

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE SATHRUGHANA PUJAHARI

W.P.No.33403 of 2017

and

W.M.P 36884 of 2017 and 36885 of 2017

S.Sekar,

... Petitioner

Vs.

1. The Principal Secretary to Government,
Home Police IV Department,
Fort. St.George,
Chennai-600 009.

2. The Addl. Chief Secretary,
Home Police IV-A Department,
Fort St.George,
Chennai-600 009.

3. The Superintendent of Police,
Erode.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to call for the records on the file of 1st respondent in proceedings No.G.O. (D) No.1467 dt. 01.12.2007 and 2nd respondent in proceedings No.G.O. 3D No.35 dt. 09.05.2006 and quash the same.

For Petitioner : Mr.D.Selvam

For Respondent : Mrs.R.Janaki,

Additional Government Pleader.

ORDER

As it appears that the petitioner while working as Sub-Inspector of police, a disciplinary proceeding was initiated against him for an alleged delinquency of lack of proper supervision which has resulted in theft of the property seized in the custody of the police. In connection with the case, the petitioner was imposed with a punishment of postponement of increment for one year without cumulative effect on 06.04.2008 against which the petitioner preferred an appeal, review and

mercy petition and the same were dismissed vide their proceedings dated 29.06.2005, 19.09.2005 & 04.01.2006 respectively. Thereafter, the petitioner submitted a memorial petition to the Government which was considered by the Government and the Government has modified the punishment to stoppage of one increment for 6 months without cumulative effect vide G.O.3D No.35 dated 09.05.2006. The petitioner thereafter made successive representations to exonerate him from the aforesaid proven misconduct which was not found favoured with. Therefore, the petitioner come to this Court to challenge the same.

2. The learned counsel appearing for the petitioner has drawn the notice of this Court to the materials on record to persuade this Court that when the petitioner was not on duty the occurrence had taken place and as such, the Government did not consider his memorial petition to exonerate him from the charges properly. Hence, the same is liable to be quashed and the petitioner is entitled from the misconduct. During the course of hearing the learned counsel for the petitioner to buttress his submission, drawn the notice of the court to the First Information Report registered at the instance of the Inspector of Police with regard to theft on 01.06.2002 indicating the fact that theft must have been made within a period of three months proceeding the First Information Report. According to him therefore as he joined on 16.10.2001, the occurrence could not have taken place during the period in which the petitioner was on duty and the finding of misconduct recorded against him therefore was without any substance and hence, seeks the relief as prayed for.

3. The learned counsel appearing for the petitioner submits that by the time the incident occurred i.e. the theft of the seized petroleum product from the custody of the police, the petitioner had not joined in the police station inasmuch as according to the FIR lodged by the Inspector of Police, the theft must have occurred within three months of seizure of the same by the Police. Therefore the petitioner who joined a month after seizure could not have been proceed with but ignoring the aforesaid materials on record a finding of misconduct was recorded against him and also others and he was imposed with the punishment. The Appellate Authority as well as the revisional Authority also did not consider the aforesaid materials indicating the fact that the petitioner could not have a role in the dereliction of duty, confirmed the order of the disciplinary Authority. However his memorial also was not properly taken into consideration by the Government and as instead of exonerating him his penalty was only reduced. Hence the petitioner came to file the writ petition challenging such finding of the disciplinary proceeding of the misconduct of

dereliction of duty inasmuch as the same was perverse therefore this Court on perusal of the materials on record and after hearing the respondent grant the relief sought for.

4. Learned Counsel appearing for the respondent states though not filed any counter but submits that the writ petition is liable to be dismissed on the ground of delay and laches on the part of the petitioner. According to him though the punishment was imposed dates back on 28.05.2004 and the petitioner appeal, review and mercy petition were dismissed on 29.06.2005 , 19.09.2005 and 04.01.2006 respectively, the petitioner did not challenge the same but submitted memorial to the Government against the same in which the Government vide G.O.No.35 dated 09.05.2006 modified the punishment imposed. The petitioner further mercy petition to the Government was also rejected vide G.O.2 D 353 dated 20.08.2009 but the petitioner continue to file successive such petitions which were repeatedly rejected and the last one was vide G.O.No.D 1467 dated 01.04.2017. Therefore the petitioner has not challenged the finding of disciplinary proceeding in appropriate time and that too challenging the finding on fact considered successively by the Appellate and Reviewing authority, this Court should not interfere with the same in exercise of writ jurisdiction under Article 226 of the Constitution of India, at the stage, submits the learned counsel for the respondents.

