

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2016

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Writ Petition No.25119 of 2012
and
M.P.Nos.1 & 2 of 2012

M. Ravi .. Petitioner

Versus

1.The Superintendent of Police
Nagapattinam District
Nagapattinam

2.The Deputy Inspector General of Police
Thanjavur Range
Thanjavur .. Respondents

Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorari, to call for the records of the respondents in connection with the impugned orders passed by the 1st respondent in PR.No.9 of 2011 u/s.3(b) dated 08.05.2012 and in C.No.B/50/Appeal/2012 dated 12.08.2012 by the 2nd Respondent quash the same.

For Petitioner : Mr.M.Muthappan

For Respondents : Mr.S.Gunasekaran

Additional Government Pleader

ORDER

This writ petition has been filed praying to quash the order dated 08.05.2012 of the first respondent, which was confirmed by the second respondent in the proceedings dated 12.08.2012. In and by the said order dated 08.05.2012, the first respondent imposed the punishment of compulsory retirement from service which was affirmed by the second respondent.

2. The petitioner was recruited directly as Grade-II Police Constable in Nagapattinam District Armed Reserve on 17.11.1998 and he was upgraded as Gr-I Police Constable in the year 1999. He was further upgraded as Head Constable in the year 2004. When the petitioner was working as such, he was

suspended from service on 19.04.2011 pending enquiry into grave charges. Subsequently, a charge memo dated 29.04.2011 was issued to the petitioner under Section 3 (b) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) alleging that the petitioner using a forged sim card to contact the prohibition offenders and acted against the police department, thereby he has brought disrepute to the police force.

3. The learned counsel for the petitioner would contend that during the course of enquiry the department has not examined any witness to prove that the petitioner has used the Sim Card bearing Subscription No. 94873 54863 nor the department has examined the person in whose name the registration of the sim card stands. The department has also not submitted the call particulars relating to the SIM Card and therefore, according to the learned counsel for the petitioner, the charges are not proved by the department beyond reasonable doubt. The learned counsel for the petitioner would further contend that the enquiry officer came to an erroneous conclusion that the petitioner did not produce the call records and thereby shifted the onus on the petitioner. Instead, the Department ought to have produced the call records details to prove that the sim card was used by the petitioner to commit the delinquency.

4. The learned counsel for the petitioner further submitted that the disciplinary authority, without considering any of the grounds raised by the petitioner, has mechanically accepted the findings of the enquiry officer and imposed the punishment of compulsory retirement from service. Thus, according to the counsel for the petitioner, the order of compulsory retirement passed by the respondents is harsh, disproportionate and it is not proportionate to the nature of charges levelled against the petitioner. Therefore, the petitioner preferred a statutory appeal to the second respondent on 15.05.2012 but it was not disposed of by the second respondent. Therefore, the petitioner filed W.P.No.18649 of 2012 and sought a direction of this Court to dispose of his appeal petition preferred before the second respondent on 15.05.2012. This Court had directed the second respondent to pass orders on merit on the appeal petition within a period of 3 months. However, even before the order could be received by the second respondent, the second respondent has rejected the appeal on 12.08.2012 confirming the order of compulsory retirement passed by the first respondent. According to the counsel for the petitioner, even the Appellate Authority has not taken into consideration the grounds raised by the petitioner and erroneously confirmed the order passed by the first respondent. The learned counsel for the petitioner therefore prayed for allowing the writ petition as prayed for.

5. The learned Additional Government Pleader appearing for the respondents, by placing reliance on the counter affidavit, would contend that the petitioner was given due opportunity to defend the enquiry proceedings. During the course of enquiry, the department has examined 7 witnesses and they were cross-examined by the petitioner. On consideration of the oral evidence, the enquiry officer has passed a detailed order and come to a definite conclusion that the charges levelled against the petitioner are proved. Thereafter, the report of the enquiry officer was sent to the petitioner and his explanation was received. On consideration of the same, the first respondent has imposed the punishment of compulsory retirement from service for the proved delinquency. Such an order passed by the first respondent was also affirmed by the second respondent by rejecting the statutory appeal filed by the petitioner. Therefore, according to the learned Government Advocate, the orders, which are impugned in this writ petition, does not call for any interference by this Court and he prayed for dismissal of the writ petition.

