

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2017

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.6343 of 2017

K.Kumaravel

.. Petitioner

Vs

1.The Principal Secretary to Government,
Home (Police-II) Department,
Fort St.George,
Chennai - 9.

2.The Director General of Police,
Dr.Radhakirhsnan Salai,
Mylapore, Chennai - 4.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the first respondent dated 20.01.2017 in G.O.Ms.No.79 and quash the same and forthwith promote the petitioner to the post of Deputy Superintendent of Police with all attendant benefits.

For petitioner : Ms.P.T.Asha
for M/s.Sarvabhauman Asso.

For Respondents : Mr.T.M.Pappiah, Spl.GP

सत्यमेव जयते
O R D E R

By way of filing this writ petition, the petitioner seeks to quash the impugned order passed by the first respondent / the Principal Secretary to Government, Home (Police-II) Department, Chennai, in G.O.Ms.No.79, dated 20.01.2017, in and by which, the petitioner was reverted from the post of Deputy Superintendent of Police to the post of Inspector of Police, on the ground of his conviction in a criminal case.

2. The case of the petitioner is that he was initially appointed as Sub-Inspector of Police on 28.09.1987 through director recruitment under the second respondent. Thereafter, in the year 1999, he was also promoted to the post of Inspector

of Police on 19.09.1999. Again, he was further promoted to the post of Deputy Superintendent of Police - Category - I on 09.07.2012. In the meanwhile, while he was working as Inspector of Police, Avanakurichi Police Station, Karur District, one Mr.V.S.Tilagar, who is an advocate, had filed a private complaint under Section 200 of Cr.PC. on the file of the Chief Judicial Magistrate, Karur, in C.C.No.5 of 2004 against the petitioner alleging that he had demanded a sum of Rs.10,000/- from the said V.S.Thilagar. The said complaint was taken on file by the Chief Judicial Magistrate for offences under Sections 323, 341, 506 part(II) and 379 (IPC), whereby he was convicted in C.C.No.5/2004, dated 17.12.2007, under Sections 323 and 341 IPC and sentenced with simple imprisonment for one month and three months respectively. Aggrieved by the same, when an appeal was preferred, the Sessions Court, Karur, vide C.A.No.66 of 2007, dated 20.12.2007, suspended the sentence. Thereafter, the de-facto complainant preferred an appeal before the Madurai Bench of this Court in Crl.Appeal No.43 of 2008 for enhancement of the punishment. Even the writ petitioner had also preferred an appeal in Crl.A.(MD) No.59 of 2014 seeking to set aside the order of conviction and sentence. Pending the appeal, the parties have settled the issue by entering into memo of compromise dated 07.02.2017 and therefore, by recording the said compromise memo, the Hon'ble Madurai Bench of this Court, by common order dated 21.02.2017, disposed of the said appeal filed by the writ petitioner, besides, dismissing the appeal preferred by the de-facto complainant as withdrawn in view of his endorsement to that effect.

3. Therefore, now, the only grievance of the petitioner is that pending appeal, the first respondent has reverted the petitioner from the post of Deputy Superintendent of Police to the post of Inspector of Police, which is impugned herein, on the ground of his conviction in a criminal case. Therefore, it is pleaded that since the appeals preferred by the parties have been disposed of by the Madurai Bench of this Court in view of memo of compromise filed by them to settle the issue, the impugned reversion order passed by the first respondent is liable to be set aside.

4. On the other hand, it is stated by the learned Special Government Pleader that in terms of the memo of compromise dated 07.02.2017, the Hon'ble Madurai Bench of this Court has disposed of the appeal seeking to set aside the order of conviction and sentence in Crl.A.(MD) No.59 of 2014, dated 21.02.2017, therefore, the writ petitioner may be directed to submit his representation before the authorities by narrating the entire facts as set out in this writ petition and thereafter, the same will be disposed of on merits.

5. It is an admitted fact that the trial Court imposed a sentence of simple imprisonment for one month under Section 341 IPC and another simple imprisonment for three months under Section 323 IPC on the writ petitioner. Aggrieved by the same, he had preferred an appeal on the file of the Sessions Court, Karur, in C.A.No.66 of 2007, whereby the learned Sessions Court, by its order dated 20.12.2007 suspended the order of sentence of imprisonment. Thereafter, he was given promotion to the post of Deputy Superintendent of Police under Rule 10(a)(i) of the General Rules for Tamil Nadu State and Subordinate Services by an order dated 09.07.2012 of the Commissioner of Police, Chennai and thereupon, on completion of his probation, he was posted as Deputy Superintendent of Police (Category-I), Prohibition Enforcement Wing, Madurai District on 04.12.2013.

6. While the matter stood as above, he had received a show cause notice dated 19.08.2014 from the first respondent proposing to dismiss him from service in view of his conviction made in C.C.No.5 of 2007, dated 07.12.2007. Challenging the said show cause notice, he filed a Writ Petition No.24498 of 2014, whereby, this Court, by order dated 10.09.2014, passed in M.P.No.2 of 2014 in W.P.No.24498 of 2014, had directed the respondents not to pass final orders till the disposal of the writ petition, with a further direction to the writ petitioner to submit his explanation to the show cause notice dated 19.08.2014.