5. As it appears that the petitioner's appeal, review and mercy petition to exonerate him from the proven delinquency, were rejected dates back on 04.01.2006. However, his memorial petition to the Government was disposed of with a order of modification of the penalty. The petitioner thereafter also did not approach this Court and went on filing repeated representations to the Government which were rejected and the last one was vide G.O.No.D 1467 dated 01.04.2017. Thereafter, the petitioner rising from the deep slumber has come to this Court to challenge the finding of facts on misconduct recorded in the disciplinary proceedings which has since been confirmed in statutorily provided appeal and review when his memorial in this regard was also rejected with the modification of the penalty, inasmuch as the memorial was rejected dates back in the year 2006. It would be apposite to mention here that this Court in exercise of the Writ Jurisdiction under Article 226 of constitution of India does not exercise the power of an Appellate Court to examine the correctness of the decision impugned though the power is supervisory one, it is only when the impugned order has been passed without jurisdiction or contrary to the statutory requirement or without any materials on record and suffers from utter perversity, this Court used to interfere with such finding recorded by the Tribunal / Authority / State in exercise of the writ jurisdiction. Therefore, there

is scope of interference on the finding of fact recorded by the enquiry officer which has been accepted by the disciplinary authority, confirmed by the appellate Authority, as well as by the reviewing authority, on the ground of improper appreciation of the materials on record, more particularly, when nothing has been brought to the notice of this Court indicating the fact such finding of fact has been recorded without any materials on record and also it is never the case of the writ petitioner that the disciplinary authority acted without jurisdiction or passed the order in utter disregard to the statutory requirement. So also, it is well settled that even no period of limitations is provided to file a writ petition under article 226 of Constitution of India, challenging the order of the State / Tribunal / Authority amenable to writ jurisdiction but in a catena of decisions the Apex Court have held that an employee who sleeps like Rip Van Winkle and got up from slumber at his own leisure deserves to be denied the relief on account of delay and laches and that repeated representations don't resurrect a dead or stale cause of action. In view of the aforesaid settled position of law, this Court is of the view that the petitioner who has approached this Court at a belated stage of more than 12 years, seeking indulgence of this Court to redress his grievance, does not deserve the same, more so on the stated ground. Hence, this writ petition stands dismissed at the stage admission. However, in these circumstances there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

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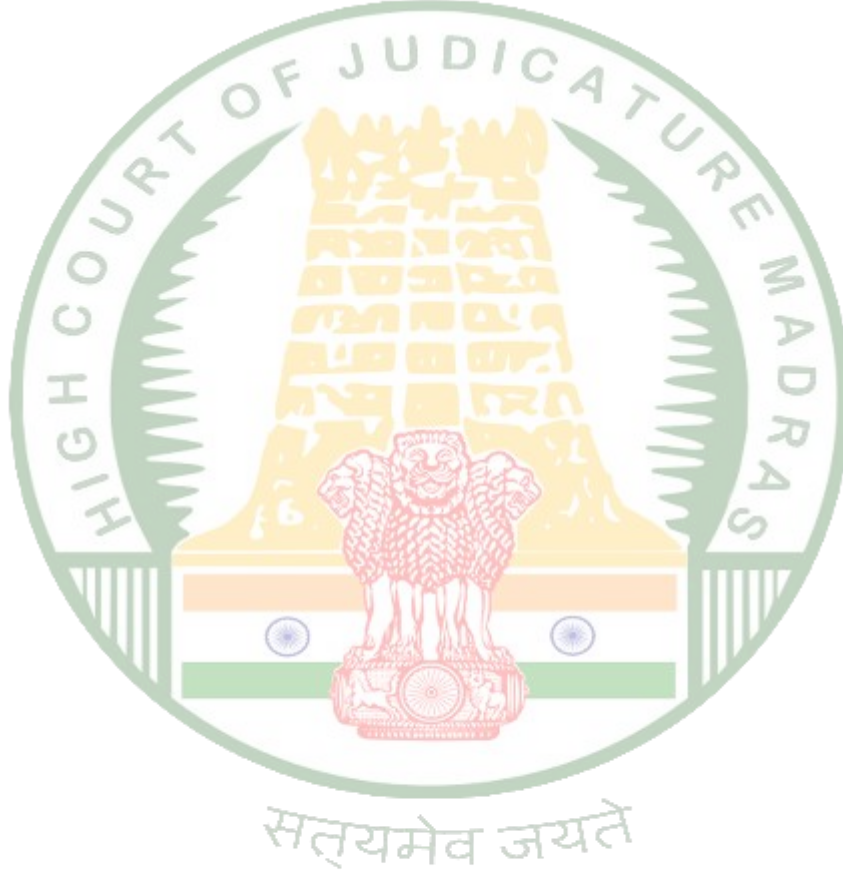
+1cc to Mr.D.Selvam, Advocate SR.NO.56668

+1cc to Government Pleader SR.NO.56823

sm:10.9.2018

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