

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.1 of 2013
and M.P.No.1 of 2013

1.The Secretary
Home Department
Government of Tamil Nadu
Fort St.George
Chennai 9.

2.Inspector General of Police
Law & Order
Chennai 600 004.

3.Deputy Inspector General of Police
Villupuram Range.

4.Superintendent of Police
Cuddalore District.Appellants/Respondent

Vs

S.BalaramanRespondent/Petitioner

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 28.08.2009 passed by this Court in W.P.No.12433 of 2007.

WP.NO.12433/2007:

Writ Petition Under Article 226 of Constitution of India by way of transfer of O.A.NO.483 of 2002 from the file of Tamil Nadu Administrative Tribunal with a prayer to call for the records of the second respondent herein in Rc.No.207591/AP-I(2)/99 dated 01/10/1999 confirming the order of the 4th respondent in D No.857/99 C.No.H1/PR 30/97 dated 29/06/99 of the 4th respondent and quash the same and consequently direct the respondents to permit the petitioner to continue in service as Police Constable in Pudupet Police Station

For Appellants : Mr.V.Anandhamurthy
Additional Government Pleader

For Respondent : Mrs.AL.Gandhimathi

JUDGMENT

(Judgment of the Court was delivered by P.VELMURUGAN, J.)

This intra Court appeal is directed against the order dated 28 August, 2009, passed by the learned Single Judge in W.P.No.12433 of 2007.

2 The facts germane and necessary which led to the filing of this intra Court appeal are as under:

2.1 The respondent was working as Grade-I Police Constable in Cuddalore New Town Police Station from 03 July, 1995. He was issued a charge memo dated 05 February, 1997, containing certain set of charges against him. The respondent denied the charges levelled against him and gave a reply to the said charge memo. An Enquiry Officer was appointed and the respondent also participated in the enquiry. The Enquiry Officer submitted his report dated 10 May, 1999 to the Disciplinary Authority holding that the charges levelled against the respondent were proved. The Disciplinary Authority by proceedings dated 29 June, 1999 imposed the punishment of dismissal of the respondent from service. Against the said order, the respondent sent a representation to the Inspector General of Police (L&O), Mylapore. By order dated 01 October, 1999, the Inspector General of Police, confirmed the order of dismissal from service. Feeling aggrieved, the respondent filed the writ petition in W.P.No.12433 of 2007.

2.2 The learned Single Judge, holding that sufficient opportunity was not afforded to the respondent, quashed the order dated 01 October, 1999 passed by the second appellant and gave a direction to the appellants to reinstate the respondent with continuity of service and with all benefits, except back wages for the period of non-employment. The said order is under challenge before us.

3 We have heard the learned Additional Government Pleader on behalf of the appellants. We have also heard the learned counsel on behalf of the respondent.

4 The fact that the respondent was working as Grade I Police Constable, disciplinary proceedings were initiated against him and the Enquiry officer sent a report to the Disciplinary Authority holding the charges proved, are not

controverted. The Disciplinary Authority, by simply accepting the findings of the Enquiry Officer, has imposed the punishment of dismissal from service on the respondent. The learned Single Judge has observed that the Disciplinary Authority, while imposing the punishment of dismissal from service, has not given any reason, much less any valid reason, for accepting the findings given by the Enquiry Officer.

5 On a perusal of the order impugned in this intra Court appeal, it is manifest that the learned Single Judge has delved very deep into the issue by re-appreciating the entire evidence as an appellate authority. In the considered opinion of this Court, when the learned Single Judge was of the opinion that the Disciplinary Authority has not given any reason for accepting the findings of the Enquiry Officer, the option left open was only to remand the matter to the Disciplinary Authority for consideration afresh and not to straightaway direct reinstatement of the respondent with continuity of service and other applicable benefits.

6 Be that as it may, the fact remains that though the respondent was initially dismissed from service, subsequently, he had retired on attaining the age of superannuation. Since the respondent has already attained the age of superannuation, the question of his reinstatement in service does not arise. Under such circumstances, this Court is of the considered view that the order passed by the learned Single Judge warrants interference.

7 Taking into consideration the fact that the respondent has attained the age of superannuation, the order passed by the learned Single Judge is modified by holding that the punishment of dismissal from service awarded by the Disciplinary Authority is set aside and the same is modified into one of compulsory retirement without back wages for the limited purpose of calculation of other retirement benefits.

In the upshot, we allow this intra court appeal to the extent indicated above. No costs.

Sd/-
Asst.Registrar (Audit)

/true copy/

Sub Asst. Registrar

gms

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4.Superintendent of Police
Cuddalore District.

+ 1 cc to Mrs.AL.Gandhimathi Advocate,SR.6020
+ 1 cc to The Govt.Pleader, SR.5829

W.A.No.1 of 2013

nr 26/03/2018



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