

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2018

CORAM:

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR

W.P.No.46197 of 2006

1. P.T.Dakshinamoorthy (Deceased)

2. D.Savithiri
3. D.Ramakrishnan
4. D.Mahalakshmi
5. D.Thyagarajan
6. D.Rajakumari

P2 to P6 are substituted as LRs of the Deceased P.T.Dakshinamoorthi, as per order dated 06.08.18 by RSKJ in M.P.1/10 in W.P.46197 of 2006Petitioners

/Vs/

1. The Government of Tamil Nadu
Rep by its Secretary to Government,
Home (Police-IV) Department,
Fort St.George, Chennai 600 009.
2. The Director General of Police,
Law and Order,
Chennai 600 004

...Respondents

Prayer:- This Writ petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the respondents, especially second respondent relating to his proceedings (punishment of dismissal from service) made in R.C.No.209687/con-v(1)/99 dated 13.04.2002 as confirmed by the first respondent pursuant to his proceedings made in G.O.(2D) No.303 Home (Police IV) Department dated 12.05.2006 and quash the same as null and void, illegal and invalid holding that the petitioner has retired from service on superannuation peacefully on 31.10.1999 and consequently directing the respondents to re-fix the petitioner's last drawn salary and disburse to him the arrears of salary from October 1999 together with bonus, increments etc apart from disbursing to him the retiral benefits, pensional benefits from 01.11.1999 holding his eligibility to recover the pension arrears.

For Petitioners : Mr.A.Amalraj

For Respondents : Mr.K.Ravikumar
Additional Government Pleader

O R D E R

The prayer sought for in this Writ Petition is for the issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent relating to his proceedings (punishment of dismissal from service) made in R.C.No.209687/con-v(1)/99 dated 13.04.2002 as confirmed by the first respondent pursuant to his proceedings made in G.O.(2D) No.303 Home (Police IV) Department dated 12.05.2006 and quash the ssame as null and void, illegal and invalid holding that the petitioner has retired from service on superannuation peacefully on 31.10.1999 and consequently to direct the respondents to re-fix the petitioner's last drawn salary and disburse to him the arrears of salary from October 1999 together with bonus, increments etc apart from disbursing to him the retiral benefits, pensional benefits from 01.11.1999 holding his eligibility to recover the pension arrears.

2. The short facts which are required to be noticed for the disposal of this Writ Petition are as follows:-

(i) The petitioner was appointed as Grade-II police constable at the respondent-Department on 01.08.1960 and thereafter, he had been subsequently promoted to various levels and he reached at the level of Inspector of Police. He claimed that he has maintained unblemished service in the police Department from the date of his appointment as Constable till his promotion as Inspector of Police.

(ii) While so, on 26.06.1995, a complaint was given by one Sugumaran against one Padmanabapillai. The said complaint was enquired into by the petitioner, as Inspector of Police and on 20.08.1995, the complaint was closed as mistake of fact.

(iii) However, the said Sugumaran, being not satisfied with the same, had filed a further complaint by approaching the competent Criminal Court to investigate the said complaint once again. Accordingly, pursuant to the direction issued in this regard, the Deputy Superintendent of Police concerned, investigated the said complaint and he has also come to the conclusion that absolutely there had been no substance on the said complaint given by the said Sugumaran against Padmanabapillai and that the same was given out of vengeance due to the enmity between them which was said to have been

developed because of a land dispute between the parties. Accordingly, the Deputy Superintendent of Police concerned referred the matter as mistake of fact once again and the same came to be closed.

(iv) However, subsequently, after several years, a charge memo has been issued on 01.10.1999 against the petitioner, at the verge of his retirement and subsequently, a revised charge memo has also been issued on 27.10.1999 just three days prior to the superannuation of the petitioner, as he had to superannuate on 31.10.1999. The sum and substance of the charge memo was that, the complaint filed by one Sugumaran against Padmanabapillai was enquired and the same was closed as a mistake of fact and the said fact has been confirmed by the Deputy Superintendent of Police, who had further investigated the same, of course, pursuant to the directions issued by the competent criminal Court, however, the said Padmanabapillai had given a complaint against the petitioner as if the petitioner demanded an illegal gratification of a sum of Rs.1,00,000/-.

(v) Because of the charge memo issued against the petitioner dated 27.10.1999, the petitioner was not permitted to retire on attaining his superannuation on 31.10.1999.

(vi) As against the said charge memo, the petitioner filed an Original Application No.7517 of 2000 before the Tamil Nadu Administrative Tribunal at Chennai, where, the application was finally disposed of by the Tribunal by order dated 07.12.2001. The Tribunal, after having considered the details of the claim made by the petitioner challenging the said charge memo, had come to the conclusion that the charge memo need not be quashed. However, the Tribunal has given a direction that the disciplinary proceedings against the petitioner shall be completed within a period of three months from the date of receipt of copy of the order, failing which, the entire proceedings shall stand annulled and the petitioner deemed to have been retired with effect from 31.10.1999.

