

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2018

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.827 of 2015 and M.P.No.1 of 2015

- 1.The State of Tamil Nadu,
Rep. by the Secretary,
Home (Police) Department,
Fort St. George, Chennai-9.
- 2.The Deputy Inspector General of Police,
Thanjavur Range, Thanjavur.
- 3.The Superintendent of Police,
Thanjavur District. ... Appellant

Vs.

Tr.J.Balasubramanian ... Respondent

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 22.09.2014 passed by this Court in Writ Petition No.28307 of 2005 (O.A.No.738 of 2003).

W.P.No.28307 of 2005:

Writ Petition came to be numbered by transfer of O.A.No.738 of 2003 on the file of the Tamil Nadu Administrative Tribunal, praying to call for the records relating to the third respondent's proceedings made in PR.No. 141/98 U/r 3(b) dated 16.7.1999 as confirmed by 1st respondent in G.O. (2D) No. 415 Home (Pol. VI) Department dated 10.12.2002 to Quash the same and consequently direct the respondents to reinstate the petitioner with all backwages continuity of service and other benefits arising thereto.

For Appellants : Mrs.A.Srijayanthi,
Special Government Pleader

For Respondent : Mr.K.Govindan

J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The Disciplinary Authority initiated disciplinary proceedings against the respondent by framing three charges. The Disciplinary Authority conducted an ex-parte enquiry stating that the respondent was not co-operating with the Enquiry Officer for an early disposal of the matter. The Disciplinary Authority after conclusion of the enquiry, passed an order dismissing the respondent from service. The order was passed on 10 July 1999. The respondent challenged the said order before the Deputy Inspector General of Police, Thanjavur. The appeal was dismissed by order dated 1 December 1999. The order was thereafter challenged before the Government. The Government rejected the revision petition by order dated 10 December 2002. The respondent thereafter, filed Original Application in O.A.No.738 of 2003 before the Tamil Nadu Administrative Tribunal, challenging the order of punishment. The Original Application was transferred to this Court and registered as W.P.No.28307 of 2005. The learned Single Judge allowed the writ petition and quashed the punishment. The learned Single Judge taking into account the retirement of the respondent on attaining the age of superannuation, directed the appellants to calculate the benefits payable to him. The order is under challenge at the instance of the Police Department.

2. We have heard the learned Special Government Pleader on behalf of the appellants. We have also heard the learned counsel for the respondent.

3. The Superintendent of Police, Thanjavur, issued a charge memo to the respondent on 20 July 1998 alleging that he published a pamphlet under the caption "Niyayemthana" on 03.09.1998 criticizing his superior officers and threatening to go on indefinite fast from 8 June 1998 in front of the Police Control room at Thanjavur. The other charge relates to the publication of pamphlet under the caption "Neethi Kettu Unnaviratham" on 2 August 1993 criticizing his superior officers and threatening to go on fast on 10 August 1993. The third charge relates to the misconduct in having used the traveler's diary of the Inspector for printing and publishing the pamphlet on 3 June 1998.

4. The respondent failed to submit his response within the time granted by the Disciplinary Authority. The Disciplinary Authority therefore conducted ex parte oral enquiry. The respondent submitted a representation for change of the Enquiry Officer on the ground that he was biased. The said request was not entertained. The Enquiry Officer proceeded to conduct the

enquiry and thereafter, submitted a report. The Disciplinary Authority accepted the report and dismissed the respondent from service.

5. The order dated 10 July 1999 dismissing the respondent from service was challenged by him before the Appellate Authority. It was a statutory appeal. The Appellate Authority was expected to consider the appeal in the light of the factual position and record an independent finding. The order passed by the Appellate Authority, dated 1 December 1999 does not contain any indication that the appeal was considered on merits. The Appellate Authority simply stated that the respondent herein has not put forth any fresh point other than the explanation offered previously and as such, the punishment is well deserved and there is no need for intervention. Similar mistake was committed by the Government also. Even though it was a statutory revision, the Government has not passed any speaking order.

6. The scope and ambit of Rule 6(1) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 was considered by a Division Bench of this Court in The Joint Commissioner of Police and The Deputy Commissioner of Police vs. G.Anandan reported in 2008 Writ LR 86. The Division Bench made it clear that the order passed by the appellate authority must contain reasons.

7. The appeal, being a statutory right given to the delinquent must be considered in the light of the case pleaded by him. However, no such consideration was found in the order passed by the Appellate Authority.

