

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.10.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.29674 of 2014
and M.P.No.1 of 2014

K.Subramaniam

.. Petitioner

vs.

1.The Direct General of Police,
Tamilnadu Police Head Quarters,
Chennai-600 004.

2.The Deputy Inspector General of Police,
Salem Range, Salem.

3.The Superintendent of Police,
District Police Office,
Namakkal.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the 3rd respondents proceedings No.Tha.Pa.No.25/G1/2012 dated 04.12.2012 and the 2nd respondent's proceedings No.C.No.B1/44/607/2013 dated 30.01.2013 and the first respondent herein proceedings R.C.No.055272/AP.2(2)/2013 dated 07.04.2014 imposing punishment of compulsory retirement and quash the same and consequently direct the respondents to reinstate the petitioner.

For Petitioner : M/s.P.Immanuel Prakasam

For Respondents : Mr.C.Jagdish,
Special Govt. Pleader

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O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus to quash the order of the the third respondent in proceedings No.Tha.Pa.No.25/G1/2012 dated 04.12.2012, the proceedings of the second respondent in No.C.No.B1/44/607/2013 dated 30.01.2013 and the proceedings of the first respondent in R.C.No.055272/AP.2(2)/2013 dated 07.04.2014, imposing punishment of compulsory retirement and consequently direct the respondents to reinstate the petitioner.

2. The petitioner would state that while he was working as Head Constable in Paramathivelur Police Station, Namakkal District, a Charge Memo was served on him by the third respondent, vide proceedings No.25/G1/2002 dated 15.05.2012. The charge against the petitioner was that he has absented himself from duty without obtaining prior permission from Superior Officer for more than 60 days. The Deputy Superintendent of Police, District Crime Branch, Namakkal was appointed as an Enquiry Officer and during the course of enquiry, the petitioner has also submitted a detailed explanation along with medical certificates for his absence. The Enquiry Officer held that the charges against the petitioner were proved and the Disciplinary Authority, namely the Superintendent of Police, Namakkal, the third respondent herein agreed with the findings of the Enquiry Officer and awarded the drastic punishment of compulsory retirement from service, vide order dated 04.02.2012, without giving him a reasonable opportunity to submit his further representation. On 27.01.2012, the petitioner has been treated as deserter, vide proceedings of the third respondent. Thereafter, the petitioner filed a mercy petition before the Director General of Police/first respondent herein on 06.03.2013 and the same was rejected, vide proceedings dated 07.04.2014. Hence, the petitioner has come forward with this writ petition.

3. When the matter is taken up for consideration, the learned counsel appearing for the petitioner submitted that in an identical issue in W.P.No.34356 of 2013 dated 24.01.2014, this Court, by relying upon a judgment of the Division Bench of this Court in W.A.No.1608 of 2011 dated 26.02.2013, wherein the Division Bench, by relying upon the judgment of the Hon'ble Supreme Court in 2004 (4) SCC 560 [Shri Bhagwan Lalarya v. Commissioner of Police], has set aside the dismissal order and remanded the matter to the respondent therein to consider the issue regarding proportionality of the punishment and to pass fresh orders.

4. Per contra, Mr.C.Jagadish, learned Special Government Pleader appearing for the respondents drawn the attention of this Court to the counter affidavit of the third respondent wherein it has been stated that the Enquiry Officer, namely the Deputy Superintendent of Police, District Crime Branch, Namakkal, sent his Enquiry Report, based on depositions of the prosecution witnesses and prosecution exhibits, holding that charges were proved against the petitioner and based on the Enquiry Report, the Disciplinary Authority/third respondent herein has awarded the punishment of "Compulsory Retirement" and would further submit that the petitioner during his 20 years of service, absented himself 8 times for duty and was awarded punishments and he is a chronicle absentee. Thus, the learned Special Government Pleader prays for dismissal of this writ petition.