(vii) Subsequently, an enquiry was conducted and on conclusion of the enquiry, the Enquiry Officer had given his report stating that the charge has been proved. Based on which, second show cause notice had been given to the petitioner, who in turn, in response, had given his reply and after having considered all these materials, the Disciplinary authority has passed the final order on 13.04.2002 whereby he had inflicted the punishment of dismissal of service against the petitioner. Aggrieved over the said order of punishment of dismissal of service against the petitioner, he had preferred an appeal before the first respondent, who is the appellate authority. The said appellate authority has also passed an order in G.O.(2D)

No.303 Home (Police IV) Department dated 12.05.2006 confirming the order of punishment by rejecting the appeal filed by the petitioner. Aggrieved over the said order passed by the disciplinary authority, which was confirmed by the appellate authority, the petitioner has filed this Writ Petition with the aforesaid prayer.

3. Heard Mr.A.Amalraj who would make submission by assailing both the disciplinary authority as well as the appellate authority's orders mainly on three grounds. The learned counsel submitted that, once the complaint given by one Sugumaran dated 26.06.1995 was enquired into and on conclusion of the enquiry, it was closed as mistake of fact on 20.08.1995, on the very same factor, re-investigation was done by the Deputy Superintendent of Police concerned, on the basis of the subsequent complaint given by the Sugumaran. Hence, the question of any complaint claimed to have been given by the said Padmanabapillai, against whom the said complaint given by Sugumaran was closed as mistake of fact, does not arise, as there would not be any substance on the complaint given by the said Padmanabapillai, making an allegation against the petitioner that he had made the demand of illegal gratification of Rs.1,00,000/- and received the same.

4. Secondly, the learned counsel would submit that, when the Tamil Nadu Administrative Tribunal, by order dated 07.12.2001, had specifically directed to complete the disciplinary proceedings within a period of three months from the date of receipt of copy of that order and the final order be passed, failing which, the proceedings initiated against the petitioner shall stand annulled and the petitioner will be deemed to have retired with effect from superannuation date, in all fairness, that order should have been scrupulously followed by completing the disciplinary proceedings including the passing of the final order within the said period. In this regard, the learned counsel would submit that, even though the said order had been passed on 07.12.2001, within a period of three months period, final order on the disciplinary proceedings was not passed and the same was passed beyond the period of three months (i.e) on 13.04.2002. Therefore, by virtue of the said order passed by the Tribunal, the entire disciplinary proceedings initiated against the petitioner shall stand annulled. Therefore, the question of proceedings against the petitioner including inflicting the punishment on him also does not arise.

5. The learned counsel appearing for the petitioner has also raised a ground that, Rule 6 of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules envisages that, the appellate authority must apply his mind to verify whether the facts on which the order was based have been established and also whether the facts established afford

sufficient ground for taking action and also whether the penalty is excessive, adequate or inadequate. Only after making such consideration, orders should have been passed by the appellate authority under the said Rule. Herein, the case in hand, since the appellate authority has passed a cryptic order without showing any materials that based on such materials, the appellate authority has come to the conclusion that there had been a basis with facts, which established the grounds for inflicting the punishment and without making such an exercise as contemplated under Rule 6, which is mandatory in nature, the appellate authority since has passed an order in appeal, which is impugned herein, it shall not stand in the legal scrutiny.

6. Per contra, Mr.K.Ravikumar, learned Additional Government Pleader appearing for the respondents would submit that, insofar as the first ground raised by the petitioner with regard to the veracity of the charge is concerned, the charge was framed on 01.10.1999, subsequently, a revised charge memo was framed on 27.10.1999. Pursuant to the initiation of the disciplinary proceedings, the petitioner's service had been retained as he was not permitted to retire on Superannuation on 31.10.1999. Thereafter, the enquiry was conducted. During enquiry before the enquiry officer, all opportunities had been given to the petitioner and after having examined the veracity of the charge and evidences adduced on the side of the employer and also after taking into account the defence taken by the delinquent, the Enquiry Officer had found that the charges framed against the petitioner had been proved. Therefore, in this regard since there had been no violation in the procedure that has been adopted in completing the enquiry, it cannot be said by the petitioner that the charge itself did not have any basis to proceed. Since the charges are grave in nature as rightly observed by the Tamil Nadu Administrative Tribunal in the order passed in the Original Application set out by the petitioner, due diligence had been taken by the authorities in completing the enquiry in a fair manner.

