

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G. RAMESH
AND
THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

Writ Appeal Nos. 604 and 720 of 2016

and CMP.No.8071 and 9499 of 2016

The Secretary to Government,
Home (Police-II) Department,
Fort St. George, Chennai 600 009.

... 1st Appellant in W.A.No.604/2016

The Director General of Police,
Dr. Radhakrishnan Salai, Mylapore
Chennai 600 004.

... 2nd Appellant in W.A.No.604/2016 and
Sole Appellant in W.A.No.720/2016

Vs.

N.Karunanithi ... Respondent in both Appeals

Writ Appeals filed under Clause 15 of Letters Patent against
the common order dated 18.02.2014 passed by the learned Single
Judge in W.P.Nos.13889 and 34242 of 2013.

For Appellant/Appellants in
both Appeals :

Mr.P.S.Sivashanmugasundaram

Special Government Pleader

For Respondent in both Appeals : Mr.M.Muthappan

J U D G M E N T

(Made by HULUVADI G. RAMESH, J.)

The appellants have come up with these Writ Appeals
challenging the common order dated 18.02.2014 passed by the
learned Single Judge in W.P.Nos.13889 and 34242 of
2013.WP.No.13889/2013

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call for the records of the respondent in connection with the impugned shone cause notice is shed in RC.No.78993/APIV(1)2012, dated 26.02.2013 (Served on 29.04.2013) and to quash the same.

WP.No.13889/2013

Writ Petition filed under Article 226 of the for issuance of a writ of Mandamus praying to file of the respondents to consider petitioners claim for promotion as Dougherty Superintendent of Police, category-I for the panel year 2011-12, published in G.O.(MS)No.465, Home(Police-2_Dept, dated 19.06.2012 and promote the petitioner as Deputy Superintendent of police, category-I, without reference to the show cause notice issued by the 2nd Respondent in RC.No.78993/AP.IV(1)/2012, dated 26.02.2013 and to grant the petitioner all consequential service and monetary benefits at par with the petitioners Junior

2. Brief facts leading to the filing of these Appeals, are, as under:

2.1. The respondent herein viz. Karunanithi is a directly recruited Sub-Inspector of Police. He entered the service through the selection conducted in the year 1984 and he was appointed on 28.09.1987 and subsequently promoted as Inspector of Police in January 1999. He was arrested in connection with an offence in Crime No.947 of 2003 and suspended from service on 29.08.2003, while he was in judicial custody. Thereafter, the case registered in Crime No.947 of 2013 was dropped against the petitioner. While so, the other cases filed against the petitioner also ended in acquittal. Hence, he made a representation to revoke the order of suspension and the order of suspension was also revoked on 06.02.2013.

2.2. During the pendency of the false criminal case, the respondent was issued with a charge memo under Rule 3(b) of the TNPSS (D & A) Rules. The Enquiry Officer held that all the charges against the respondent as proved by a Proved Minute, dated 27.07.2007. But, the Disciplinary Authority viz. the Deputy Inspector General of Police, CID (Intelligence), Chennai disagreed with the views of the Enquiry Officer and issued an order to conduct enquiry afresh. Followed by the same, another Enquiry Officer, viz. the Additional Superintendent of Police, SB CID, Chennai was appointed to conduct the oral enquiry and he submitted a Minute holding that the third charge has been partly proved. But, the punishing authority viz. the Deputy Inspector General of Police, CID (Intelligence) disagreed with the findings of the Enquiry Officer holding the third charge as partly proved and issued an order dropping further action on the

respondent vide proceedings dated 19.05.2008. The said proceedings of the Deputy Inspector General of Police, CID (Intelligence) was taken up for review by the Inspector General of Police, who is the reviewing authority and the same was confirmed by his order dated 01.06.2008.

2.3. Since the respondent was acquitted in all criminal cases, he made a representation to the Department to treat the period of his suspension from 05.09.2003 to 06.02.2013 as duty for all purposes. While so, the Director General of Police took a suo motu review of the proceedings of the Deputy Inspector General of Police, CID (Intelligence), Chennai, dated 19.05.2008 and after a lapse of five years from the date of dropping of further action in the disciplinary proceedings, the Department has issued a show cause notice dated 26.02.2013 under Rule 15(A) of TNPSS (D & A) Rules.

2.4. Seeking to quash the said Show Cause Notice, the respondent filed a Writ Petition in W.P.No.13889 of 2013 and a Writ Petition in W.P.No.34242 of 2013 seeking a direction to the appellants herein to consider his claim for promotion as Deputy Superintendent of Police, Category - I for the panel year 2011-12 without reference to the show cause notice dated 26.02.2013 issued by the 2nd respondent and to grant him all consequential service and monetary benefits at par with his junior.

3. The learned Single Judge, by a common order dated 18.02.2014 in W.P.No.13889 of 2013 and W.P.Nos.34242 of 2013, set aside the impugned show cause notice and allowed the Writ Petitions. Relevant portion of the said order is extracted hereunder:

"9. On the whole, I am of the opinion that the impugned show cause notice dated 26.02.2013 issued by the Department against the petitioner is liable to be quashed on the grounds that it is hit by limitation and the second review is not permissible under the Rules. Consequently, as the petitioner has been acquitted/exonerated from all the criminal cases as well as departmental proceedings, the petitioner is entitled to be promoted as Deputy Superintendent of Police.

In fine, the writ petitions are allowed and the impugned show case notice dated 26.02.2013 is quashed. The respondents are directed to consider the claim of the petitioner for promotion and to pass appropriate orders promoting him as Deputy

Superintendent of Police, Category-I, and to grant him all consequential service and monetary benefits, within a period of eight weeks from the date of receipt of a copy of this order."

