IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2015

CORAM:

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

Writ Petition No.27217 of 2013 and
M.P.No. 1 of 2013

R.Velmurugan ...Petitioner

Vs.

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

2.Deputy Inspector General of Police,
Coimbatore Range,
Coimbatore.

3.The Superintendent of Police,
Erode District, Erode. ...Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the 3rd respondent in and by his proceeding J/T.P.No.48/2006, Rule 3(a) dated 25.07.2007 and consequential order passed by the first respondent in and by his proceedings RC.No.API(1)/168809/2008 dated 25.10.2008, and quash the same and consequently direct the respondents to reinstate the petitioner into service.

For Petitioner : Mr.V.Bharathidasan

For Respondents : Mr.M.S.Ramesh
Addl.Govt.Pleader

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O R D E R

The order passed by the first respondent by entertaining a mercy petition is challenged in this writ petition on the ground that it was not supplemented by reasons.

2. The petitioner was issued with a charge memo while functioning as Grade II Constable on 25.07.2007 on account of his unauthorised absence for the period from 21.05.2006 to 28.08.2006. The other charge relates to his behaviour in an intoxicated condition. The petitioner was suspended from service with effect from 28.08.2006. The petitioner was reinstated in service on 06.07.2007.

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3. The disciplinary authority concluded the disciplinary proceedings and passed a final order removing the petitioner from service. The order dated 25.07.2007 on the file of the third respondent has become final, in view of the failure on the part of the petitioner to file a statutory appeal before the appellate authority. The petitioner long thereafter filed a mercy petition before the first respondent. The first respondent considered the mercy petition and opined that the file produced by the department amply shows magnitude of the charge and as such, the punishment was adequate and just. The first respondent rejected the mercy petition. Feeling aggrieved by the said order, the petitioner is before this Court.

4. The learned counsel for the petitioner contended that the first respondent was expected to consider the issue in extenso taking into account the contention taken by the petitioner in his mercy petition. Since no such effort was taken, the learned counsel wanted the first respondent to consider the matter afresh.

5. I have also heard the learned Additional Government Pleader on behalf of the respondents.

6. There is no dispute that the petitioner failed to challenge the order passed by the disciplinary authority before the appellate authority. The petitioner without availing the appellate remedy filed a statutory mercy petition before the first respondent under Rule 15 A(1)(ii) of TNPSS (D & A) Rules 1955.

7. The first respondent instead of considering the charges framed against the petitioner, the evidence recorded by the Enquiry Officer and the findings recorded thereafter, by way of a very brief order rejected the mercy petition. The petitioner now wanted a hearing for the purpose of reducing the punishment to one of compulsory retirement.

8. The impugned order passed by the first respondent does not contain any indication that he has considered the issue in detail in the light of the contentions taken in the mercy petition. It was a statutory mercy petition and as such the first respondent was expected to pass an order with reasons. Since no such effort was taken by the first respondent, the impugned order is liable to be set aside.

9. In the result,the impugned order dated 25.10.2008 is set aside and the matter is remitted to the first respondent for fresh consideration. The first respondent is directed to consider the mercy petition for the purpose of deciding as to whether the punishment was commensurate with the gravity of the delinquency and as to whether it could be converted into one of compulsory retirement. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

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10. The writ petition is allowed to the extent indicated above. No costs. Connected miscellaneous petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

svki

To

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

2.Deputy Inspector General of Police,
Coimbatore Range,
Coimbatore.

3.The Superintendent of Police,
Erode District, Erode.

1 CC to the Government Pleader SR NO 4764

+1cc to Mr.V.Bharathidasan, Advocate SR.No.4831

W.P.No.27217 of 2013

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