

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 11.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.15196 of 2008

K.Prabhakaran

... Petitioner

Vs

1. The Deputy Commissioner of Police,
Kilpauk Range,
Chennai City Police.
 2. The Assistant Commissioner of Police,
Law and Order, Vepery,
Chennai City Police,
Chennai.
 3. The Joint Commissioner of Police,
North Zone,
Chennai City Police, Chennai.
 4. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.
- ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents in connection with the impugned orders passed by the respondents 1, 3 and 4 in PR.No.66/2004 P.R. (M) dated 30.12.2005, RC.No.PRs/Apl/PR N (1)/05 dated 15.3.2006 and Rc.No.212967/AP.3(3)/2006 dated 30.4.2008 respectively and quash the same and further direct the respondents to reinstate the petitioner into service with all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkataramani,
Senior Counsel
for Mr.M.Muthappan

For Respondents : Mr.M.Elumalai,
Government Advocate

O R D E R

This Writ Petition has been filed, challenging the correctness of the impugned orders passed by the respondents 1, 3 and 4 in PR.No.66/2004 P.R. (M) dated 30.12.2005, RC.No.PRs/Appl/PR N (1)/05 dated 15.3.2006 and Rc.No.212967/AP.3 (3)/2006 dated 30.4.2008 respectively, quash the same and for further direction, directing the respondents to reinstate the petitioner into service with all consequential service and monetary benefits.

2. Mr.K.Venkataramani, learned Senior Counsel appearing for the petitioner assailing the impugned orders submitted that the petitioner while serving as a Grade I Police Constable in G.1 Vepery Police Station, Chennai City, he has suffered a charge memo stating that he was deputed for bandhobust duty at the meeting point of EVR Road and EVK Sampath Road between 7.00 a.m. and 1.00 p.m. But it was alleged that he left the point during the duty hours and also quarrelled with one Meenakshi by scolding her in unparliamentary language and also caused damage to the glass bottle. In respect of the same, he was served with a Charge Memo containing two charges on 18.10.2004 based on a preliminary enquiry report submitted by the Assistant Commissioner of Police, Kilpauk Range. After receiving the charge memo, the petitioner submitted a petition requesting the Enquiry Officer, who was appointed immediately thereafter and conducted the oral enquiry, to furnish him copies of the documents mentioned in the Charge Memo and also requested that he may be given sufficient opportunity to defend himself effectively in the disciplinary proceedings. Finally, after the enquiry was over, a report was furnished holding that the charges levelled against the petitioner were proved and based on the report of the Enquiry Officer, he was issued with a punishment of compulsory retirement by an order dated 30.12.2005 by an Officer who is not having any authority or jurisdiction. The petitioner, therefore, preferred an appeal against the punishment of compulsory retirement passed by the Deputy Commissioner of Police, Kilpauk, Chennai City on the ground that when the delinquent was serving in Flower Bazaar Police Station, the Deputy Commissioner of Police, Kilpauk, has no jurisdiction to pass such an order since as per Rule 4(e) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, the Deputy Commissioner of Police, Flower Bazaar alone is the competent authority to impose the above punishment. But it was considered and rejected by the Joint Commissioner of Police in his Proceedings dated 15.3.2006. Thereafter, the petitioner filed a petition dated 28.4.2008 requesting to reinstate him in service by setting aside the punishment of compulsory retirement. This was forwarded to the Director General of Police.

3. The learned Senior Counsel for the petitioner further submitted that when the Director General of Police has also agreed with the case of the petitioner that the Deputy Commissioner of Police, Kilpauk has no jurisdiction whatsoever and accordingly came to the conclusion that the order of compulsory retirement was erroneous and also set aside the same in his Order dated 18.06.2007, he cannot in exercise of his power vested under Rule 15 A(ii) of TNPSS (D&A) Rules, 1955 issue a Show Cause Notice giving him only 15 days from the date of receipt of that notice to show cause as to why a penalty should not be imposed. Once the Director General of Police has come to the conclusion that the order of punishment of compulsory retirement was wrongly imposed by the Deputy Commissioner of Police, Kilpauk, he should have remanded the matter back to the Deputy Commissioner of Police, Flower Bazaar, who is the competent authority to impose the punishment. Without doing so, he should not take over the role of Disciplinary Authority in the case by exercising his power under Rule 15 A(ii) of TNPSS (D&A) Rules, 1955, as a result, the petitioner has lost his valuable right of appeal. Therefore, the impugned order is liable to be set aside, it is pleaded.