4. Learned Special Government Pleader contended that the learned Single Judge failed to consider that the Director General of Police is the Head of Department and the Inspector General of Police, Intelligence is an inferior Officer and that the review made by the Director General of Police in PR No.8/2004 and the Show Cause Notice issued under Rule 15(A)(1)(ii) is well within the Rules and should not have been quashed.

5. On the other hand, learned counsel appearing for the writ petitioner/respondent herein contended that the Director General of Police has exercised his power under Rule 15 A(1)(ii) of the Rules, which is available only when other functionaries as stated therein have not exercised their power. In the case on hand, since the Deputy Inspector General of Police, CID (Intelligence) has already exercised his suo motu review power within the limitation period, the subsequent review is without jurisdiction.

6. We have heard the learned counsel for the parties and perused the material documents available on record.

7. For better appreciation of the relevant provisions, it is relevant to extract the same as under:

15.A.(1) Notwithstanding any contained in these rules:

(i) the State Government or

(ii) the Head of the Department directly under the State Government, in the case of Government servant serving in a department or office under the control of such Head of Department; or

(iii) The appellate authority, other than the State Government, within six months of the date of the order proposed to be revised or

(iv) any other authority specified in this behalf by the State Government by general or special order, and within such time as may be prescribed in such general or special order; may at any time either on their or its own motion or otherwise call for the records of any inquiry and review any order made under these rules, after consultation with the Tamil Nadu Public Service

Commission where such consultation is necessary and may

(a) confirm, modify or set aside the order; or

(b) confirm reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry, as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit.

Provided that no order imposing or enhancing any penalty shall be made by any [revising authority] unless the Government servant concerned has been given a reasonable opportunity of making representation. Where it is proposed to impose any of the penalties specified in clauses (d), (e), (h), (i) and (j) of rule 2(i) or to enhance the penalty imposed by the order sought to be [revised] to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in sub rule (b) of rule (3) and after giving a reasonable opportunity to the Government servant concerned of showing cause on the evidence adduced during the inquiry and except after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary.

Provided further that no power of [revision] shall be exercised by the Head of Department, unless:-

(i) the authority which made the order in appeal or

(ii) the authority to which an appeal would lie where no appeal has been preferred, is subordinate to him.

2(a) No proceeding for revision shall be commenced

(i) where no appeal has been preferred before the expiry of the period of limitation for an appeal or

(ii) where an appeal has been preferred before

the disposal of such appeal.

8. On a careful reading of the afore stated provision, it is clear that notwithstanding anything contained in the Rules, the State Government or the Head of the Department directly under the State Government, in the case of Government servant serving in a Department or Office under the control of such Head of Department or the appellate authority, other than the State Government or any other authority specified in this behalf by the State Government by general or special order, may exercise the power of review within six months of the date of the order proposed to be reviewed.

9. In a similar circumstance, this Court, in W.A.No.775 of 2014, by an order dated 29.09.2015, held as under:

"16. The power of review, as prescribed under Rule 15.A(1) of the Rules, is in respect of the date of the order proposed to be reviewed. In the case on hand, the first order passed by the D.I.G, dated 7th February, 2013 was taken under suo motu review by the Additional Director General of Police (Crime), who has confirmed the said order on 16th April, 2013. Thus, the subsequent review purported to have been taken by the D.G.P./ appellant herein cannot be a review of review.

17. In the case on hand, as the facts are not in dispute, the power of review was exercised by the Additional Director General of Police (Crime) under Rule 15.A(1) of the Rules, confirming the order dated 7th February, 2013 passed by the D.I.G. Thus, the subsequent review by any other authority is not permissible. It is luculent that the suo motu power of review can be exercised by either one authority, not all authorities one after another. In respect of clause (iv) of Rule 15.A(1) of the Rules, we are informed that the State Government has not issued any general or special order specifying the authority under Rule 15.A(1)(iv) of the Rules and as such, no power under Clause (iv) is available to be exercised by any other authority.

18. It is trite law that the power of review is exercisable for correction of mistake on facts as well as in law, within the limit of statute, dealing with their exercise of power. A review of review cannot lie [See : Sow Chandra Kante and

another Vs. Sheikh Habib¹ and Kamlesh Verma Vs. Mayawati and others²] 19 For the analysis herein-above, we do not find an irregularity, irrationality in the impugned order rendered by the learned Single Judge, which is unexceptionable, warranting no interference."

10. In view of the above order passed by this Court, if we see the present case, the power of review was exercised by the Inspector General of Police, confirming the order passed by the Deputy Inspector General of Police, CID (Intelligence) and subsequent review by any other authority is not permissible. It is well settled that the suo motu power of review can be exercised by any one authority, but not all authorities one after another. Therefore, we do not find any irregularity or irrationality in the impugned order passed by the learned single Judge, thereby warranting interference by this Court.

11. Resultantly, the above Writ Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions in C.M.P.No.8071 of 2016 and C.M.P.No.9449 of 2016 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1 The Secretary to Government,
Home (Police-II) Department,
Fort St. George, Chennai 600 009.

2 The Director General of Police,
Dr. Radhakrishnan Salai, Mylapore
Chennai 600 004.

+2cc to Mr.M. Muthappan, Advocate, S.R.No.
+1cc to the Government Pleader, S.R.No.53129

mv (CO)
md (15/11/2016)

W.A.Nos.604 and 720 of 2016