8. The learned Single Judge quashed the punishment and directed the appellants to give promotion to the respondent taking into account his eligibility. Since the respondent has already been retired from service on attaining the age of superannuation, there was no direction for reinstatement.

9. Even though, we are of the view that the Appellate Authority erred in dismissing the appeal without passing a detailed order on merits, still, it is not possible to confirm the order passed by the learned Single Judge in its entirety. The learned Single Judge ought to have remanded the matter to the Appellate Authority for fresh consideration, in case, the Court is of the view that there was total non consideration of the materials. However, no such effort was taken by the learned Single Judge. There is no question of directing the appellants to give promotion to the respondent without adjudicating the question as to whether the authority has considered the matter in the light of the statutory provisions.

10. We have already held that the Appellate Authority erred in dismissing the appeal without supplementing reasons. The core question therefore is as to whether we should remand the matter to the Appellate Authority for fresh consideration.

11. The order of the Disciplinary Authority was passed on 10 July 1999. The appellate order was passed on 1 December 1999. The Government rejected the revision on 10 December 2002. The respondent retired from service on attaining the age of superannuation on 31 March 2008.

12. The question therefore is as to whether this Court would be justified in remanding the matter ten years after the retirement of the respondent, to the Appellate Authority for fresh consideration.

12. After hearing the learned counsel for the parties and taking into account the entire background facts, we are of the view that this is not a fit case to remand the matter to the Appellate Authority at this point of time. We therefore, modify the order passed by the learned Single Judge by imposing the punishment of compulsory retirement.

14. The intra court appeal is disposed of as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

abr/svki

To

1. The State of Tamil Nadu,
Rep. by the Secretary,
Home (Police) Department,
Fort St. George, Chennai-9.

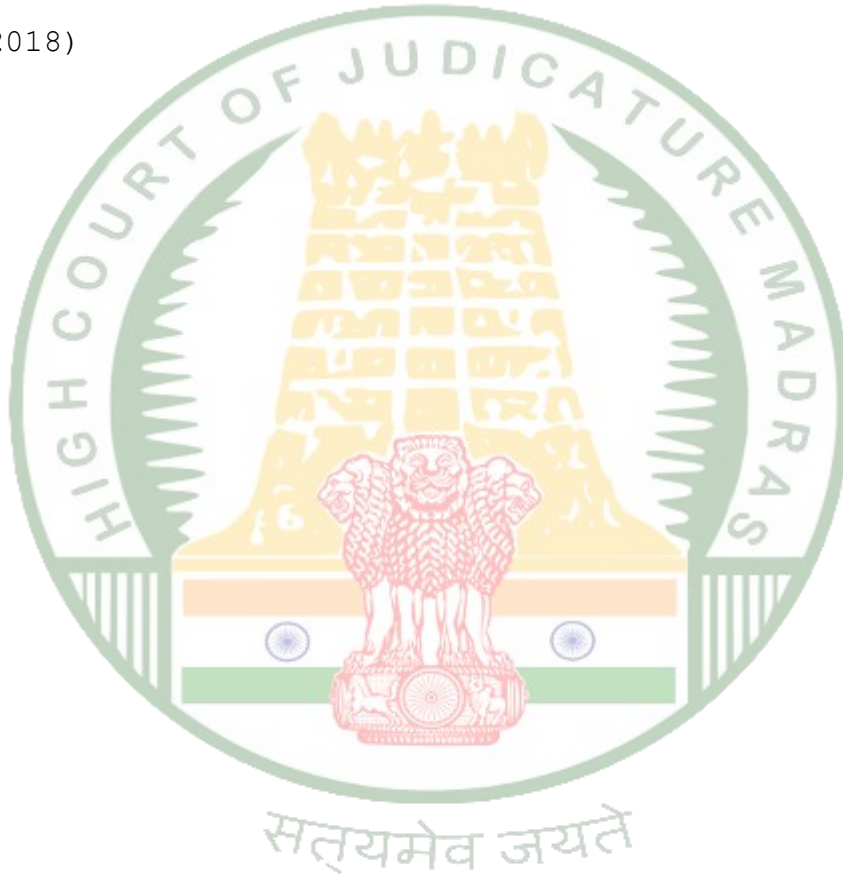
2. The Deputy Inspector General of Police,
Thanjavur Range, Thanjavur.

3.The Superintendent of Police,
Thanjavur District.

+1 CC to Mr.K. Govindan, Advocate sr 19535.
+1 CC to Govt. Pleader sr 20103.

W.A.No.827 of 2015

SP(24/04/2018)



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