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W.A.No.3399 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**W.A.No.3399 of 2024
and
C.M.P.No.26408 of 2024**

The Principal Secretary to Government,
Home (Police-2) Department,
Secretariat,
Chennai - 600 009.

... Appellant

-Vs-

K.Baskaran

... Respondent

PRAYER : Appeal filed under Clause 15 of Letters Patent, to set aside the order in W.P.No.31485 of 2016 dated 22.09.2023 and allow the above writ appeal.

For Appellant : Mr.S.Venkateswaran
Special Government Pleader

For Respondent : Mr.A.E.Ravichandran



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J U D G M E N T

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(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This intra Court appeal has been directed against the order passed by the writ Court dated 22.09.2023 in W.P.No.31485 2016.

2. Against the respondent herein, the departmental proceedings was initiated which ended in a punishment of compulsory retirement by issuance of G.O.(2D)No.276, Home (Police-2) Department dated 07.08.2014 and consequential Government Order in G.O.(2D)No.171, Home (Police-2) Department dated 09.03.2016 giving effect to the compulsory retirement order from 07.08.2014.

3. The said Government Orders were under challenge in the writ petition filed by the respondent / writ petitioner on the main ground that, since it is a major penalty proceedings where, after the Enquiry Officer filed a copy of the report served on the respondent / delinquent, a second show cause notice also ought to have been issued, however without giving such opportunity by giving the second show cause notice since the Disciplinary Authority proceeded to



conclude the disciplinary proceedings by imposing the said punishment, that was questioned on the said ground which was accepted by the learned Judge through the order impugned dated 22.09.2023, thereby, the learned Judge passed the following order:

"15. Therefore, the following directions are issued:

(a) The respondent must issue a second show cause notice to the petitioner relating to the punishment to be imposed consequent to the charges having been proved. In the second show cause notice, the respondent must clearly explain their jurisdiction to issue such a show cause notice in spite of the fact that the Court had not granted extension of time as stipulated in W.P.No.27709/2013.

(b) The petitioner is given full liberty to take up every issue including the issue of jurisdiction of the respondent to so issue the show cause notice and to proceed further with the enquiry after the time stipulated in W.P.No.27709/2013 had long passed.

(c) The petitioner is also permitted to raise every other issue on facts and also on the issue of law with respect to double jeopardy.

(d) After issuance of such show cause notice, which should be issued within a period of four weeks from the date of receipt of a copy of this order, the respondent, on receipt of the explanation from the petitioner, may take a decision about the further orders to be passed.



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(e) It is made clear that breach of issuance of show cause notice within the period of four weeks from the date of receipt of a copy of this order, would bring the entire proceedings to a halt and it would become a nullity.

16. In view of the order passed, the orders impugned in the present writ petition are set aside. But, since further directions are issued, the writ petitions stands disposed of. No costs."

4. Aggrieved over the same, the present appeal has been directed by the appellant State.

5. Heard Mr.S.Venkateswaran, learned Special Government Pleader appearing for the appellant and Mr.A.E.Ravichandran, learned counsel appearing for the respondent.

6. It was contended by the learned counsel appearing for the respondent that, there has been a pendency of disciplinary proceedings for more than 17 years, let it be concluded by dismissing the writ appeal as the appellant / Disciplinary Authority does not have any jurisdiction to proceed further on the disciplinary proceedings in view of the show cause notice having not been



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issued which mandatorily ought to have been issued.

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7. We have considered the said submissions made by the learned counsel appearing for the respondent and perused the materials placed before this Court.

8. All these aspects having been considered, the said order was passed by the learned Judge which is impugned herein and especially in the operative portion of the order in Paragraph Nos.15 and 16 which we have extracted herein above, such a liberty also had been given to the respondent / writ petitioner to raise the jurisdictional issue also on receipt of the show cause notice issued by the appellant / Disciplinary Authority.

9. Insofar as the non-issuance of the show cause notice second time which is mandatorily required in any major penalty proceedings is concerned, the learned Special Government Pleader even though made an attempt to seek interference of the order passed by the writ Court, we are not impressed with the same for the reason that, such a mandatory requirement cannot be brushed aside.

10. Therefore, we do not find any reason to interfere with the reasoning as well the conclusion arrived at by the learned Judge through the impugned



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order, resultantly, the writ appeal fails, hence, it is liable to be dismissed.

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11. But at the same time, since the time slot given by the learned Judge through the impugned order to give second show cause notice already been over and for all this time, this legal battle is still going on including the present intra Court appeal which is being disposed only today, we are inclined to pass the following order in this writ appeal:

(i) The appellant shall issue the second show cause notice to the respondent / writ petitioner within a period of four weeks from the date of receipt of a copy of this order, failing which, it shall be deemed that the disciplinary proceedings has come to an end and the respondent / writ petitioner would be free to seek for the benefits as if that there has been no disciplinary proceedings against him.

(ii) If the second show cause notice is issued by the appellant within four weeks period as indicated above, it is open to the respondent / writ petitioner to give his reply where he can raise the jurisdictional issue also as has been directed by the learned Judge in Paragraph No.15 of the order impugned.

(iii) After receipt of the reply which shall be filed by the respondent / writ petitioner within four weeks from the date of the receipt of the show cause notice, the appellant / Disciplinary Authority shall complete the proceedings and pass final order on merits and in accordance with law within a



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period of six weeks thereafter.

(iv) If this time schedule is violated by any of the parties, they have to suffer for such violation.

12. With these observations and directions, this Writ Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) (C.S.N., J.)
26.11.2024

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji



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C.SARAVANAN, J.**

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