

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-12-2018

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.12911 of 2005

G.Gajendran

...Petitioner

Vs

1.The Superintendent of Police,
Chengai East District,
Chennai-16.

2.The Director General of Police,
Chennai-4.

3.The State of Tamil Nadu
Represented by the Secretary to Government,
Home (Police) Department,
Chennai-9.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records connected in F.Order P.R.G2/384/96 under Rule 3(b) dated 17.4.97 of the first respondent and Rc.No.60377/ API(2)/2003-4 dated 25.7.2003 of the second respondent and quash the same and direct the reszpondents to restore the petitioner's scale of pay in original posting and accordingly pay arrears.

For Petitioner : Mr.G.Elanchezhiyan

For Respondents: Mr.G.B.Rajesh,
Government Advocate.

O R D E R

The order of punishment, imposing the punishment of a reduction in time scale of pay by three stages for three years with cumulative effect, is under challenge in the present writ petition.

2. The writ petitioner was initially appointed as Grade-II Constable on 1.3.1986. On account of the allegation of unauthorised absence, the writ petitioner was removed from service by way of an order dated 4.3.1999. The writ petitioner filed Original Application before the Tamil Nadu Administrative Tribunal, challenging the order of removal and the said punishment was set aside and the writ petitioner was reinstated into service.

3. The learned counsel for the writ petitioner states that the allegation of unauthorised absence resulted in framing of charges under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 and the writ petitioner submitted his explanation, denying the charges. An enquiry was conducted and based on the enquiry report, the punishment of three stages of reduction for three years with cumulative effect was imposed. Challenging the said order, the present writ petition is filed.

4. The learned counsel for the writ petitioner mainly relying upon the Circular issued by the Commissioner of Police, Chennai City in proceedings dated 5.12.1990. The Commissioner of Police, Chennai City issued Circular Memorandum stating that "if any punishment rolls have been initiated under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, the Disciplinary Authorities are instructed to impose minor penalties applicable to 3(a) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, on completion of the disciplinary proceedings".

5. Relying on the said Circular, the learned counsel for the writ petitioner contends that the benefit of the Circular is to be set aside on that ground. When the Commissioner of Police, Chennai City issued the Circular stating that for the allegation of unauthorised absence, should be imposed with the minor penalty.

6. This Court is of an opinion that there is no irregularity in respect of framing of the charges under Rule 3 (b) by the Disciplinary Authority. The procedures contemplated were followed by the authorities by taking domestic enquiry. The writ petitioner also provided with an opportunity to submit his defence and the final order was passed.

7. In respect of the Circular Memorandum issued by the Commissioner of Police, Chennai City, this Court is of an opinion that the Circular is in violation of the Discipline and Appeal Rules itself. Such a Circular ought not to have been issued by the Commissioner of Police, Chennai City, in view of

the fact that the powers conferred on the Disciplinary Authority under the Rules, cannot be usurped by way of a Circular issued by the Commissioner of Police, Chennai City.

8. The Disciplinary Authorities are empowered to impose punishments considering the merits and demerits of the individual cases. It is a discretion of the Competent Disciplinary Authority to impose punishments described under the Discipline and Appeal Rules.

9. Such being the legal principles to be followed by the Commissioner of Police, Chennai City, cannot provide instructions to the Disciplinary Authorities to impose a particular punishment or to impose punishment in a particular manner. The powers conferred by way of Rules or Statutes, cannot be taken away by the Appellate Authority and each Authority has to exercise his powers conferred under the Rules independently and by considering the merits and demerits of the individual cases concerned.

10. This being the legal principles to be followed, the Circular issued by the Commissioner of Police, Chennai City has no sanctity and is in violation of the established legal principles.

11. This apart, the Circular issued by the Commissioner of Police, Chennai City, cannot have any statutory enforceability and it was issued for the purpose of guiding the subordinate officials. Thus, the writ petitioner also cannot place any reliance on such Circular issued by the Commissioner of Police, Chennai City.

12. In this view of the matter, the writ petitioner has not established any acceptable legal grounds for the purpose of interfering with the impugned order of punishments and accordingly, the impugned order of punishment stands confirmed.

13. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Svn

To

- 1.The Superintendent of Police,
Chengai East District,
Chennai-16.
- 2.The Director General of Police,
Chennai-4.
- 3.The Secretary to Government,
State of Tamil Nadu,
Home (Police) Department,
Chennai-9.

+1cc to M/S.G.Elanchezhiyan, Advocate Sr.84378
+1cc to the Government Pleader Sr.84458

WP No.12911 of 2005

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srg 28/12/2018