6. I heard the learned counsel on either side and perused the materials placed on record. The charge against the petitioner is that he has contacted the prohibition offenders by using a forged sim card and thereby acted detrimental to the functioning of the police force, thereby he has brought disrepute to the department.

7. In order to prove the charges against the petitioner, 7 witnesses have been examined and they were cross-examined by the petitioner. In other words, the petitioner has fully participated in the enquiry proceedings and he was given due opportunity. The report of the enquiry officer was served on the petitioner for which the petitioner has also submitted his explanation. Thus, the enquiry was conducted in accordance with law in adherence to principles of natural justice. The disciplinary authority, who is the first respondent herein, has analysed the report of the enquiry officer and came to the conclusion that for the proved delinquency, it is appropriate to impose the punishment of compulsory retirement from service. Such an order passed by the first respondent was also affirmed by the second respondent in the statutory appeal preferred by the petitioner.

8. Having regard to the above, I am of the view that the punishment of compulsory retirement imposed on the petitioner is proper and proportionate to the nature of charges and I do not find any reason to interfere with the same. It is made clear that this order will not preclude the petitioner from

approaching the Government by filing a Mercy Petition and if any such Mercy Petition is preferred by the petitioner, it is for the Government to consider it in accordance with law.

9. The Writ Petition is disposed of in the above terms. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst. Registrar.

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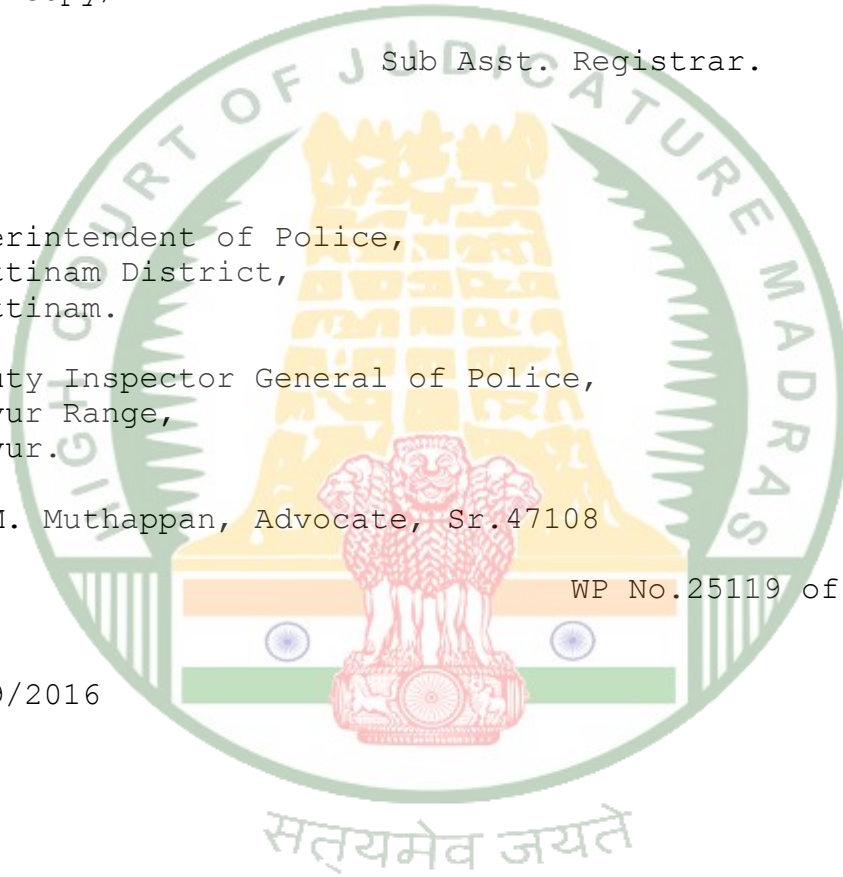
Sub Asst. Registrar.

dn/rsh
To

- 1.The Superintendent of Police,
Nagapattinam District,
Nagapattinam.
- 2.The Deputy Inspector General of Police,
Thanjavur Range,
Thanjavur.
- +1 CC to M. Muthappan, Advocate, Sr.47108

WP No.25119 of 2016

TM (CO)
MD : 14/09/2016



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