

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

W.A.No.775 of 2014
and
M.P.Nos.1 and 2 of 2014

The Director General of Police,
Tamilnadu,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-4.

... Appellant/Respondent

Vs.

P.Selvaraju

... Respondent/Petitioner

This writ appeal is preferred under Clause 15 of Letters Patent against the order dated 03.01.2014 passed in W.P.No.27186 of 2013.

WP.NO.27186 of 2013:Petition filed Under Article 226 of the Constitution of India Praying for issuance of a Writ of Certiorari to Call for the records of the respondent in connection with the impugned order passed in RC.No.56567/Con 1(2)/2011 dated 9.9.2013 and quash the same

For Appellant : Mr.P.S.Sivashanmugasundaram,
Spl.G.P

For Respondent : Mr.K.Venkataramani, SC
for Mr.T.Ayengaraprabhu

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JUDGMENT

(The Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal arises from the order dated 3rd January, 2014, whereunder two writ petitions, being W.P.Nos.25485 and 27186 of 2013 filed by the writ petitioner / respondent herein were allowed. The instant appeal is directed against the order passed in

W.P.No.27186 of 2013 only.

2 The indisputable and undeniable facts germane to the subject matter are that the writ petitioner, while serving as Sub Inspector of Police, was considered for promotion to the post of Inspector of Police by including his name in the "C" list of Sub Inspector of Police (Taluk) found fit for promotion for the year 2011-12. On the basis of the preparation of the panel dated 1st June, 2011, the said "C" list of 88 eligible Sub Inspectors of Police was published vide proceedings in RC.No.666/NGB.V(1)/P-25/'C'List/2012-3, dated 4th August, 2012. The writ petitioner was placed at serial No.8. He was also given a promotion order allotting Villupuram range by proceedings dated 7th August, 2012. On being relieved on 17th August, 2012 from the post, he was kept reserved. On 3rd September, 2012, the writ petitioner was served with a show cause notice as to why his name may not be deleted from the temporary "C" list of Sub Inspector of Police for the panel year 2011-12 and the order passed by the Superintendent of Police and Inspector General of Police, North Zone be not cancelled. Further, he was called upon to submit his explanation.

3 The petitioner responded to the show cause notice and filed his explanation dated 24th September, 2012, which was not accepted and vide the impugned order dated 15th December, 2012, the name of the petitioner was deleted from the temporary "C" list of Sub Inspector of Police (Taluk) fit for promotion as Inspector of Police for the panel year 2011-12. Being aggrieved, the writ petitioner came up with a writ petition, being W.P.No.25485 of 2013 and the order dated 15th December, 2012 was quashed by the impugned common order. The appellant has not chosen to challenge the same in the instant appeal.

4 The writ petitioner, while serving in Salem District, as Sub Inspector of Police, was served with a charge memo on 8th August, 2011, containing two charges, for the allegation of misconduct during the period of his service in Video Piracy Cell, CB CID, Coimbatore under the provisions of Rule 3(b) of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 (for short "the Rules") by the Deputy Inspector General of Police, CB CID (SIT), Chennai (for short "D.I.G."). A proper domestic enquiry was initiated. Thus, the second charge was not found proved and the first charge was found proved in the enquiry report dated 16th October, 2012. The petitioner was given an opportunity to make his explanation in respect of the first charge. On consideration of the explanation submitted by the writ petitioner, the D.I.G., vide order dated 7th February, 2013 dropped both the charges, holding that even charge No.1 was not found proved.

