

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2019

Coram

The Hon'ble Mr. Justice M.M. Sundresh
and
The Hon'ble Mr. Justice Krishnan Ramasamy

Writ Appeal No. 2413 of 2013

K. Ithayaganthan ... Appellant / Petitioner

Vs.

1. The State of Tamil Nadu rep by its
Secretary to Government,
Home (Police-V) Department,
Secretariat, Chennai - 600 009.
2. The Director General of Police,
Chennai - 600 004.
3. The Deputy Inspector General of Police,
(Administration) Chennai - 4 ... Respondents

Writ Appeal filed under Clause 15 of Letters Patent seeking
to set aside the order dated 22.06.2011 in W.P.No.35638 of 2007.

Writ of Certiorarified Mandamus to call for the records
pertaining to the order passed by the first respondent in G.O
(2D) No. 484 Home (Police -V) Department dated 23-07-2007 and
the order passed by the 2nd respondent in his proceedings Rc NO.
staff II (2) /219274/2005 dated 23-2-2006 and the order passed
by the 3rd respondent in his proceedings Rc.No. Staff II (2)
P.R.NO. 9/2005 dated 29-9-2005 and quash the same and direct the
respondents to promote the petitioner as personal Assistant
(Administration) From the date on which his junior was
promoted and confer all the consequential benefits.

For Appellant : Mr.P.Ganesan for
M/s. C.S.Associates

For Respondents : M/s.A.Srijayanthi
Special Government Pleader

JUDGEMENT

(Order of the Court was delivered by M.M.Sundresh, J.)

This is an interesting case. The appellant suffered an order of censure. He filed an Appeal and thereafter, Revision Petition. The Revisional Authority exercised his suo moto powers and issued a notice, to show cause as to why, the procedure contemplated under Rule 17 (b) Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 shall not be followed. On receipt of the reply from the appellant, the Revisional Authority, without conducting any enquiry, straightaway passed an order imposing punishment by modifying the censure passed by the Original Authority. Challenging the same, the Writ Petition is filed. The learned Single Judge dismissed the Writ Petition, inter alia, holding that, instead of remanding the matter, it would be better to dismiss the Writ Petition, since the charges, per se, would not require procedural formalities and as such dismissed the Writ Petition.

2. We have heard the learned counsel for the respective parties.

3. We find considerable force in the submission made by the learned counsel appearing for the appellant. Notice was issued only for conversion of the charges from 17 (A) to 17 (b). If that was done, then, the procedure contemplated under Rule 17 (b) ought to have been followed. This was not done. On the contrary, the punishment withholding the increment for a period of three years without cumulative effect was imposed. Secondly, in the case on hand, suo moto powers have been exercised by the Revisional Authority during the pendency of the Revision Petition filed by the appellant. It is rather a unique and strange case. Rule 36 (2) can normally be invoked when the Revisional Authority is not satisfied with the punishment imposed by the Original Authority or the Appellate Authority, as the case may be.

4. Be that as it may, certainly, there is a procedural violation available. The order impugned has been passed contrary to the show cause notice issued. The charges are to the effect that the appellant was either negligent or committed an act of insubordination.

5. In such view of the matter, we are unable to concur with the views expressed by the learned Single Judge. Perhaps, if the appellant has not filed Appeal or Review, he would not have warranted this position. He has also reached the age of superannuation by now.

6. In the light of the above discussion, we are of the view that the impugned order is not sustainable. Accordingly, the Writ Appeal is allowed and the impugned order is set aside. Needless to state that the order of censure would get revived. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Home (Police-V) Department,
Secretariat, Chennai - 600 009.
2. The Director General of Police,
Chennai - 600 004.
3. The Deputy Inspector General of Police,
(Administration) Chennai -4.

+1cc to M/S.C.S. Association, Advocate Sr.659
+1cc to the Government Pleader Sr.1023

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