

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2018

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P. No.13466 of 2008

T. Arivazhagan

...Petitioner

.Vs.

1. State of Tamil Nadu,  
Represented by its  
Secretary to Government,  
Home ( Police IV) Department,  
Fort St. George, Chennai – 600 009.

2. The Superintendent of police,  
Chengai East District,  
St. Thomas Mount,  
Chennai – 600 016.

3. The Enquiry Officer  
Deputy Commissioner of Police,  
St. Thomas Mount, chennai City,  
Chennai – 600 16.

4. The Joint Commissioner of Police,  
South Zone, Chennai – 16

...Respondents

**Prayer:** The writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the entire records relating to the impugned order of punishment passed by the 1<sup>st</sup> respondent vide G.O.(2D) No.170 dated 24.03.2008 and quash the same as null and void.

For Petitioner : Mr.K. Prem Kumar  
For Respondents : Mr.Thanga Vadana Balakrishnan  
Additional Government Pleader

**ORDER**

The petitioner prays for issuance of a Writ of Certiorari by calling for the entire records relating to the impugned order of punishment passed by the 1<sup>st</sup> respondent vide G.O.(2D) No.170 dated 24.03.2008 and quash the same as null and void.

2. The case of the petitioner is that he joined as a Typist in the Police Department and reached up to the post of Superintendent on 05.09.2003, and worked at the Office of the Joint commissioner of police, South Zone, ST. Thomas Mount, Chennai – 600 016. While he was working as Superintendent (Crimes I & II Section) Chengai East District, the second respondent by his proceedings C.No.H.III(3)/1915/5764/2004 dated 25.10.2004 had nominated him as Team Manager, for the Inter Range Games Meet Year, 2004, which was scheduled to be held between 26.10.2004 and 30.10.2004. While that being so, the petitioner was directed to report before the Superintendent of Police, Salem District along with the participants on 27.10.2004 afternoon, but to his shock and surprise, on 26.10.2004, the second respondent had transferred him from the post of

Superintendent (Crimes 1 & 2 Section) to the post of Superintendent (Pensions Section) by his proceedings D.O.No. 1414 of 2004 dated 26.10.2004. As per the proceedings of the second respondent C.No.H.III(3)/1915/5764/2004 dated 25.10.2004, the petitioner had to join the sports meet at Salem as a Team Manager, but he returned to the Head quarters at 01.11.2004 and took charge as Superintendent (Pension Section). According to the petitioner, there was no prescribed procedures to be adopted while transferring from one place to another in the same office.

3. The learned counsel for the petitioner would contend that the second respondent had issued a charge memo vide C.No.PR@1/2005 dated-nil-signed on 09.02.2005 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal ) Rules, wherein six charges were framed against him one of which is for gross dereliction of duty and not effectively supervising the correspondence relating to the execution of warrant of arrest in MFA 139/04 of the High Court of Kerala against the individuals. According to the petitioner since the charges framed against the petitioner was against one M.Sivakumar, Personnel Assistant to Superintendent of Police(Administration), who is the person dealing with the concerned

files, the petitioner has no role to play in the said matter.

4. The learned counsel for the petitioner would also contend that from 01.10.2004 to 30.11.2004, he was working as Superintendent of (Pension Section) and the subject matter was dealt with only by the said M.Sivakumar, Personal Assistant to Superintendent of Police(Administration), and no direction was issued to the petitioner to hold the additional charge of the crime section work.

5. The learned counsel for the petitioner would further contend that the petitioner had submitted his explanation in the enquiry conducted by the 3<sup>rd</sup> respondent, wherein it is stated that one N.D.Govindarajan was posted as Superintendent (Crimes I & II) in the office of the 2<sup>nd</sup> respondent instead of the petitioner herein and the petitioner took charge on 29.10.2004 and availed Earned Leave from 01.11.2004 to 29.11.2004 and at that point of time, one Mr.Justus, Superintendent had been instructed to hold the additional charge of Crimes Section by way of separate order being passed by the second respondent vide No.P1/1929/5314/2004 dated 18.10.2004. Further, in the place of N.D.Govindarajan, one N. Ragunathan, Superintendent

was posted by the same order and he took charge from 27.10.2004. In spite of explanation given to the enquiry officer, he has passed an order against the petitioner, which is perverse, false, baseless, incorrect and illegal and contrary to the evidence put forth in the domestic Enquiry. The first respondent has passed the final order, vide G.O.(2D) No.170, accepting the findings of the enquiry officer and the third respondent has also imposed the punishment of stoppage of increment for a period of six months without cumulative effect. Hence, the order passed by the first respondent has to be quashed in this writ petition.

