



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2017

CORAM :

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P (MD) Nos. 24331 and 24332 of 2016

M. Ravi ... Petitioner in W.P. (MD) No. 24331 of 2016

S. Uthayakumar ... Petitioner in W.P. (MD) No. 24332 of 2016

vs.

- 1) The Commissioner of Police
O/o. The Commissioner of Police,
Madurai City.
- 2) The Deputy Commissioner of Police,
O/o. The Deputy Commissioner of Police,
Head Quarters,
Madurai City.
- 3) The Inspector of Police
Central Crime Branch (CCB)
Madurai City. ... Respondents in both WPs

Prayer in W.P. (MD) No. 24331 of 2016 : Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari to call for the records pertaining to the Impugned Punishment Order in Ta.Pa.No.47/2013 dated 24.03.2014 on the file of the Respondent No.2 and consequential Impugned Order in C.No.D1(3)/Appeal 02/2014 dated 19.05.2014 signed on 20.05.2014 on the file of the Respondent No.1 and Quash the same as illegal.

Prayer in W.P. (MD) No. 24332 of 2016 : Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari to call for the records pertaining to the Impugned Punishment Order in Ta.Pa.No.46/2013 dated 24.03.2014 on the file of the Respondent No.2 and consequential Impugned Order in C.No.D1(3)/Appeal 01/2014 dated 19.05.2014 signed on 20.05.2014 on the file of the Respondent No.1 and quash the same as illegal.

For Petitioner (in both WPs) : Mr. T. Lajapathi Roy

For Respondents (in both WPs) : Mr. A. K. Baskarapandian
Special Government Pleader

**COMMON ORDER**

The prayer in these writ petitions is for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned punishment order in Ta.Pa.No.47 and 46/2013 dated 24.03.2014 on the file of the Respondent No.2 and consequential impugned orders in C.No.D1(3)/Appeal 02/2014 and C.No.D1(3)/Appeal 01 /2014 dated 19.05.2014 signed on 20.05.2014 on the file of the Respondent No.1 and quash the same as illegal.

2.A perusal of the impugned orders passed by the 1st respondent/appellate authority clearly shows that none of the grounds raised in the appeals preferred by the petitioners has been considered and the appellate authority has simply rejected the appeals of the petitioners, by stating as follows:-

'I have gone through the entire PR file, appeal petition and other connected records. The delinquency against the appellant is well proved. Hence the appeal petition is rejected.'

3.Since the impugned orders dated 19.05.2014 passed by the 1st respondent/appellate authority are non speaking orders, the same are set aside and the matter is remitted back to the 1st respondent, who shall consider the appeals afresh, by taking note of the parameters set out under Rule 23 of the Tamil Nadu Civil Services(Discipline & Appeal) Rules, which speaks about the power and procedure of the appellate authorities and thereafter, dispose of the appeals in accordance with law. The said Rule is extracted hereunder:-

'23. (1) In the case of an appeal against an order imposing any penalty specified in rule 8 or 9, the appellate authority shall consider--

(a) whether the facts on which the order was based have been established;



(b) whether the facts established afford sufficient ground for taking action; and

(c) whether the penalty is excessive, adequate or inadequate and pass orders--

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case ;

Provided that --

(i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v) (c), (vi), (vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has not already been held in the case, the appellate authority shall, subject to the provisions of sub-rule (c) of rule 17, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of sub-rule (b) of rule 17 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v) (c), (vi), (vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has already been held in the case, the appellate authority shall , after giving the appellant a reasonable opportunity of making representation against the penalty proposed on the basis of the evidence adduced during the enquiry, make such orders as it may deem fit ; and



(iii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of sub-rule (a) of rule 17 of making representation against such enhanced penalty.

(2) Any error or defect in the procedure followed in imposing a penalty may be disregarded by the appellate authority if such authority considers, for reasons to be recorded in writing, that error or defect was not material and has neither cause injustice to the person concerned nor affected the decision of the case.''

With the above direction, these Writ Petitions are disposed of. No costs.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

- 1) The Commissioner of Police
O/o. The Commissioner of Police,
Madurai City.
- 2) The Deputy Commissioner of Police,
O/o. The Deputy Commissioner of Police,
Head Quarters,
Madurai City.
- 3) The Inspector of Police
Central Crime Branch (CCB)
Madurai City.

+2cc Mr.T.Lajapathi Roy, Advocate in SR No.1031 & 1032
+1cc to the Spl.Govt.Pleader in SR No.1151