

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2017

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.27864 of 2013

B.Mohammed Meera

.. Petitioner

Vs.

1.The Director General of Police,
Tamil Nadu, Chennai - 4.

2.The Principal Secretary to Government,
Home (Police VI) Department,
Secretariat, Chennai - 9.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the order of the first respondent herein passed in his Rc.No.209492/Con.I(2)/2007-2 dated 03.08.2010 imposing a punishment of compulsory retirement from service and the consequential order passed by the second respondent herein passed in G.O.(2D) No.380, Home (Police VI) Department dated 31.07.2013 rejecting the appeal petition and quash the same and consequently direct the respondents herein to reinstate the petitioner in service with all consequential service and monetary benefits.

For Petitioner .. Mr.Ravi Shanmugam

For Respondents.. Mr.T.M.Pappiah,
Spl. Govt. Pleader

ORDER

The writ petition has been filed seeking the following relief:

to issue a writ of certiorarified mandamus to call for the records pertaining to the order of the first respondent herein passed in his Rc.No.209492/Con.I(2)/2007-2 dated 03.08.2010 imposing a punishment of compulsory retirement from service and the consequential order passed by the second respondent herein passed in G.O.(2D) No.380, Home (Police VI) Department dated 31.07.2013 rejecting the appeal petition and quash the same and consequently

direct the respondents herein to reinstate the petitioner in service with all consequential service and monetary benefits.

2.The case of the petitioner is that he was appointed in the Police Department as Grade II Police Constable on 17.11.1998 and he was promoted as Grade I Police Constable in the year 1998 and further promoted to the post of Head Constable in November 2004. While working as Head Constable, certain allegations were made against the petitioner in discharge of his duties and therefore was placed under suspension on 26.05.2005. The matter was referred before the Tribunal for Disciplinary Proceedings for the purpose of framing charges in order to proceed with the departmental enquiry. The Commissioner, Tribunal for Disciplinary Proceedings, by proceedings dated 04.04.2008 framed charges against the petitioner and other officials involved in the acts of misconduct. The Tribunal for Disciplinary Proceedings concluded the enquiry on 27.11.2009 holding the charges proved. A report was furnished to the petitioner on 06.05.2010 seeking for his explanation.

3.In response to the report of the Tribunal for Disciplinary Proceedings, the petitioner submitted his representation on 01.06.2010 setting out the infirmities in the conclusion arrived at by the Tribunal. However, the first respondent, without taking note of the infirmities pointed out by the petitioner, had passed an order on 03.08.2010, imposing the punishment of compulsory retirement from service by accepting the findings given by the Tribunal for Disciplinary Proceedings. As against the punishment of compulsory retirement, the petitioner preferred an appeal to the second respondent on 08.09.2010. However, the same was rejected by the second respondent on 31.07.2013. Both the disciplinary authority's order dated 03.08.2010 and the order in the appeal dated 31.07.2013 are put to challenge in this writ petition.

4.Upon notice, Mr.T.M.Pappiah, learned Special Government Pleader entered appearance on behalf of the respondents and filed a detailed counter.

5.Mr.Ravi Shanmugam, learned counsel appearing for the petitioner would at the outset submit that the petitioner had been wrongly implicated in the departmental action and in fact, the evidence which was made available before the Tribunal would point out the fact that the petitioner had not collected any amount in excess of what was fastened on the erring two wheeler riders. In fact, the evidence would also point out the fact that he was only assisting the officials in discharge of their duty for apprehending the two wheeler riders, who were violating the traffic rules/regulations.

6.Learned counsel for the petitioner would draw this Court's attention to the disciplinary authority's order dated 03.08.2010

in which the first respondent has himself observed tht the money which had been taken from the motor riders was ostensibly taken for the error/violations on their part and the charged officials were only assisting the superiors during the vehicle checks. While making such observation in favour of the petitioner, ultimately, the disciplinary authority agreed with the findings of the Tribunal for Disciplinary Proceedings and imposed the impugned penalty of compulsory retirement.

7.Mr.Ravi Shanmugam, learned counsel appearing for the petitioner would also point out that the statutory appeal which was preferred by the petitioner before the second respondent had been disposed of by a non-speaking order on 31.07.2013. This Court's attention was brought to the order passed by the appellate authority, the second respondent herein and the order does not deal with the point raised by the petitioner in the appeal but merely concluded that all the points have been carefully and independently considered. No reasons have been spelt out by the appellate authority and the mechanical rejection is therefore contrary to the service rules and hence cannot be sustained in law. This Court is in agreement with the submissions made by the learned counsel for the petitioner that the appellate authority's order is a non-speaking order and therefore cannot be countenanced in law.

8.Taking into consideration the favourable observation made by the disciplinary authority himself in the punishment order dated 03.08.2010, this Court, instead of remanding the matter back to the appellate authority, is of the view that the punishment of compulsory retirement is little excessive to the gravity of the misconduct alleged against the petitioner. It appears from the records that the role played by the petitioner in the vehicle check was very restricted and limited and he was not implicated directly in any form of demand by way of illegal gratification. The amount, which was collected from the motorists was, even according to the disciplinary authority, only towards fine and therefore, the petitioner cannot be slapped with the major penalty of compulsory retirement.

9.However, while observing as above, this Court is of the view that the Tribunal for Disciplinary Proceedings which went into the factual allegations against the petitioner and others found the charges proved, no matter to what extent the petitioner was involved in the allegations along with the other superior or other officers. In the said circumstances, although this Court finds that the punishment which ultimately imposed viz., compulsory retirement is excessive in the facts and circumstances of the case, the said punishment is liable to be modified. Therefore, the order imposing the punishment of compulsory retirement dated 03.08.2010 and the consequential order dated 31.07.2013 rejecting the appeal are set aside. This Court directs the reinstatement of the petitioner, however, the petitioner is not entitled to the salary for the period when he

was compulsorily retired until the period of his reinstatement as this Court thinks that this would be sufficient punishment for the petitioner for the proved misconduct. The respondents are directed to pass orders reinstating the petitioner within a period of four weeks from the date of receipt of a copy of this order. It is also made clear that on being reinstated, the petitioner, except for the backwages, is entitled to all other benefits like continuity of service, seniority, any further promotion etc.,

10.The writ petition stands allowed on the above terms. No costs.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

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To

- 1.The Director General of Police,
Tamil Nadu, Chennai - 4.
- 2.The Principal Secretary to Government,
Home (Police VI) Department,
Secretariat, Chennai - 9.

+1 CC to Ms. Ravi Shanmugam, Advocate sr 63457.

+1 Cc to Govt. Pleader sr 63672.

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AD(CO)
sp(27/09/2017)

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