5 Subsequently, the matter was taken up in review by the Additional Director General of Police (Crime) under suo motu jurisdiction and the exoneration granted by the D.I.G. was confirmed on 16th April, 2013. The submission of the writ petitioner was that

dropping of charges relates back to the date of empanelment on 1st June, 2011 as no charge was present for consideration. Having been exonerated from the charges, the petitioner made a representation to the appellant herein on 20th February, 2013, seeking restoration of his name in the "C" list for promotion and also the consequential promotion order. Finding no response, one more representation was made on 19th August, 2013. Thus, the first petition, being W.P.No.25485 of 2013 was filed, impugning the order dated 15th December, 2012. In the meantime, the petitioner was served a show cause notice on 9th September, 2013 by the appellant herein, calling upon him to make explanation as to why the order dated 16th April, 2013, confirming the order dated 7th February, 2013 passed by the D.I.G. be not reviewed in exercise of power under Rule 15.A(1)(ii) of the Rules. The said show cause notice is the subject matter of the second writ petition. The order passed thereon is the subject matter in this appeal.

6 The case of the petitioner before the learned Single Judge was that the impugned show cause notice dated 9th September, 2013 was beyond jurisdiction of the respondent therein. Secondly, no review power can be exercised after expiry of six months from the date of passing of the impugned proceedings as the petitioner was exonerated of the charges by order of the D.I.G., dated 7th February, 2013. The said order was taken in review in exercise of suo motu power by the Additional Director General of Police (Crime), who has confirmed the order of the D.I.G., on 16th April, 2013. Thus, six months limitation period got expired much before the impugned suo motu review was taken by the appellant herein. It is also contended that once the review jurisdiction has been exercised by the Additional Director General of Police, under Rule 15.A of the Rules, no second review is maintainable as the same is without jurisdiction.

7 The learned Single Judge examined the facts from all angles and came to the conclusion that the second review by the Director General of Police (for short D.G.P.) /appellant herein was impermissible. The power of suo motu review exercised by the Additional Director General of Police (Crime), vide order dated 16th April, 2013, confirming the order passed by the D.I.G. on 7th February, 2013, was final. The subsequent review was beyond limitation period. Accordingly, both the impugned orders dated 9th September, 2013 and 15th December, 2012 were quashed.

8 As it is already stated herein-above, there is no challenge to the quashing of the order dated 15th December, 2012 by the common order as the same was under challenge in the writ petition in W.P.No.25485 of 2013.

9 The learned counsel appearing for the appellant-D.G.P., would contend that there is no limitation in taking the matter suo motu as the Director General of Police is the Head of the Department and that the earlier suo motu review jurisdiction was exercised by

the Additional Director General of Police. Both officers are competent and have jurisdiction to exercise power independently under the provisions of Rule 15.A of the Rules. On the question of limitation, it is contended that limitation period of six months be reckoned from the date of the order passed by the Additional Director General of Police and not the first order of dropping of charges by the D.I.G.

10 It is further contended that besides the power of the State Government or the Head of the Department or the appellate authority, any other authority specified in this behalf by the State Government by general or special order may also review any order made under clause (iv) of Rule 15.A(1) of the Rules, wherein there is no limitation of six months. Thus, the period of six months limitation will be applicable only in case of the appellate authority, not in case of other authorities including the Head of the Department.

11 On the other hand, Mr.K.Venkataramani, learned Senior Counsel appearing for the writ petitioner / respondent herein would contend that the DGP has exercised his power under Rule 15.A(1)(ii) of the Rules, which is available only when other functionaries as stated therein have not exercised their power. In the case on hand, since the Additional Director General of Police (Crime) has already exercised his suo motu review power within the limitation period, the subsequent review is without jurisdiction. It is also reiterated that the period of six months would commence from the date of the order proposed to be reviewed. The order proposed to be reviewed was the order passed by the D.I.G. on 7th February, 2013. The limitation period would commence from that date, which had come to an end on 6th August, 2013.

12 We have heard the learned counsel for the parties, perused the pleadings and documents appended thereto.

13 For proper and better appreciation of the relevant provisions, it is beneficial to extract the same as under :

15.A.(1) Notwithstanding any contained in these rules:

(i) the State Government or

(ii) the Head of the Department directly under the State Government, in the case of Government servant serving in a department or office under the control of such Head of Department; or

(iii) "The appellate authority, other than the State Government, within six months of the date of the order proposed to be revised or"

(iv) any other authority specified in this behalf by the State Government by general or special order, and within

such time as may be prescribed in such general or special order; may at any time either on their or its own motion or otherwise call for the records of any inquiry and review any order made under these rules, after consultation with the Tamil Nadu Public Service Commission where such consultation is necessary and may

(a) confirm, modify or set aside the order; or

(b) confirm reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry, as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit.

