



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.11.2016
CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A(MD) .No.1420 of 2016
and
C.M.P. (MD) .No.10696 of 2016

- 1.The State of Tamil Nadu,
rep.by its Principal Secretary to Government,
Home Department,
Secretariat,
Chennai.
- 2.The Director General of Police,
Law and Order, Santhome,
Chennai-04. ... Petitioners/Respondents

Vs

N.Thirumal Alagu,
Inspector of Police,
Social Justice and Human Rights Unit,
Virudhunagar, Virudhunagar District
... Respondent/Petitioner

This Writ Appeal is filed under Clause 15 of Letter Patent against the order dated 22.01.2015 made in W.P(MD).No.11948 of 2014.

Prayer in WP(MD). 11948/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned show cause notice issued by the 2nd respondent in his proceedings in Rc.NO. 122518/Con1(2)/2012 dated 20.06.2014 and quash the same as illegal and consequentially to direct the respondents to include the name of the petitioner in appropriate place in the panel of Inspector of Police fit for promotion to the post of Deputy Superintendent of Police for the year 2011-2012 and promote him as Deputy Superintendent of Police with continuity of service and all monetary benefits.

For Appellants	:Mr.D.Muruganandham Additional Government Pleader
For Respondent	:Mr.M.Ajmalkhan Senior Counsel for M/s.Ajmal Associates



JUDGMENT

[Judgment of the Court was delivered by

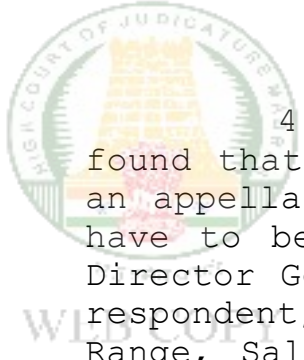
M.SATHYANARAYANAN, J.]

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By consent, this Writ Appeal is taken up for final disposal.

2. The affidavit leading to filing of the Writ Petition has been narrated in detail in the impugned order dated 22.01.2015 in W.P(MD).No.11948 of 2014 and the earlier round of litigation gave rise to the passing of the order dated 05.12.2013 in W.P(MD).No.13822 of 2013 and therefore, it is unnecessary to restate the facts once again except to narrate the relevant facts which requires for the disposal of this appeal.

3. The respondent herein is the Writ Petitioner and while he was working as Inspector of Police, Central Crime Branch, he was issued with a charge memo dated 05.09.2007 alleging that he failed to conduct proper enquiry and given a report with an intention to cover the illegalities of M.Prabakaran, Proprietor of Business Solutions, Salem. The respondent/writ petitioner submitted the written statement and further, Enquiry officer was appointed and he found that the three charges levelled against the respondent/Writ Petitioner herein had been proved. However, the disciplinary authority, namely, Deputy Inspector General of Police, Salem Range held that the charges framed against the respondent / Writ Petitioner had not been proved. However, the Deputy Inspector General of Police, Salem Range, Salem District, the third respondent in W.P(MD).No.13822 of 2013 sought for the concurrence of the Vigilance Commissioner, Chennai to review the entire case of the respondent/writ petitioner and thereafter, the Principal Secretary to Government, Home Department, Chennai, the first respondent in W.P(MD).No.13822 of 2013, having found that the case of the respondent/writ petitioner required for review and accordingly, directed the Director General of Police, the second respondent in W.P(MD).No.13822 of 2013 to review the entire matter and he also reviewed the matter by exercising of the power available to him under Rule 15(A)(i)(ii) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 (in short 'the Rules') and imposed the punishment of withholding of increment for a period of two years and challenging the same, respondent/writ petitioner filed an appeal before the Administrative Department, namely, the Principal Secretary to Government, Home Department, Chennai, and the said order imposing the punishment was confirmed and challenging the legality of the same, the respondent/writ petitioner filed W.P(MD).No.13822 of 2013, and notices were ordered to the respondents therein and thereafter, it was taken up for final disposal.



4. The learned Judge, after analysing the materials found that the power of review under Rule is not a substitute to an appellate power and while exercising the power, the procedures have to be complied with scrupulously and having found that the Director General of Police not even indicated as to how the third respondent, namely, the Deputy Inspector General of Police, Salem Range, Salem District, was wrong in coming to his conclusion and also found that the order passed by the first respondent was a cryptic order and he merely confirmed the order passed by the second respondent and therefore, thought it fit to quash the impugned order dated 14.06.2012 and allowed the Writ Petition. Admittedly, the respondents in W.P(MD).No.13822 of 2013 and the appellants herein did not choose to make a challenge to the said order in the form of appeal or file a review order or atleast sought clarification and therefore, it has become final. Thereafter, the second respondent once again issued the proceedings in the form of show cause notice dated 20.06.2014 opining that the views of the Deputy Inspector General of Police, Salem Range, Salem District was not correct and therefore, observed that the charges against the respondent/writ petitioner had been proved and a show cause notice was issued calling upon him as to why one of the penalties specified under rule 2 of TNPSS (D&A) Rules should not be imposed for the charges held proved. Challenging the legality of the same, the petitioner filed W.P (MD).No.11948 of 2014 and the said Writ Petition was entertained and notices were ordered and the matter was taken up for final disposal. The learned Judge, on going through the impugned show cause notice found that it was nothing but the repetition of the same charge which was earlier set aside by this Court vide its order dated 05.12.2013 in W.P(MD).No.13822 of 2013 and in the said order, he did not grant liberty to the appellants herein to proceed further. The learned Judge also found that once the order of punishment is set aside, it is not open to the second respondent / appellant herein to proceed afresh and also placed reliance upon the order dated 28.03.2006 made in W.P(MD).No.36490 of 2005 and citing the said reason, had allowed the Writ Petition vide his order dated 22.01.2015 and the respondents 1 and 2 therein, challenging the legality of the same has filed the present Writ Appeal.

