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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01-03-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

And

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

WP No.12671 of 2022

And

WMP Nos.12116 and 12119 of 2022

T.Velmurugan

.. Petitioner

-VS-

1.The Registrar-General,
High Court of Madras,
Chennai-600 104.

2.The Principal District Judge,
(Appointing cum Disciplinary Authority),
Salem.

3.The District Munsif,
Omalur,
Salem District.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the impugned proceedings issued by the second respondent in



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Roc.No.5585/2018 dated 29.04.2022 and to quash the same.

For Petitioner : Mr.J.Jayamalan

For Respondents : Mr.V.Vijayshankar

ORDER

[ORDER OF THE COURT WAS MADE

BY S.M.SUBRAMANIAM, J.]

Further representation called for from the petitioner on the findings of the Enquiry Report in departmental proceedings, is under challenge in the present writ petition.

2. The petitioner was holding the post of Superintendent. Departmental disciplinary proceedings were initiated and a charge memo in No.2 of 2018 dated 20.11.2018 was issued to the petitioner. The petitioner initially challenged charge memo in WP No.2706 of 2019. The Division Bench of this Court passed final orders, dismissing the writ petition on 05.02.2019, by granting liberty to the writ petitioner to defend his case before the Disciplinary Authority. Accordingly, the Disciplinary Authority appointed an Enquiry Officer, who in turn conducted an enquiry and



submitted Final Report. The findings of the Enquiry Officer, in his Report, were not agreed by the Disciplinary Authority/ Principal District Judge.

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3. Since the Disciplinary Authority disagreed with the findings of the Enquiry Officer, a show cause notice was issued calling further representation from the petitioner for providing an opportunity to the delinquent Officer. The said show cause notice calling further representation from the petitioner dated 29.04.2012, came to be challenged in the present writ petition.

4. Mr.J.Jayamalan, learned counsel for the petitioner, would contend that there is no basis for the charge memo issued to the writ petitioner. The fixation made to the staff members were approved by the learned Principal District Judge and therefore, the Disciplinary Authority has taken a partisan view in respect of the case of the writ petitioner. Once the fixation is approved, the question of framing charge memo would not arise at all. Thus the petitioner challenged the second show cause notice.

5. The learned counsel for the respondent would oppose the



contentions raised on behalf of the petitioner by stating that the procedures as contemplated under Discipline and Appeal Rules, are scrupulously followed. The petitioner was afforded with an opportunity to defend his case. The petitioner participated in the enquiry proceedings and the Disciplinary Authority disagreed with the findings of the Enquiry Officer. Thus show cause notice was issued, calling for further representations/explanations from the delinquent Officer.

6. Considering the arguments as advanced between the parties to the lis on hand, the scope of judicial review under Article 226 of the Constitution of India, is to ensure the processes through which the decision has been taken by the Competent Authority is in consonance with the Statutes and the Rules in force, but not a decision itself. Therefore the factual disputes raised in the departmental disciplinary proceedings deserves no adjudication from the hands of this Court.

7. All disputed facts or the allegations with reference to the charges, are to be adjudicated before the Disciplinary Authority. The scope of the power of judicial review cannot be expanded for the purpose of



adjudication of disputed facts in departmental disciplinary proceedings. In the event of any such adjudication, there is a possibility of miscarriage of justice. Thus the Disciplinary Authority must be allowed to exercise his powers as contemplated under the Discipline and Appeal Rules by examining the records on the findings of the Enquiry Officer and take a decision.

8. In the present case, a charge memo was issued. Writ filed against the charge memo was dismissed. The petitioner participated in the domestic enquiry. The Enquiry Officer submitted his Final Report. The Disciplinary Authority disagreed with the findings in the enquiry report.

9. The Disciplinary Authority is empowered to disagree with the findings of the Enquiry Officer under the Discipline and Appeal Rules. In the event of such disagreement, further opportunity is to be provided to the delinquent Officer. In compliance with the rules of natural justice, further opportunity has been given by the Disciplinary Authority to the petitioner to submit his further explanations. Instead of submitting further explanations, the petitioner has chosen to file the present writ petition.



10. The requirement for dealing with the cases of disagreement with the findings of the Enquiry Officer, is that the Disciplinary Authority must assign reasons for disagreement, and such reasons are to be communicated to the delinquent Officer seeking further explanation.

11. In the present case, Annexure to the order impugned dated 29.04.2022 reveals that reasons for holding the charges as proved by disagreeing with the findings of the Enquiry Officer has been categorically stated by the Disciplinary Authority.

12. With reference to the reasons given for disagreement, the petitioner has to submit his further explanations/representations and such explanations are also to be considered. Thereafter, final order is to be passed in the departmental disciplinary proceedings. Thus, we are of the considered opinion that the Disciplinary Authority has scrupulously followed the procedures as contemplated under the Discipline and Appeal Rules.

13. Writ against show cause notice calling for further representation is not entertainable in a routine manner. Such writ



proceedings are entertainable, if issued by an Incompetent Authority or tainted with allegations of mala fides. None of these grounds are established in the present writ petition. Thus the petitioner has to submit his further representations/explanations, in response to the show cause notice issued by the Disciplinary Authority in impugned proceedings dated 29.04.2022. On receipt of the same, the Disciplinary Authority is empowered to consider the materials available on record, take decision and pass final orders in the departmental disciplinary proceedings. If an adverse order is passed, the petitioner has got a right of appeal.

14. With the above observations, the present writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are also dismissed.

(S.M.SUBRAMANIAM,J.) (K.RAJASEKAR,J.)
01-03-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn



To

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