5. Keeping the submission made on either side, I have gone through the entire materials available on record.

6. It is relevant to extract the following portion of the decision of this Court in an identical situation in W.P.No.34356 of 2013 dated 24.01.2014, as relied on by the learned counsel for the petitioner:

"4. The only submission made by the learned counsel appearing for the petitioner is that the punishment imposed on the petitioner is disproportionate to the charges levelled against her. Hence, according to the learned counsel for the petitioner, by quashing the impugned orders, a direction could be given to the respondents to reinstate the petitioner into service and to grant all consequential service and monetary benefits. Reliance was placed by the learned counsel for the petitioner upon the judgment rendered by the Division Bench of this Court in W.A.No.1608 of 2011, dated 26.02.2013, wherein in an identical situation, a Division Bench of this Court, by relying upon the judgment of the Hon'ble Supreme Court reported in 2004(4) SCC 560 [Shri Bhagwan Lalarya v. Commissioner of Police], set aside the dismissal order and remitted back the matter to the respondent therein to consider the issue regarding the proportionately of the punishment and to pass fresh orders. In this regard, the learned counsel appearing for the petitioner has also invited the attention of this Court to the judgment passed by the Division Bench of this Court in W.A.No.58 of 2011 dated 27.1.2011 in the case of R.Ramesh v. The Deputy Inspector General of Police and Others."

The above cited decision is squarely applicable to the facts of the present case. In the light of the above cited decision, I am of the opinion that the punishment imposed on the petitioner is disproportionate to the charges levelled against him. Hence, the impugned orders are liable to be quashed and accordingly, quashed.

7. In the result, Writ Petition is allowed and the impugned order of the third respondent in proceedings No.Tha.Pa.No.25/G1/2012 dated 04.12.2012, the proceedings of the second respondent in No.C.No.B1/44/607/2013 dated 30.01.2013 and the proceedings of the first respondent in R.C.No.055272/AP.2(2)/2013 dated 07.04.2014 imposing punishment of compulsory retirement are set aside. The matter is remitted back to the first respondent to reconsider the same with regard to quantum of punishment imposed on the

petitioner and pass orders within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1.The Direct General of Police,
Tamilnadu Police Head Quarters,
Chennai-600 004.

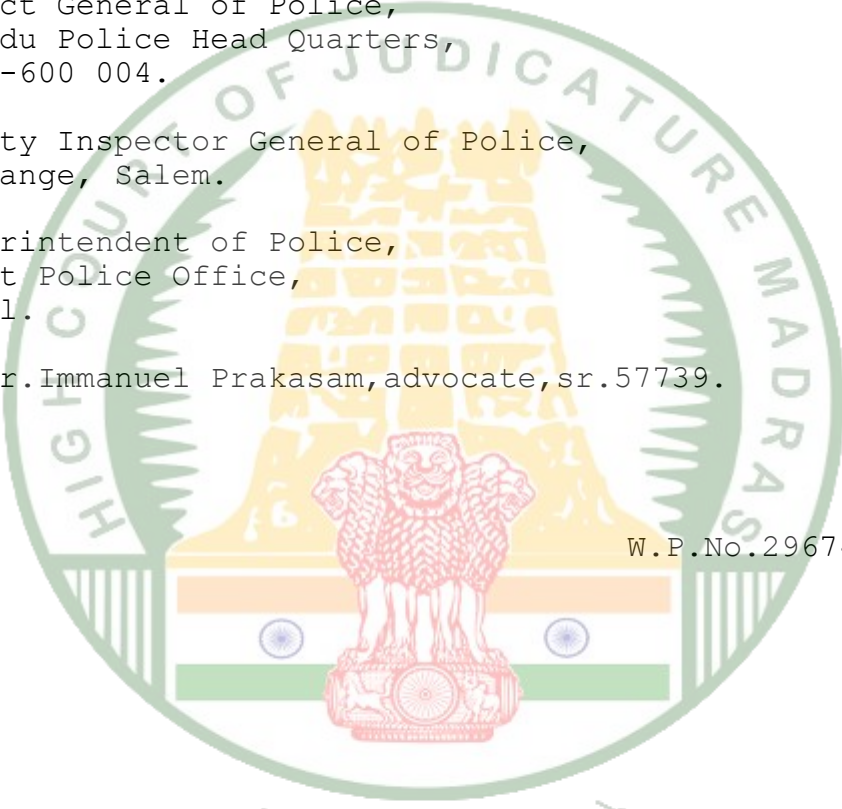
2.The Deputy Inspector General of Police,
Salem Range, Salem.

3.The Superintendent of Police,
District Police Office,
Namakkal.

+1 cc to Mr.Immanuel Prakasam,advocate,sr.57739.

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W.P.No.29674 of 2014



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