5. Mr.D.Muruganandham, learned Government Advocate appearing for the appellants would strenuously contend that admittedly, the impugned order of punishment came to be set aside partly on technical ground and therefore, the second respondent being the competent authority has rightly issued the show cause notice calling upon the respondent/writ petitioner to offer his explanation and therefore, it cannot be faulted with and in support of his contention, he placed reliance upon the judgment of the Apex Court reported in **(2013) 6 SCC 530, Life Insurance Corporation of India Vs Masilamani** and eventually, prayed for setting aside the order impugned in this Writ Appeal.

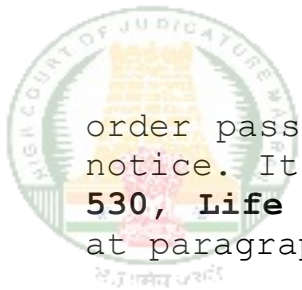


6. Per contra, Mr. Ajmal Khan, learned Senior Counsel appearing for the respondent/writ petitioner would contend that there cannot be any difficulty in accepting the proposition laid down in the judgment cited supra by the learned Government Advocate, but the facts of the case herein would disclose that the order of punishment imposed on the respondent/writ petitioner came to be quashed by this Court vide its order dated 05.12.2013 in W.P (MD).No.13822 of 2013 and since no further challenge has been made by the appellants herein, it has become final and as such, it is not open to the second appellant herein to issue a fresh show cause notice on the very same set of allegations and proceed further and hence, prays for dismissal of this Writ Appeal with costs.

7. This Court paid its best attention to the submissions made on either side and perused the materials available on record.

8. It is well settled position of law that even if a wrong order passed by the Court having jurisdiction to pass an order in such cases, the revisional Court will not interfere with such an order, unless jurisdictional error is pointed out, it cannot be challenged. Section 41 of the Evidence Act also speaks about the relevance of certain judgment in probate, etc., jurisdiction of the Court. Admittedly, the order dated 05.12.2013 in W.P(MD).No.13822 of 2013 is an inter-party judgment between the very same appellants and the respondent herein and the learned Judge, while setting aside the order of punishment, did not grant liberty to the appellants herein to proceed afresh. As rightly pointed out by the learned Senior Counsel appearing for respondent/writ petitioner that if the appellants who are arrayed in the above said Writ Petition really aggrieved by the said order, dated 05.12.2013 in W.P(MD).No.13822 of 2013, ought to have challenged the same in the form of appeal or atleast sought clarification and they have failed to do so and as a consequence, the order dated 05.12.2013 in W.P(MD).No.13822 of 2013 has reached the finality.

9. In such view of the matter, the second respondent for the very same set of allegations cannot issue the show cause notice once again and the said legal aspect has been correctly appreciated by the learned Judge and in support of the said view, he also placed reliance upon the order dated 28.03.2006 made in W.P(MD).No.36490 of 2005. It is also well settled position of law that even in the case of administrative orders/decisions/executive instructions being void or voidable, unless it is required to be declared by a competent forum, it is not permissible to ignore the same merely because it is void. If such is the legal position even for the administrative orders and admittedly, the order dated 28.03.2006 made in W.P(MD).No.36490 of 2005 is a judicial order passed by the competent authority and in the absence of challenge to the said order, the second respondent cannot overreach the



order passed by this Court, in the form of an impugned show cause notice. It is apt to mention the judgment reported in **(2013) 6 SCC 530, Life Insurance Corporation of India Vs Masilamani**, wherein, at paragraph No.15.1, the Apex Court has held as follows:-

WEB COPY "...15.1. When a court/tribunal sets aside the order of punishment imposed in a disciplinary proceeding on technical grounds I.e.non-observance of statutory provisions, or for violation of the principles of natural justice, then whether the superior court, must provide opportunity to the disciplinary authority to take up and complete the proceedings from the point that they stood vitiated; and...."

10. When we apply the said principle in the case on hand coupled with the settled legal position enunciated supra, we can safely hold that the second appellant is not competent to issue any show cause notice, as done in the present case.

11. In our considered opinion of this Court, the learned Judge has correctly appreciated the said aspect and legal position and arrived at a correct decision and we do not find any error or illegality nor infirmity, in the order impugned in this Writ Appeal and this Court is not inclined to interfere with the same. Hence, this Writ Appeal stands dismissed and the order dated 22.01.2015 made in W.P(MD).No.11948 of 2014 stands confirmed. However, in the facts and circumstances, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

1.The Principal Secretary to Government,
The State of Tamil Nadu,
Home Department, Secretariat, Chennai.

2.The Director General of Police,
Law and Order, Santhome, Chennai-04.

+1cc to M/s.Ajmal Associates, SR.No.70998

+1cc to special Government Pleader SR.No.71421

ssm

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