6. The learned Additional Government Pleader appearing for the respondents have filed a counter affidavit stating that there was gross dereliction of duty and the petitioner has not been effectively supervising the correspondences relating to the execution of Warrant of arrest in MFA 139/04 of the High Court of Kerala against certain individuals. He would further submit that the Deputy Commissioner of police, St. Thomas Mount, Chennai City has conducted the oral enquiry and held the charges 1 and 2 as proved. Since, the petitioner had not handed over charge to other officer when he was transferred to Pension Section. The charges 3,4,5 and 6 are not proved and the

Secretary to Government has passed an order imposing the punishment of postponement of increment for a period of six months without commutative effect, vide GO(2D) No. 170, Home (Pol.IV) Department dated 24.03.2008. When he was transferred to the Pension Section, he was also asked to hold the charge of the other Section and the punishment imposed by the Superintendent of police, has not been adhered by the petitioner. Though the petitioner, joined in Pension Section on 01.11.2004, he has not followed the orders issued by the authorities. After the examination of witnesses, the enquiry officer held that the charges have been proved and the petitioner was awarded the punishment.

7. A perusal of the records would show that Mr. Justus, Superintendent had been instructed to hold the additional charge of crime, vide leave order in C.No.P1/1929/53141/20/04 dated 08.10.2004. The respondents would submit that the punishment of stoppage of increment for a period of 6 years without cumulative effect was based on a full fledged enquiry, which is also the subject matter passed by the third respondent. However, the first respondent, after analyzing the facts, had accepted the findings and decided to award the punishment of postponement of increment for a period of six

months without cumulative effect. That apart, the petitioner has not filed any written statement against the order passed by the first respondent. When there is no person acting on the Department, the petitioner was orally directed to take charge and the lapses on his part had not been explained properly. Hence, the order passed by the first respondent is valid to the fact that the oral instruction is suffice. The learned Additional Government Pleader was directed to place the relevant files before this Court. From the said files, the relevant portion is extracted here under:

Page No:135 of the records it is stated as follows:

" Transfer and Posting to Office to Office Suptds.- Ordered.

*Tr. Justus, Supdt. who has been received on transfer from chief office on 25.06.2004 FN is posted to PR.II Section in a vacancy.*

*Tr. T. Arivazhagan, Supdt. who has been received on transfer from City Police, Chennai on 01.07.2004 FN, is posted to Crime Section ( I &II ) vice Tr. Zaffarullah, Supdt. is transferred and posted to leave section"*

In Page No:137 of the records, it is found as follows:

*2. Thiru T. Arivazhagan, Superintendent ( crime I & II ) Section is transferred and posted to pension Section Vice Thiru S.Raghunathan, Superintendent is transferred.*

As per the orders issued, the petitioner has reported for duty and took charge of the Pensions Section on 01.11.2004 forenoon.

In Page 141 of the records in C.No.P/4929/53141/04, it is found thus:

*2.Tr. Justus Superintendent P.R.II Section will hold Additional charge of the above period.*

8. Based on the documents and evidence, it is proved beyond doubt that the petitioner was not asked to hold any charge from 01.11.2004 to 29.11.2004 which was his leave period. Hence, from the above observations it could be seen that the said Justus was given an additional charge and the petitioner is not liable to undergo any punishment. Therefore, the impugned order passed by the first respondent is quashed and the petitioner shall be given the arrears of pay which had been stopped by the respondents, within a period of eight weeks from the date of receipt of a copy of this order.