Provided that no order imposing or enhancing any penalty shall be made by any [revising authority] unless the Government servant concerned has been given a reasonable opportunity of making representation. Where it is proposed to impose any of the penalties specified in clauses (d), (e), (h), (i) and (j) of rule 2(i) or to enhance the penalty imposed by the order sought to be [revised] to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in sub rule (b) of rule (3) and after giving a reasonable opportunity to the Government servant concerned of showing cause on the evidence adduced during the inquiry and except after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary.

Provided further that no power of [revision] shall be exercised by the Head of Department, unless:-

(i) the authority which made the order in appeal or

(ii) the authority to which an appeal would lie where no appeal has been preferred, is subordinate to him.

2(a) No proceeding for revision shall be commenced

(i) where no appeal has been preferred before the expiry of the period of limitation for an appeal or

(ii) where an appeal has been preferred before the disposal of such appeal."

14 On a careful reading of the aforestated provision, it is clear that notwithstanding any contained in the rules, the State Government or the Head of the Department directly under the State Government, in the case of Government servant serving in a department or office under the control of such Head of Department or the appellate authority, other than the State Government or any other authority specified in this behalf by the State Government by general or special order, may exercise the power of review within six months of the date of the order proposed to be reviewed.

15 It is not in dispute that the main order dropping the charges is the order dated 7th February, 2013 passed by the D.I.G. The Additional Director General of Police (Crime), who is the appellate authority, has exercised its review power suo motu within the period of six months from the said order and confirmed the order passed by the D.I.G. Thus, the other functionaries, i.e., the State Government or the Head of the Department are denuded of their power to exercise the review.

16 The power of review, as prescribed under Rule 15.A(1) of the Rules, is in respect of the date of the order proposed to be reviewed. In the case on hand, the first order passed by the D.I.G, dated 7th February, 2013 was taken under suo motu review by the Additional Director General of Police (Crime), who has confirmed the said order on 16th April, 2013. Thus, the subsequent review purported to have been taken by the D.G.P./ appellant herein cannot be a review of review.

17 In the case on hand, as the facts are not in dispute, the power of review was exercised by the Additional Director General of Police (Crime) under Rule 15.A(1) of the Rules, confirming the order dated 7th February, 2013 passed by the D.I.G. Thus, the subsequent review by any other authority is not permissible. It is luculent that the suo motu power of review can be exercised by either one authority, not all authorities one after another. In respect of clause (iv) of Rule 15.A(1) of the Rules, we are informed that the State Government has not issued any general or special order specifying the authority under Rule 15.A(1)(iv) of the Rules and as such, no power under Clause (iv) is available to be exercised by any other authority.

18 It is trite law that the power of review is exercisable for correction of mistake on facts as well as in law, within the limit of statute, dealing with their exercise of power. A review of review cannot lie [See : Sow Chandra Kante and another Vs. Sheikh Habib¹ and Kamlesh Verma Vs. Mayawati and others²]

1 (1975) 1 SCC 674

2 (2013) 8 SCC 320

19 For the analysis herein-above, we do not find an irregularity, irrationality in the impugned order rendered by the learned Single Judge, which is unexceptionable, warranting no interference.

20 Resultantly, the writ appeal is dismissed. No costs. Consequently connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CO)

dt:08/10/2015

True Copy

Sub-Assistant Registrar

To

The Director General of Police,
Tamilnadu,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-4.

+1 cc to Mr.M.Muthappan, Advocate sr.52771

W.A.No.775 of 2014

pvr(co)
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