

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

WP.No.16671 of 2008

T.G.Babu

Petitioner

Vs

1. The Director General of Police, Chennai-4
 2. The Deputy Commissioner of Police,
District Police office
St.Thomas Mount, Chennai-16
- Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the order of the 2nd Respondent made in proceedings PR.No.42/2006, under Rule 3(b) of TNPSS (D&A) Rules 1955, dated 10.4.2007 and confirmed by the 1st Respondent in proceedings Rc.No.151185/AP.3(3)/2007, dated 28.04.2008 and to quash the same and to direct the Respondents to reinstate the Petitioner into service with all consequential service benefits.

For Petitioner : Mr.G.Bala

For Respondents : Mr.A.Kumar, SGP

ORDER

In this Writ Petition, the Petitioner seeks for a direction to the Respondents to reinstate the Petitioner into service with all consequential service benefits, by quashing the order of the 2nd Respondent, dated 10.4.2007 and confirmed by the 1st Respondent by order dated 28.04.2008.

2. This court heard the learned counsel on either side and perused the materials placed on record.

3. The Petitioner, who is a police officer, has been imposed with the punishment of compulsory retirement on the ground that he had absented from duty for 21 days. According to the Petitioner, during the relevant point of time, he had sought for medical leave and it was given and it was also subsequently extended, but that has not been considered. In the enquiry,

the Petitioner was given an opportunity to explain and the Petitioner also submitted his explanation. However, by the impugned order, he was imposed with the punishment of compulsory retirement. Subsequent development has taken place. He did not prefer an appeal as against the order of punishment. Later on, he has preferred a petition before the 1st Respondent and that has been treated as a mercy petition under Rule 15A (1)(ii) of the TNPSS Rules and the same was rejected. Hence, the Petitioner is before this court.

4. The only ground raised by the Petitioner is that the impugned order of the 1st Respondent is a non speaking order. The petition filed by the Petitioner ought to have been treated as a review application. If it is treated as a review application, as per Rule 15A (2)(iii), it shall be dealt with in the same manner as if it were an appeal under these Rules. In this connection, he would also rely on the decision of this court reported in 2006 4 MLJ 1382 (K.Kandasamy Vs. DIG of Police and another) wherein in similar circumstances, this court has held that there is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with and by setting aside the impugned order therein, remanded the matter for fresh consideration. However, in the case on hand, the Petitioner would contend that he has already been superannuated and he only pleads some mercy to give one more opportunity to treat the mercy petition as a review application under Rule 15A (2)(iii).

5. The learned Special Government Pleader for the Respondents, by filing a detailed counter, would contend that the Petitioner did not avail the opportunity by giving a reply and even the punishment is commensurate with the fault committed by him and being a police officer, he should be called as "tpl;nlho" and he has been sent out only on that ground.

6. In the impugned order of the Appellate Authority, it is stated in paragraphs 5 and 6 as under:-

"5. He has now submitted a mercy petition dated 29.8.2007 to cancel the punishment imposed on him. This petition is treated as mercy petition under rule 15A(1)(ii) of TNPSS (D&A) Rules, 1955.

6. I have gone through the petition and PR file carefully. The mercy petition was given the punishment of "Compulsory Retirement" for the delinquency of desertion. A perusal of the PR file shows that the charge against the mercy Petitioner is amply proved. The punishment is amply deserved. I decline to interfere and hence I reject the mercy petition."

7. Rule 15A(2)(iii) reads as follows:-
"An application for review shall be dealt with in the same manner as if it were an appeal under these rules."

8. The Appellate Authority has categorically stated that the petition was treated as a mercy petition under Rule 15A(1)(ii). But, according to the Petitioner, it should have been treated as a review application and accordingly, it should have been dealt with in the same manner as if it were an appeal under these rules and hence, the impugned order is a non speaking order.

9. The ratio decidendi, as has been held in 2006 4 MLJ 1382 (K.Kandasamy Vs. DIG of Police and another) relied on by the Petitioner is that a non speaking order of the Appellate Authority is liable to be quashed. It is a case where the Appellate Authority failed to go into the factual details and consider all the grounds of appeal before deciding an appeal. But, in the case on hand, though reliance is made in respect of an appeal, definitely it cannot be equated in this case, since it is not an appeal. If it is treated as review application, definitely it has to be dealt with as an appeal, but it was treated only as a mercy petition. Further, the Petitioner did not prefer any appeal against the punishment, instead he had sought only for mercy and it could have been treated as a review application was his argument.

10. But, in these extraordinary circumstances and the peculiar circumstances of the case on hand, not treating as a precedent, in view of the further developments that the Petitioner had already attained superannuation and that there was medical leave, which was originally granted and the Petitioner absented period of 21 days and the authority did not go into the factual details, especially at least for the point whether the absence of 21 days is commensurate with the punishment of compulsory retirement from service, the impugned order is set aside and the matter is remanded back to the concerned authority for fresh consideration, who shall treat his mercy petition as a review petition and give opportunity to the Petitioner and pass orders, on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order.

11. With the above directions, this Writ Petition is disposed of.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To:

1. The Director General of Police, Chennai-4
2. The Deputy Commissioner of Police,
St.Thomas Mount, Chennai-16

+1 cc to M/s.Gobalan & Dairy Advocate sr.34652
+1 cc to Government pleader sr.34918

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