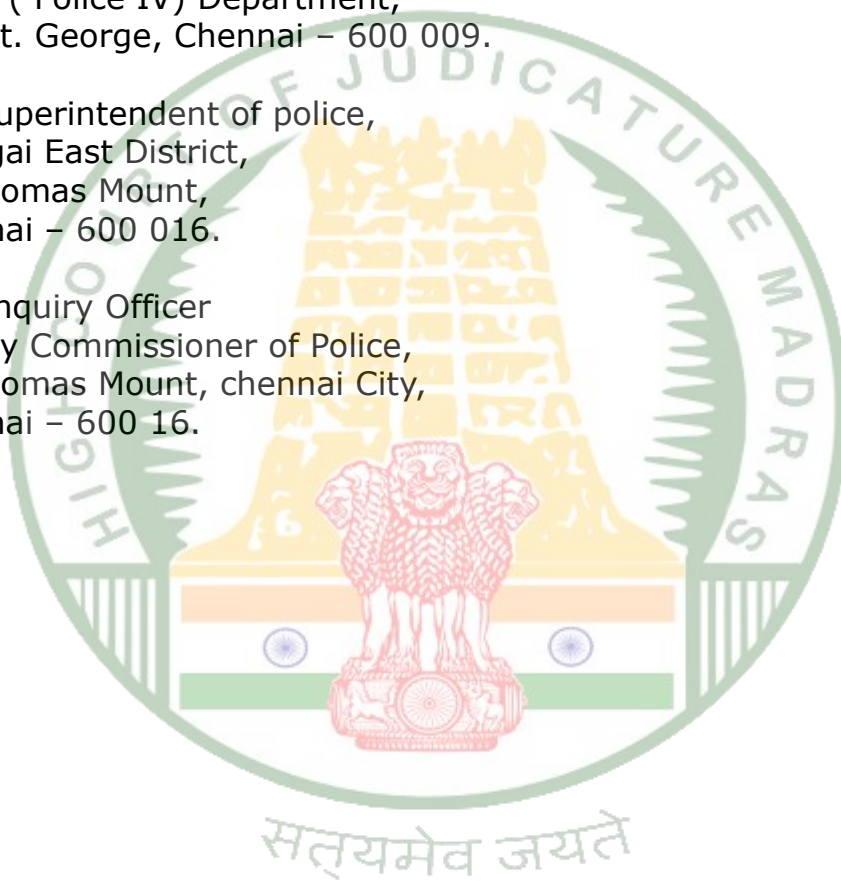
With the above observation, this petition is allowed.

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Index : Yes/No  
Internet: Yes/No

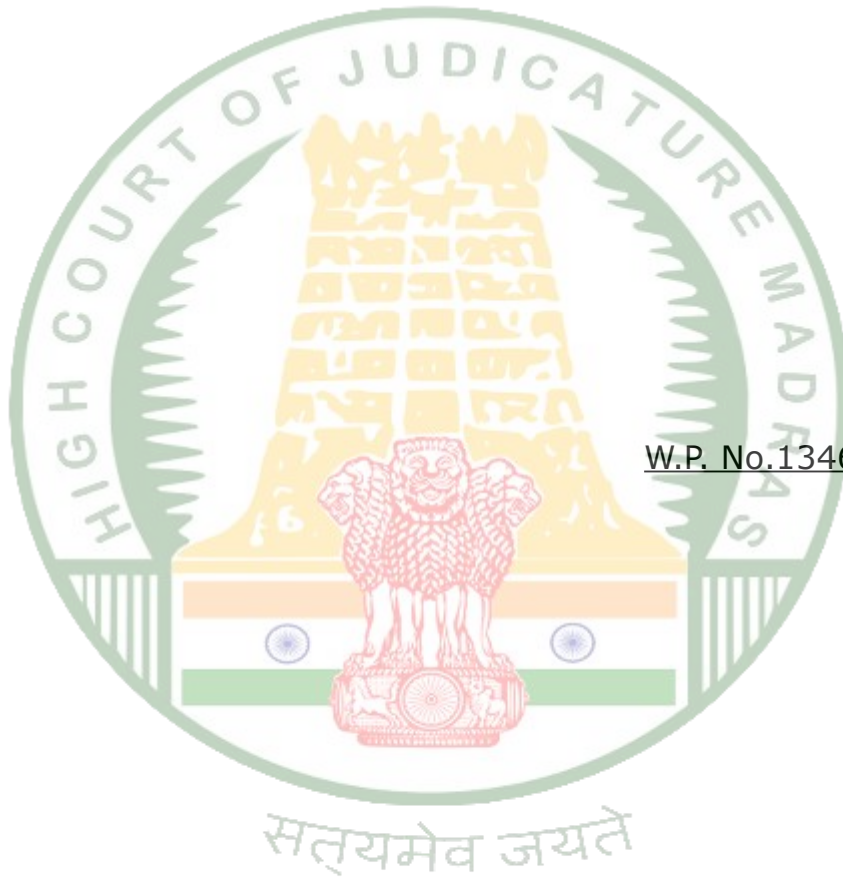
To.

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**V.BHAVANI SUBBAROYAN,J.**  
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