7. Insofar as the second ground raised by the petitioner that within three months period when the enquiry was not completed and final order was not passed, the learned Advocate Government Pleader has invited the attention of this Court about the dates. According to the learned Government Pleader, the Tribunal order dated 07.12.2001 was signed by the Section Officer of the Tribunal concerned on 27.12.2001 and thereafter on despatch, it was received by the respondents on 17.01.2002. The final hearing of the enquiry was ended on 22.02.2002 and the enquiry officer's report was submitted on 05.03.2002. Thereafter, after giving an opportunity to respond to the second show cause notice to the petitioner and after the receipt of such reply from the petitioner to the second show cause notice,

the disciplinary authority concluded his proceedings by passing the final order of punishment on 13.04.2002. Therefore, three months period, from the date of receipt of copy of the order (i.e) on 17.01.2002, would end only by 16.04.2002 and before which since the final order was passed on 13.04.2002, the said ground raised by the petitioner has no basis and cannot be sustained, as the disciplinary authority has concluded proceedings well within the time as stipulated by the Tribunal.

8. The learned Additional Government Pleader has also submitted with regard to third ground raised by the petitioner that, under Rule 6, there had been no application of mind on the part of the appellate authority is concerned, the appellate authority, after having considered the grounds raised by the petitioner against the order of the disciplinary authority and also by taking into account the veracity of charge, the defence taken by the delinquent and the conclusion arrived at both by the enquiry officer as well as the disciplinary authority, had come to the conclusion that the disciplinary authority's decision to inflict the punishment of dismissal of service against the petitioner was justiable and accordingly, he had confirmed the same.

9. I have considered the said submissions made by the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondents.

10. Merely because the complaint given against the said Padmanabha Pillai was closed as mistake of fact by the petitioner himself and the said factor has once again been confirmed by the subsequent enquiry conducted by the Deputy Superintendent of Police, who also referred the matter as mistake of fact, that would not, ipso-facto, give a clean chit to the petitioner from proceeding against him, that too when a specific complaint was received from an individual against whom the original complaint was given and enquired by the petitioner, that the petitioner had demanded the illegal gratification of Rs.1 lakh and the same had been received by him from the individual, namely, Padmanabha Pillai.

11. Therefore, the Department has rightly initiated the disciplinary proceedings by issuing a charge memo and also a revised charge memo before the petitioner attaining the age of super annuation. It is the settled proposition that once the disciplinary proceedings is initiated before the superannuation, where the services of the delinquent is retained with lien with the liberty to proceed against him or continuation of the disciplinary proceedings, the same can be continued even beyond the period of super annuation for which Rule 9 of the Pension

Rule, can very well be invoked. Herein the case in hand, such procedure has been adopted by the respondents in continuing the disciplinary proceedings even beyond the super annuation. Therefore, the same cannot be found fault with.

12. As has rightly been pointed by the learned Additional Government Pleader appearing for the respondents, the final order of the disciplinary authority was passed on 13.04.2002 i.e will within the three months period as stipulated by the Tribunal. Therefore, the said ground raised by the petitioner cannot also be accepted.

13. Insofar as the ground urged by the petitioner as against the way in which the appeal was disposed of by the appellate authority is concerned, the relevant rule, i.e Rule 6 of the the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules can very well be pressed into service which reads thus.

Rule 6. (1) In the case of an appeal against an order imposing any penalty specified in rule 2, 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 after such consideration, shall 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:

14. By heavily relying upon the said rule, the learned counsel for the petitioner has submitted that, though several grounds have been raised against the order of disciplinary authority, the same had not been considered by applying his mind. In order to testify the said ground, let us refer to the decision taken by the appellate authority which reads thus:-

"As per the above direction of the High Court, Tr.P.T.Dakshinamoorthy formerly Inspector Police has submitted his appeal dated 16.03.2006 to Government along with the delay condonation petition.

The Government have carefully and independently examined the appeal of

Tr.P.T.Dakshinamoorthy, formerly IP with relevant records. It is found from the records that the charges for which he was dismissed from service was proved beyond doubt. He has adduced no valid grounds, Government have therefore decided to reject the appeal of the individual as devoid of merits. Government accordingly order that the appeal of Tr.P.T.Dakshinamoorthy, formerly Inspector of Police against the punishment of dismissal from service imposed on him be rejected as devoid of merits".

15. By perusing the aforesaid decision taken by the appellate authority, this Court finds that, the appellate authority has come to the conclusion that the order passed by the disciplinary authority has to be accepted. However, the appellate authority does not disclose any reason as to why the decision taken by the disciplinary authority has to be accepted. By merely making a statement that the appellate authority has carefully and independently examined the appeal of the delinquent with relevant records and further stated that, from the records and the charges for which he was dismissed from service was proved beyond doubt and he had not adduced any valid ground, the appellate authority decided to reject the appeal of the individual as devoid of merits. This kind of cryptic order has not been suggested by the rule, which has been rightly pointed out by the learned counsel for the petitioner.

