

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 22.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE **A.SELVAM**
and
THE HONOURABLE MR.JUSTICE **G.CHOCKALINGAM**

WRIT APPEAL (MD) No.213 of 2013andM.P.(MD)No.1 of 2013

1.Superintendent of Police,
Tirunelveli District,
Tirunelveli.

2.The Accountant General (A & E),
Tamil Nadu,
Chennai-18

: Appellants/Respondents

Vs.

Thiru.B.Sorimuthu
Ex. HC 2315
S/o.Boomibalan,
7A, Dayabaram Street,
Murugankurichi,
Tirunelveli.

: Respondent/Petitioner

Writ Appeal has been filed under Clause 15 of Letters Patent against the order, dated 10.08.2011 and made in W.P.(MD)No.8918 of 2011 on the file of this court.

Prayer in WP(MD). 8918/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Pleased to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the first respondents in Na.Ka.No. F1/Pen 67/2010 dated 8.6.2011 and to quash the same and to pay the monthly pension with arrears to the petitioner taking in to account Rs. 11,790 as his basic pay.

For Appellants : Mr.N.Manoharan
Special Government Pleader

For Respondent : Mr.H.Thayumanasamy



JUDGEMENT RESERVED DT: 05.04.2016

JUDGEMENT DELIVERED DT: 22 .04.2016

WEB COPY

J U D G M E N T

(Judgment of the Court was made by **G. CHOCKALINGAM, J**)

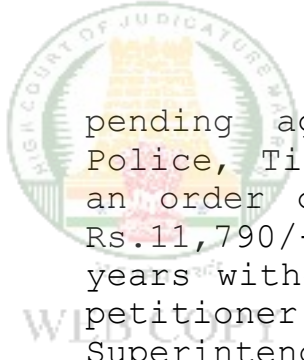
The Writ Appeal has been directed under Clause 15 of Letters Patent as against the order of the learned single Judge of this court, dated 10.08.2011 and made in W.P(MD)No.8918 of 2011 on the file of this court.

2.It is manifested from the records that the petitioner had filed a writ petition under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the first respondent in Na.Ka.No.F1/Pen67/2010, dated 08.06.2011 and to quash the same and to pay the monthly pension with arrears to the petitioner taking into account Rs.11,790/- as his basic pay.

3.In the writ petition, it was contended by the writ petitioner that the petitioner joined the Police Department as Constable on 23.05.1978. While he was working as Head Constable, disciplinary proceedings in P.R.No.118 of 2007, were initiated against him, in which he was inflicted with a punishment of reduction by two stages in the time scale of pay for two years without cumulative effect. At that time, the writ petitioner had reached the pay of Rs.4,700/- and by way of implementation of penalty, the pay was reduced to Rs.4,500/- with effect from 14.04.2008 for two years.

4.The petitioner has further contended that following the above said departmental action, another departmental proceedings were initiated in P.R.No.165 of 2008 under Rule 3(b) of the Tamil Nadu Police Subordinate Service Rules, on 02.07.2010, by the Superintendent of Police, Tirunelveli District. On appeal to the Deputy Inspector General of Police, Tirunelveli Range, the punishment was modified into that of compulsory retirement from service with effect from 04.02.2009. Pursuant to the modification of punishment, the Superintendent of Police, Tirunelveli District has passed an order, dated 14.10.2010 directing recovery of the monetary value of Rs.12,576/- equivalent to the unavailed portion of the punishment period from 04.02.2009 to 13.04.2010, imposed in P.R.No.118 of 2007 from DCRG benefits.

5.It is the further case of the petitioner that the said amount had been recovered and that when the appeal filed before the Deputy Inspector General of Police, Tirunelveli Range was



pending against the order of removal, the Superintendent of Police, Tirunelveli District the first respondent therein, passed an order on 10.11.2009 reducing the pay of the petitioner from Rs.11,790/- to Rs.11,100/- with effect from 14.04.2008 for two years without cumulative effect. Being aggrieved by the same, the petitioner made a representation on 19.04.2011 to the Superintendent of Police, Tirunelveli District the first respondent therein, requesting to reconsider the pension proposal and to revise the pension taking into account I.e., Rs.11,790/- as pay. The said request has been rejected and hence, the writ petition.

6.The learned single Judge of this court, after considering the materials available on record, had proceeded to dispose of the above said writ petition on 10.08.2011 holding that the respondents are directed to compute monthly pension and arrears, taking into account the pay of the writ petitioner as Rs.11,790/- within a period of three months, from the date of receipt of a copy of the order.

7.Having been aggrieved by the order of the learned single Judge of this court, dated 10.08.2011, the appellants being the respondents in the above writ petition stand before this court with this appeal.

