

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.10.2016
CORAM
THE HONOURABLE MR. JUSTICE R.SUBBIAH
Writ Petition No.35533 of 2016
and W.M.P.Nos.30544 and 30545 of 2016

R.Pugalenthir

... Petitioner

Vs

- 1 The Government of Tamilnadu
Rep. by the Principal Secretary to
Government Home Department Secretariat
Chennai-9.
 - 2 The Director General of Police
Mylapore Chennai-4.
 - 3 The Deputy Inspector General
of Police Railways Chennai-8.
 - 4 The Superintendent of Police
Railways Trichy
- ... Respondents.

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of certiorarified Mandamus to calling for the records of the first respondent pertaining to the impugned order G.O.2(D) No.151 Home (Police-VI) Department dated 3.3.2016 confirming the order of the third respondent herein in R.C. No.A2/8005/ 2004/Appeal No.17/2004 dated 29.12.2004, confirming the order of the fourth respondent in P.R. No.12/2004 under Rule 3(b) dated 6.10.2004 imposing the punishment of removal from service and quash the same and consequently direct the respondents to reinstate the petitioner into service with all consequential benefits.

For Petitioner : Mr.A.Kalaiselvan
For Respondents : Mr.K.Dhananjeyan,
Spl. Govt. Pleader

ORDER

By consent, the main writ petition itself is taken up for final disposal.

2. The petitioner has come up with the present writ petition, challenging the order of the first respondent pertaining to the impugned order G.O.2(D) No.151 Home (Police-VI) Department dated 3.3.2016, confirming the order of the third respondent herein in R.C. No.A2/8005/ 2004/Appeal No.17/2004 dated 29.12.2004, confirming the order of the fourth respondent in P.R. No.12/2004 under Rule 3(b) dated 6.10.2004 imposing the punishment of removal from service and consequently, to direct the respondents to reinstate him into service with all consequential benefits.

3. It is the case of the petitioner that he was directly recruited as Grade II Police Constable on 17.1.1987 and later, promoted as Grade I Police Constable on 17.6.1998 and as Head Constable on 8.8.2002. While so, on 19.1.2004, since he was suffering from severe stomach pain, he was unable to attend duty on 20.1.2004. Thereafter, on 30.1.2004, he reported duty along with medical certificate. However, he was instructed to report SRP / RLY and as such, he reported before him on 5.4.2004. Thereafter, on 5.4.2004, he was taken to duty, but, later, departmental proceedings were initiated against him and after enquiry, he was removed from service vide order dated 6.10.2004. Challenging the same, he preferred an appeal dated 29.11,2004, which was rejected by order dated 29.12.2004. Thereafter, he filed a review petition dated 18.3.2005. Finally, he has also filed an appeal dated 9.11.2005 to the first respondent herein. Since his appeal along with various representations were not considered, he filed a writ petition before this Court in W.P.No.25654 of 2015 and this Court, by order dated 18.8.2015, directed the first respondent herein to consider the representation of the petitioner dated 27.7.2015. Pursuant to the direction of this Court, the first respondent passed an order in G.O.(2D) No.151, dated 3.3.2016 confirming the punishment of removal from service. Challenging the same, the present writ petition has been filed.

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 him. 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 Vs. Commissioner of Police), set aside the dismissal order and remitted back the matter to the respondent therein to consider the issue regarding the proportionality 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 Vs. the Deputy Inspector General of Police and others.

5. The above cited judgments rendered by the Division Bench of this Court are squarely applicable to the facts of the present case. In the light of the above referred to judgments, 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 and the writ petition is allowed. The matter is remitted back to the disciplinary authority viz., the fourth respondent herein to reconsider the same with regard to the quantum of the punishment imposed on the petitioner and to pass fresh orders within a period of six weeks from the date of receipt of a copy of this order. It is also made clear that in the event the quantum of punishment is reduced, the petitioner shall not claim backwages for the period in which he has not performed his duty. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1 The Principal Secretary to
Government,
Government of Tamilnadu
Home Department Secretariat
Chennai-9.

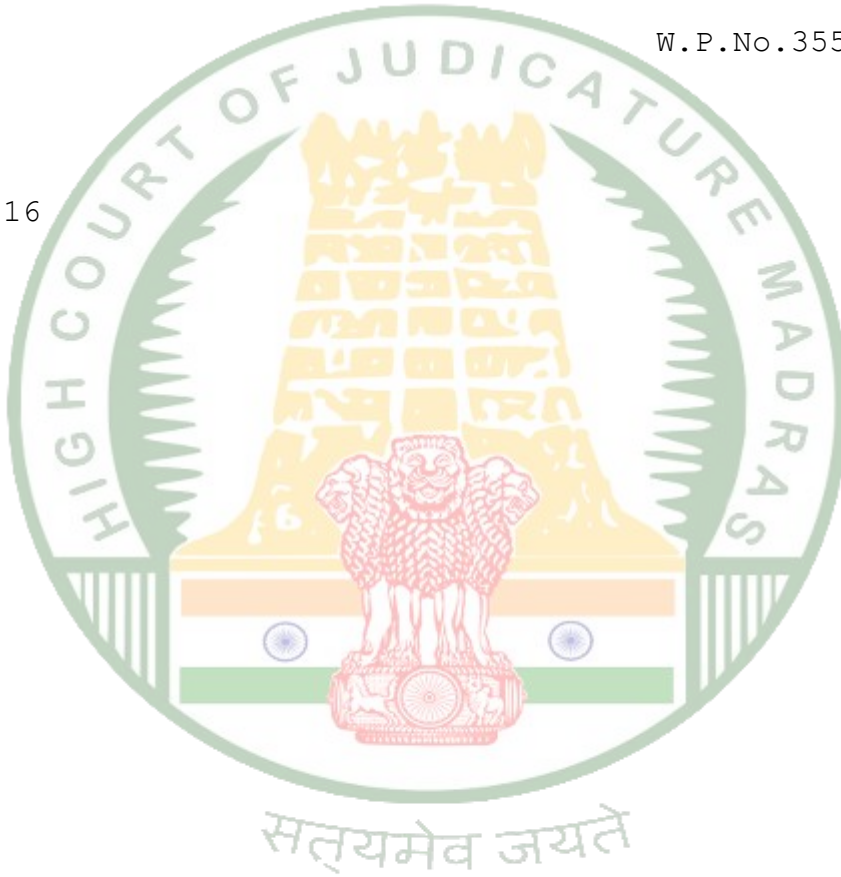
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- 2 The Director General of Police
Mylapore Chennai-4.
- 3 The Deputy Inspector General
of Police Railways Chennai-8.
- 4 The Superintendent of Police
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Madras sr 5162

W.P.No.35533 of 2016

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