16. A perusal of the said rule specifically discloses two aspects. First one is that, whether with regard to the facts on which the order was based have been established or not. Secondly, whether the facts established afford sufficient ground for taking action.

17. With these two aspects, whether the appellate authority has independently applied his mind on the facts of the case as well whether the facts had afforded sufficient ground to take action as has been concluded by the disciplinary authority, ought to have been examined independently.

18. On perusal of the order of the appellate authority, this Court finds that, no such exercise has been undertaken by the appellate authority except by merely stating that, it has been carefully and independently examined the materials available on record and also stating that there are no valid reasons raised by the delinquent and accordingly, rejected the appeal.

19. In view of the said flaw of the appellate authority which is in direct violation of Rule 6 as quoted above, this Court is of the view that, the order of the appellate authority cannot be sustained. Therefore, it deserves for an interference by this Court.

20. In the result, this Writ Petition is disposed of with the following order:

(i) The order of the appellate authority made in G.O.(2D) No.303 Home (Police IV) Department dated 12.05.2006 is hereby quashed.

(ii). The matter is therefore remanded back to the appellate authority (i.e) the first respondent herein for reconsideration.

(iii). While making such reconsideration, the appellate authority must borne in mind the mandatory requirements as contemplated under Rule 6 of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 and independently apply his mind and shall take a decision thereon as to whether the punishment inflicted on the petitioner was warranted based on the established materials and accordingly, the appellate authority can take a decision.

(iv). It is further made clear that, while taking a decision, the appellate authority can also take into account the factual matrix that, as of now the petitioner is no more and by taking a pragmatic and sympathetic view on that regard, accordingly, decide the appeal in accordance with law and on merits.

(v). The aforesaid exercise shall be undertaken by the appellate authority within a period of two months from the date of receipt of a copy of this order.

With these directions, the Writ Petition is partly allowed as indicated above. No costs.
Sr

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

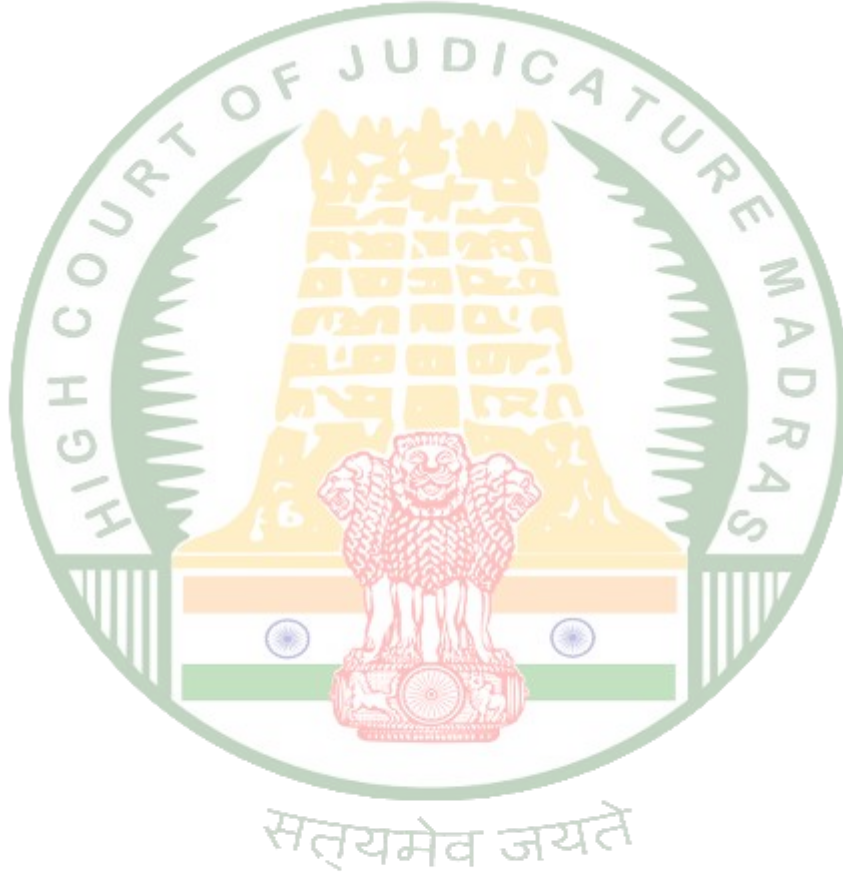
1. The Secretary to Government,
Government of Tamil Nadu
Home (Police-IV) Department,
Fort St.George, Chennai 600 009.

2. The Director General of Police,
Law and Order,
Chennai 600 004

+1cc to Mr.A.Amalraj, Advocate, SR.No.67794
+1cc to the Govt.Pleader, Vide Sr.No.67847

W.P.No.46197 of 2006

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