7. In the above circumstances, two events are to be taken note of; firstly, after the sentence was suspended by the learned Sessions Court, Karur, in C.A.No.66 of 2007, dated 20.12.2007, the petitioner was given promotion as Deputy Superintendent of Police on 09.07.2012. However, since the conviction continued and sentence alone was suspended, the first respondent reverted the petitioner from the post of Deputy Superintendent of Police to the post of Inspector of Police, which is impugned herein, stating that the petitioner cannot be given the benefit of promotion during the currency of conviction. Therefore, this Court is not able to find any error in the impugned order of reversion passed by the first respondent.

8. Secondly, it is also an admitted fact that the Hon'ble Madurai Bench of this Court, by its common judgment dated 21.02.2017 passed in CrI.A(MD).Nos.43 of 2008 and 59 of 2014, disposed of the said appeals by recording the joint compromise memo dated 07.02.2017 filed by the writ petitioner and the de-facto complainant to settle the issue amicably and also in view of withdrawal of the CrI.A.(MD)No.43 of 2008 by the de-facto complainant and in the said judgment, it is observed that the departmental proceedings initiated against the writ petitioner may be quashed.

9. At this juncture, learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in Khursheed and another v. State of Uttar Pradesh and another [(2007) 12 SCC 68], for a proposition that offences under Sections 325 and 341 IPC are compoundable in nature with the permission of the Court. Therefore, in the light of the ratio of the Apex Court, when the Madurai Bench of this Court has recorded compromise as per sub-section 8 of Section 320 of the Cr.PC, composition of offence under the Section shall have an effect of acquittal of the accused with whom the offence has been compounded and the resultant effect of compounding of offences would be that the accused should be acquitted. In other words, once the offences have been compounded and the requisite permission is granted by the Court, the accused must be acquitted.

10. Therefore, considering the fact that the offences punishable under Sections 341 and 323 IPC have already been compounded by the parties by entering into compromise as mentioned in para 8 above and also by recording the above said submission of the learned Special Government Pleader for the respondents, this Court directs the petitioner to submit his representation before the respondents within a period of one week from the date of receipt of a copy of this order by setting out the entire facts as stated in this writ petition and thereafter, on receipt of such representation, the respondents are directed to consider the same forthwith on merits and in accordance with law, as the petitioner is going to retire on 31.03.2017.

11. In fine, the writ petition is disposed of. No Costs. WMP.No.6840 of 2017 is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

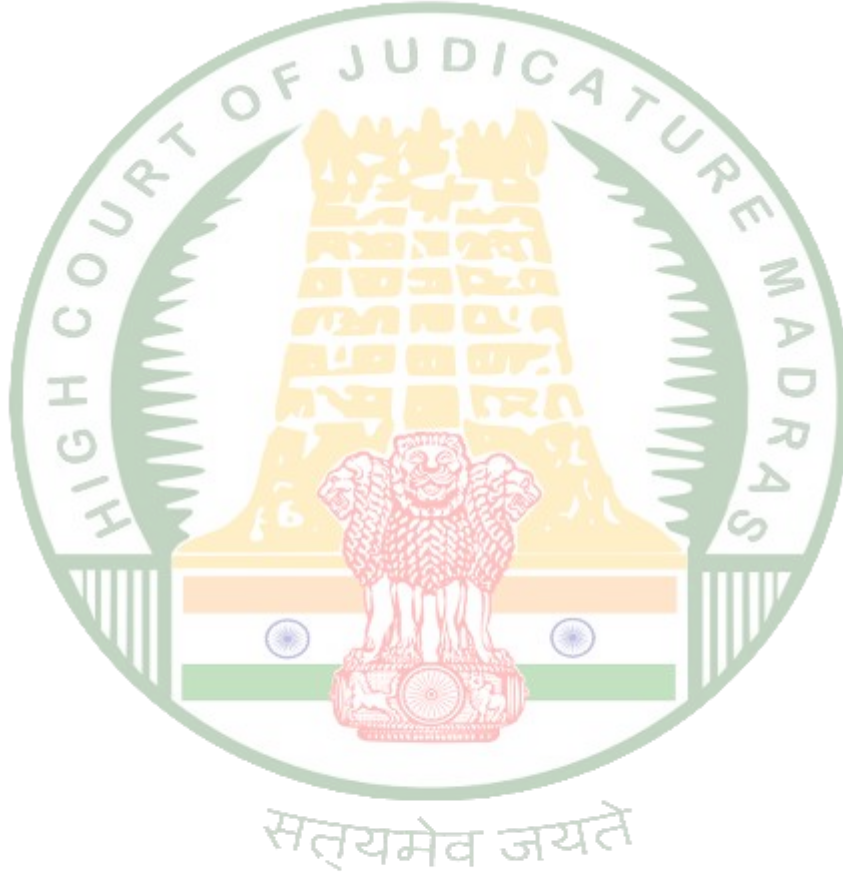
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+1cc to Government Pleader, Sr. 17958
+1cc to M/S. Sarvabhauman Assocites, Sr. 17890

W.P.No.6343 of 2017

VR(24/03/2017)



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