



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2018

CORAM:

WEB COPY

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

Rev.Applc.(MD)No.225 of 2017
IN
W.A(MD).No.1008 of 2016

The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai - 600 004.

.. Petitioner/
Appellant/Respondent

Vs.

E.Jayakumar

.. Respondent/
Respondent/Writ Petitioner

PRAYER: Review application filed under Order 47 Rule 1 and 2 of C.P.C. r/w Section 114 of C.P.C., praying to review the order, dated 30.11.2016 passed by this Court in W.A.(MD).No.1008 of 2016.

Prayer in WA(MD)No. 1008/ 2016 :

Writ Appeal against the order dated 17.04.2014 made in W.P (MD) No.14300 of 2011 on the file of this Honourable Court.

Prayer in WP(MD)No. 14300/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the respondent in connection with the show cause notice issued in RC.No.048379/GB 2(2)/2011 dated 25.10.2011 and quash the same and grant such other further relief as this Honourable Court may deem fit in the circumstances of the case.

For petitioners : Mr.B.Pugalendhi,
Addl. Advocate General,
Asst. by Mr.V.R.Shanmuganathan,
Special Government Pleader

For respondents : Mr.Veerakathiravan,
Senior Counsel for
Mr.C.Jeganathan

**ORDER**

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The facts leading to the filing of this review application have been narrated and dealt with *in ex-tenso* in the judgment, which is sought to be reviewed and hence, it is not necessary to restate the facts once again.

2. Mr.B.Pugalendhi, learned Additional Advocate General has drawn the attention of this Court to the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 (hereinafter referred to as "the Rules") as well as to the typed set of documents and would submit that the disciplinary authority has exonerated the respondent from the charges framed against him and the appellate authority cannot review any order passed under the Rules before the expiry of 60 days of the appeal and even assuming that the *suo motu* review was done by the Commissioner of Police on 31.03.2011, it is within 16 days after the issue of the said disciplinary proceedings, but before the expiry of the mandatory appeal period of 60 days. Therefore, the said act is not legally valid. It is also the submission of the learned Additional Advocate General that mere endorsement on the service register cannot be taken as if *suo motu* review had been done by the concerned official and it is only a mistake committed by the concerned Superintendent and since the charges framed against the petitioner is grave in nature, *suo motu* review initiated by the departmental head viz., the petitioner herein should reach its logical conclusion and hence, he prays for allowing of the review application.

3. Per contra, Mr.Veerakathiravan, learned senior counsel appearing for the respondent has drawn the attention of this Court to the counter affidavit filed by the respondent and would submit that as per Rule 9 of the Rules, the appeal period is not 60 days and it is only 30 days. Admittedly, the alleged *suo motu* review was done after the expiry of the 30 days and as such it cannot be faulted with. Insofar as the submission of the learned Additional Advocate General that mere endorsement on the service register cannot be taken as if *suo motu* review had been done by the concerned official, it is the submission of the learned senior counsel appearing for the respondent, the exercise of *suo motu* review of the Commissioner of Police and the entry made by the concerned Superintendent are not at all in dispute and the respondent / writ petitioner is entitled to presume what has been done already is strictly in accordance with the relevant norms and as such it cannot be faulted with. He has also brought to the knowledge of this Court that the respondent, who was working as Deputy Superintendent of Police, is continued to keep under suspension and he already reached the age of superannuation on 30.11.2016 and hence, he prays for dismissal of the review application.

4. This Court considered the rival submissions made on either side and perused the materials available on record.



5. Under Rule 9 of the Rules, the appeal time is only 30 days and not 60 days as specified in the petition for review. It is a primordial submission of the learned Additional Advocate General that the alleged *suo motu* review done by the Commissioner of Police is not as per the norms and even assuming that such *suo motu* review had been exercised by the Commissioner of Police, the same ought not to have done before the expiry of the mandatory period prescribed for filing appeal. In the considered opinion of this Court, the said submission lacks merit for the reason that as per Rule 9 of the Rules, the appeal time is only 30 days and the alleged *suo motu* review done by the Commissioner of Police is beyond the period of 30 days. As rightly pointed out by the learned senior counsel appearing for the respondent, the entry found in the service register, as per the *suo motu* review done by the Commissioner of Police, is not at all disputed and only explanation offered is that it is not a regular proceeding and that the said mistake had been done inadvertently by the concerned Office Superintendent. In the considered opinion of this Court, the said submission also lacks merit for the reason that the relevant entry available in the service records is not in dispute and the petitioner cannot be blamed for that also. This Court has also taken note of the fact that the respondent / writ petitioner has already attained the age of superannuation on 30.11.2016 and therefore, keeping the issue alive would only prolong the matter for the reason that the respondent herein is under suspension and not permitted to retire so far.

6. In our considered opinion of this Court, there is no infirmity or error apparent on the face of the record in the judgment, dated 30.11.2016, in W.A. (MD).No.1008 of 2016.

7. In the result, this review application is dismissed. No costs.

Sd/-

Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar

To

The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 46016

GCG

TE/SV-MMS/SAR-3 : 16/02/2018 : 3P/3C