

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2016

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH

W.P.No.16128 of 2009

and W.M.P.No.4950 of 2016

S.Gnanasekarapandian

... Petitioner

Vs.

1. The Commissioner of Police,
Tirunelveli City,
Tirunelveli,
Tirunelveli District.

2. The Additional Director
General of Police,
Law and Order,
Tamil Nadu,
Chennai,

3. The State of Tamil Nadu,
rep.by the Secretary,
Department of Home Secretariat,
Chennai - 9.

... Respondents

Prayer: Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorari to call for the impugned order dated 7.7.2009 made in R.C.No.11383/AP 2(1)/09 passed by the 2nd respondent namely the Additional Director General of Police, L&O, Tamil Nadu Chennai and quash the same.

For Petitioner : Mr.V.Anandhamurthy

For Respondents: Ms.M.E.Raniselvam,
Addl.Govt.Pleader

ORDER

Though the miscellaneous petition is posted for hearing, by consent of the learned counsel appearing on either side, the writ petition itself is taken up for hearing.

2. It is submitted by the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondents that the issue involved in this

writ petition is covered by an order passed by this Court in W.P.No.14758 of 2009 (R.Senthilnathan Vs. The Director General of Police, Chennai-4 and 2 others) dated 28.3.2013.

3. In the above said writ petition, the petitioner was Sub-Inspector of Police, whereas, the petitioner herein is the Head Constable. As against the petitioner in the said writ petition and the petitioner herein, charges 1 to 4 were not proved as against the charge No.5. This Court agreeing with the second contention raised on non-application of mind was pleased to set aside the order impugned and remitted the matter back for fresh consideration. The following paragraphs of the order passed therein would be apposite:

'10. However, in so far as the contention of the second respondent is concerned, the same deserves acceptance. The Minute (Enquiry Report) shows that the enquiry was held and that the charge Nos.1 to 4 were not proved. Only the fifth charge was held to be proved by the Enquiry Officer. In this show cause, notice dated 18.2.2009, proposing to enhance the penalty, the Director General of Police did not disagree with the findings of the enquiry. He disagreed only with the quantum of penalty. Paragraph No.4 of the show cause notice requires to be extracted as it throws light upon the nature of the disagreement that the Director General of Police made. Paragraph No.4 of the show cause notice dated 18.2.2009 reads as follows:-

"4. I took suo-motu review in this P.R. as per rule 15A(1)(iii) of TNPSS (D&A) Rules, 1955. I have carefully gone through the P.R. File and other connected records. The charge has been amply proved through the oral/ documentary evidences. I felt that the punishment awarded is too lenient and does not commensurate with the gravity of charge. Hence, I disagree with the orders passed by the punishing Authority, as the delinquency committed by the delinquent Officer is serious one. Hence, I propose to enhance the punishment. In the above circumstances, Tr.R. Senthil Nathan, Sub-Inspector of Police of Tirunelveli City will show cause as to why any one

of the penalties referred to in clauses (h), (i), (j) in Rule 2 of TNPSS (D&A) Rules, 1955 should not be imposed on him as deemed necessary and warranted after considering his explanation."

Factually, when the final order dated 7.7.2009 was passed by the Additional Director of General of Police, he appears to have proceeded on the basis as though there was a disagreement even on the charges proved.

11. Paragraph No.6 which happens to be the last paragraph of the impugned order reads as follows:

"6. I have carefully gone through the P.R. file, SCN explanation of the delinquent and other connected records. In the Departmental action, it is not necessary to prove charges beyond reasonable doubt. According to the theory of preponderance of probability the charges are proved through prosecution witnesses of PW1. Tmt.Premalatha, W/o.Late Sivaraman, PW-2 Tr.Velu, F/o.Late Sivaraman, PW19 Tr.Natarajan, Inspector of Police, PW20 Tr. C.Sambasivam, Assistant Commissioner of Police. The charge are very serious. The punishment of "Reduction in time scale of pay by two stages for one year and it shall not operate to postpone his future increments" awarded to the delinquent is too lenient when compared with the nature of delinquencies. Hence, I enhance the punishment into that of compulsory retirement from service."

12. In other words, after having chosen to disagree only on the quantum of penalty, the second respondent appears to have proceeded on the footing as though the charges

were already held proved. If respondent Nos.1 and 2 had decided to take a different view, even with regard to the findings on the charges, the show cause notice should have been completely different from what it was in this case. Such a show cause notice should have contained all the reasons for taking a different view even on the findings. But the show cause notice confined itself only to the quantum of penalty. Therefore, the second respondent who eventually passed the final order on a suo motu review initiated by the first respondent, appears to have gone completely out of the track and misunderstood the nature of the show cause notice. Hence, the impugned order suffers from non-application of mind.

13. Once it is concluded that the final order suffers from non-application of mind, the only alternative is to remit the matter back to the first respondent.

14. In view of the above, the writ petition is allowed, the impugned order is set aside and the matter is remitted back to the first respondent. The first respondent shall reconsider the matter with reference to the show cause notice dated 18.2.2009 with specific reference only to the charge held proved and on the reasons submitted by the petitioner and dispose of the same, within a period of four weeks from the date of receipt of a copy of this order. No costs.'

4. A perusal of the order impugned would show that the petitioner stands on an identical position as that of the petitioner in W.P.No.14758 of 2009. The order has been passed by reviewing the charges held not proved without following the procedure. In such view of the matter, the decision referred above would apply in all fours to the case of the petitioner.

5. Accordingly the writ petition stands allowed. The impugned order is set aside and the matter is remitted back to the respondents for fresh consideration. The respondents are directed to follow the procedure indicated in the order passed in W.P.No.14758 of 2009 to the case of the petitioner herein.

The entire exercise will have to be completed within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Police,
Tirunelveli City,
Tirunelveli,
Tirunelveli District.
2. The Additional Director
General of Police,
Law and Order,
Tamil Nadu,
Chennai,
3. The Secretary, State of Tamil Nadu,
Department of Home Secretariat,
Chennai - 9.

+1cc to Mr.V.Anandhamoorthy, Advocate Sr.21658
+1cc to the Government Pleader Sr.21760

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W.P.No.16128 of 2009

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