show cause notice stands



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quashed; however, it will not preclude the respondent from issuing show cause notice afresh.

17. Thus, this Writ Petition stands **allowe d**. The impugned show cause notice issued by the respondent in C.No.B3/Review 70/12 dated 30.10.12 is quashed with direction to the respondent to issue a show cause notice afresh indicating his tentative findings of the disciplinary authority along with copies of the exhibits relied upon. Thereafter, the delinquent official has to be served with notice relating to the punishment proposed. The said exercise shall be completed within a period of 8 weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

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Speaking order/Non-speaking order

Neutral: Yes /No

jrs



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To

1. The Deputy Inspector General of Police,
Villupuram Range,
Villupuram.

2. The Section Officer,
V.R.Section, High Court, Madras.



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R.KALAIMATHI, J.

jrs

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