8.Heard. Mr.N.Manoharan, learned Special Government Pleader appearing for the appellants and Mr.H.Thayumanasamy, learned counsel appearing for the respondent and perused the materials available on record.

9.The learned counsel appearing for the appellants/respondents has contended that the learned single Judge ought to have dismissed the writ petition at the stage of admission itself and that the learned single Judge ought to have considered that the respondent was inflicted with a punishment of reduction in time scale of pay by two stages for two years without cumulative effect in P.R.No.118/2007 on 14.04.2008 and he was removed from service subsequently, on 04.02.2009 in another P.R.No.165 of 2008 and the same was modified as compulsory retirement and he has been sanctioned with pensionary benefits, based on the last drawn by him at the time of removal from service, which was modified later and that the monetary value of unspent portion of reduction punishment imposed in P.R.No.118/2007 has been recovered from his retirement Gratuity and there are no statutory rules or provisions to restore his reduced pay to the actual pay drawn by him before the infliction of punishment, unless or otherwise the punishment inflicted on him is set aside or cancelled by the competent appellate authority and that as per the rules in force, the pay of Ex-Constable 2315, B.Sorimuthu to Rs.11,790/- from Rs.11,100/- is not possible. Hence, the impugned order is liable for reconsideration and cancellation, in the



interest of public as well as for the sanctity of the statutory rules in force and prayed for allowing the writ appeal.

10. Per contra, the learned counsel appearing for the respondent would contend that the learned single Judge, after appreciating the entire facts and circumstances of the case, has correctly passed the impugned order, which do not call for any interference by this court. Hence, he has prayed that the writ appeal has to be dismissed.

11. In this case, it is admitted on either side that the respondent B.Sorimuthu was working as Head Constable (HC 2315) and he was inflicted with punishment and reduction in time scale of pay by two stages for two years without cumulative effect in P.R.No.118/2007 on 14.04.2008 and during that punishment was in force, he was granted another punishment of removal of service and thereafter, the punishment was modified into that of compulsory retirement from service and hence, the reduction of time scale of pay.

12. It is also admitted that B.Sorimuthu, the respondent herein has awarded two stages of reduction of increment with effect from 14.04.2008 and for the period of two years started from 14.04.2008 and against the order passed by the punishing authority, there was no appeal or revision preferred on the side of the respondent/writ petitioner.

13. Further, it is also an admitted fact that during the subsistence of punishment, the respondent/writ petitioner was removed from service in another P.R.No.165 of 2008 with effect from 02.07.2010 and subsequently, it was modified as compulsory retirement with effect from 04.02.2009.

14. Further, it is admitted on the side of the appellants/respondents that the appellants/respondents are not denied the punishment imposed on 14.04.2008 has been given effect to 04.02.2009 and could not be effected, since there was modification of punishment into compulsory retirement.

15. It is seen from the records that the respondent/writ petitioner has specifically averred in the writ petition that the 1st appellant/1st respondent has passed an order, dated 14.10.2010 recovering the monetary value equivalent to the unavailed portion of the punishment period worked out at Rs.12,576/- from the respondent/writ petitioner's DCRG benefits from 04.02.2009 to 13.04.2010, which is admitted by the appellants herein. Hence, even though the reduction in two stages granted from 14.04.2008 upto two years I.e., 13.04.2010, since there was compulsory retirement with effect from 04.02.2009, the un-availed portion of punishment period was recovered from DCRG as stated above.



16. In view of the above circumstances, the respondent/writ petitioner has suffered with punishment even after he was modified the punishment into compulsory retirement from service and the amount was recovered for un-availed portion and the amount was recovered from his DCRG benefits. Hence, this court is of the considered view that the said punishment has to be treated as entire punishment on him as stated above.

17. Considering all these aspects, the learned single Judge of this court has given a finding that the writ petitioner ought to have been restored to his original pay of Rs.11,790/- from the date of completion of the period of punishment that is two years reduction in time scale without cumulative effect and consequently, directed the respondents therein to compute monthly pension and arrears, taking into account the pay of the writ petitioner as Rs.11,790/- within a period three months from the date of receipt of a copy of the order, which do not suffer with any infirmity. Hence, the writ appeal is liable to be dismissed.

18. In the result, writ appeal is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar
Madurai Bench of Madras High Court,
Madurai.

er

To

1. Superintendent of Police,
Tirunelveli District, Tirunelveli.

2. The Accountant General (A & E),
Tamil Nadu, Chennai-18

+1 cc to Mr. K. Suresh Kumar, Advocate, SR No. 22798

+1 cc to Special Government Pleader, SR No. 23452

RG.JGB-DP/

05.05.2016

5P.5C

Judgment made in
W.A (MD) No. 213 of 2013

22.04.2016