4. A counter affidavit has been filed by the 1st respondent.

5. Mr.M.Elumalai, learned Government Advocate appearing for the respondents urging this Court to dismiss the writ petition submitted that the petitioner is a habitual defaulter and he was awarded with the following punishments, namely, 1. Black mark for his absent for duty in PR.No.515/A11/84, 2. Yet another Black mark for his absent for duty in PR.No.704/A11/85, 3. Also suffered yet another punishment of pay reduction for his misbehaviour with public in PR.No.190/P.R.I(1)/85. In addition to that, the petitioner continued to incur disciplinary proceedings even in PR.No.137/P.R.I(4)/107228/90 for his misbehaviour and assaulting the public with lathi and suffered a major punishment of removal from service. However, when he preferred an appeal, the appellate authority setting aside the order of removal, reinstated him into service with modified punishment of pay reduction. The petitioner again did not stop and continue to show his misbehaviour. Therefore, he suffered one more charge memo in PR.No.48/PR N (1)/98 for marrying another woman while the first wife is alive. That apart, the petitioner suffered pay reduction in PR.No.39/P.R.N.(1)/2000 for misbehaviour with public and another pay reduction in PR.No.84/P.R.21(1)/2001 for disobedience in carrying out the orders of the Superior Officers and using filthy language against them and finally he suffered the punishment of compulsory retirement for misbehaviour and assaulting the public against which is the present one.

6. The learned Government Advocate further submitted that the charges are very serious in which the first charge shows that there is a reprehensible conduct in leaving the work spot unauthorizedly on 15.10.2003 between 07.00 hours and 13.00 hours in E.V.K.Sampath Road junction without properly discharging the duties assigned to him. The second charge is still very serious because deserting the work spot and proceeding to the platform in front of the Periyar Maaligai in E.V.K. Sampath Road on 15.10.2003 at about 10.00 hours trespassing into the STD Booth run by one Tmt.Meenakshi and using vile language against Tmt.Meenakshi and pushing her down by pulling her hands and breaking the biscuit containers made of glass which show the conduct of the petitioner in a disorderly manner unworthy of a policeman. Therefore, he was issued with a Charge Memo. Finally, the Enquiry Officer found him guilty under all the charges, based on which the Deputy Commissioner of Police, Kilpauk accepting with the findings of the Enquiry Officer passed an order of compulsory retirement. Aggrieved thereby, the petitioner preferred an appeal before the Joint Commissioner of Police, North Zone, who also in his Proceedings dated 15.03.2006 confirmed the same considering the fact that the petitioner is unfit to continue in a Disciplined Force. As against that, the petitioner filed a petition dated 12.4.2006 to the Commissioner of Police with a request to reinstate him in service by setting aside the order of punishment. This was placed before the Director General of Police.

7. The learned Government Advocate also submitted that having gone through the order of punishment passed by the Deputy Commissioner of Police which was also confirmed by the Joint Commissioner of Police in his order dated 15.03.2006, the Director General of Police came to a conclusion that the order of compulsory retirement passed by the Deputy Commissioner of Police, Kilpauk, when the petitioner was serving in Flower Bazaar Police Station was wrong since as per Rule 4(e) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, the Deputy Commissioner of Police, Flower Bazaar alone is the competent authority to impose the above punishment. However, after setting aside the said punishment, the Director General of Police, who is empowered under Rule 15 A(1) of TNPSS (D&A) Rules, 1955, issued a Show Cause Notice calling upon the petitioner to show cause why an order of compulsory retirement should not be made against him and after giving sufficient opportunity to the petitioner, the impugned order dated 30.12.2005 was passed by the Director General of Police as he has got enormous power. Therefore, it is relevant to extract Rule 15 A(1) of TNPSS (D&A) Rules, 1955 here under:

'Rule 15A (1) Notwithstanding anything contained in these rules:

- (i) the State Government or
- (ii) the Head of the Department directly under the State Government, in the case of Government servant serving in a department or office under the control of such Head of Department; or
- (iii) the appellate authority, within six months of the date of the order proposed to be reviewed; or
- (iv) any other authority specified in this behalf by the State Government by general or special order, and within such time as may be prescribed in such general or special order; may at any time, either on their or its own motion or otherwise call for the records of any inquiry and review any order made under these rules, after consultation with the Tamil Nadu Public Service Commission where such consultation is necessary and may
 - (a) confirm, modify or set aside the order; or
 - (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
 - © remit the case to the authority which made the order or to any other authority, directing such authority to make such further enquiry, as it may consider proper in the circumstances of the case; or
 - (d) pass such other orders as it may deem fit.

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government servant concerned has been given a reasonable opportunity of making representation against the penalty proposed, where it is proposed to impose any of the penalties specified in clauses (d), (e), (f), (h), (i) and (j) of rule 2 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in sub rule (b) of rule (3) and after giving a reasonable opportunity to the Government servant concerned of showing cause against the penalty proposed on the evidence adduced during the inquiry and except after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary."

8. A perusal of the above clearly shows that the Director General of Police, Tamil Nadu is absolutely right in setting aside the earlier order passed by the Deputy Commissioner of Police, Kilpauk, Chennai by exercising his power conferred under Rule 15 A(1) of TNPSS (D&A) Rules, 1955. Secondly, the counter affidavit filed by the respondent clearly shows that the petitioner has been awarded with the following punishments,

which are given as under :

1. Black mark for his absent for duty in PR.No.515/A11/84;
2. Yet another Black mark for his absent for duty in PR.No.704/A11/85;
3. Also suffered yet another punishment of pay reduction for his misbehaviour with public in PR.No.190/P.R.I(1)/85;
4. In addition to that, the petitioner continued to incur disciplinary proceedings even in PR.No.137/P.R.I(4)/107228/90 for his misbehaviour and assaulting the public with lathi and suffered a major punishment of removal from service. However, when he preferred an appeal, the appellate authority setting aside the order of removal, reinstated him into service with modified punishment of pay reduction;
5. He suffered one more charge memo in PR.No.48/PR N (1)/98 for marrying another woman while the first wife is alive;
6. Suffered pay reduction in PR.No.39/P.R.N.(1)/2000 for misbehaviour with public;
7. Another pay reduction in PR.No.84/P.R.21(1)/2001 for disobedience in carrying out the orders of the Superior Officers and using filthy language against them and finally suffered the punishment of compulsory retirement for misbehaviour and assaulting the public against which the present Writ Petition has been filed.

The above track records clearly show that the petitioner is the habitual defaulter.

9. When the petitioner was a habitual defaulter and suffered more than two removal orders twice and one compulsory retirement order, it is not known how the Director General of Police awarded the compulsory retirement instead of removal from service that itself shows that he has shown some leniency towards the petitioner. Further, on reference being made by the Commissioner of Police, when the Director General of Police has exercised his power which are mentioned herein above, this Court is not able to find any infirmity in the impugned order of Compulsory Retirement dated 30.12.2005. As a matter of fact, the Director General of Police should have passed an order of removal by modifying the punishment, and he has only confirmed the order of compulsory retirement. Since for the reason that the petitioner has already suffered the punishment of removal from service twice and later on appeal, he has been reinstated with minor punishments, this Court is not inclined to interfere with the present impugned order of compulsory retirement.

10. In view of all the above, the Writ Petition fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Police,
Kilpauk Range,
Chennai City Police.
2. The Assistant Commissioner of Police,
Law and Order, Vepery,
Chennai City Police,
Chennai.
3. The Joint Commissioner of Police,
North Zone,
Chennai City Police, Chennai.
4. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai-4.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.12039
+1cc to the Government Pleader, S.R.No.12872

W.P.No.15196 of 2008

CA (CO)
CS/26/03/2019

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