

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2019

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD
W.A.No.4251 of 2019

1.Government of Tamil Nadu,
rep. by Secretary to Government,
Home (Police-VI) Department,
Secretariat, Chennai - 600 009.

2.The Direct General of Police,
Chennai - 600 004.

3.The Commissioner of Police,
Salem City, Salem.

4.The Deputy Commissioner of Police,
Law and Order, Salem City Police,
Salem.

..Appellants/Respondents

Vs.

V.Sekar

.. Respondent/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 06.11.2017 passed in W.P.No.24940 of 2011 on the file of this Court.

Prayer in WP.No.24940 of 2011 : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the orders (1) G.O.(2D) No.358, Home (Pol.VI) Department, dated 19.06.2008 of the first respondent (2) Pro.Rc.No.952/232411/AP.2 (2)/2005 dated 23.12.2005 of the second respondent (3) Pro.C.No.H1/Appeal No.35/2005 dated 19.09.2005 of the third respondent and (4) F.Order in PR.36/H1/2005 dated 07.09.2005 of the fourth respondent, to quash the same and issue consequential directions to the respondent to reinstate the petitioner in service as Head Constable with all benefits.

For Appellants

: Mr.V.Jayaprakash Narayanan
Government Pleader

For Respondent

: Mr.M.Ravi

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

This appeal has been preferred by the State contending that the learned Single Judge has allowed the writ petition without taking into account the nature of the charge for which the respondent had been proceeded against.

2. Learned counsel for the State has invited the attention of the Court to paragraphs 4 and 5 of the counter-affidavit filed in the writ petition to contend that in view of the said charge subsisting and the offence proved, there was no occasion for the learned Single Judge to have reversed the order, even though the learned Single Judge has not been able to reverse the findings of the enquiry report. The writ petition appears to have been allowed on the doctrine of disproportionality coupled with the findings on merits.

3. The learned Single Judge, in paragraph 10 of the impugned judgment has recorded as under:

"10.This Court has considered the rival submissions of the learned counsels appearing for the parties and perused the materials and pleadings placed on record. No doubt that the petitioner had committed an act of misconduct by abandoning the training for more than 70 days. However, it has to be seen that the petitioner was willing to report for duty on 20.05.2005 along with the medial certificate. In such circumstances, the authority ought to have taken a lenient view in the matter in not removing the petitioner from service by imposing a penalty of compulsory retirement."

4. From a perusal of the said recital, it is evident that the learned Single Judge was clearly influenced by the circumstance of the nature of the charges which resulted in the observation that the authorities ought to have taken a lenient view of the matter.

5. Learned counsel for the appellants submits that if this was the conclusion drawn, then in that event it should have been left to the authority concerned for reconsideration of the nature of punishment.

6. Learned counsel for the respondent has relied on the judgments in the case of Shri Bhagwan Lal Arya v. Commissioner of Police, Delhi and others, reported in (2004) 4 SCC 560 and Krushnakant B.Parmar v. Union of India and another, reported in (2012) 3 SCC 178 and contended that the punishment imposed is disproportionate and excessive and, therefore, the same was rightly set aside by the learned Single Judge.

7. On the other hand, learned counsel for the State has relied on the judgment of a Division Bench of this Court in the case of The Government of Tamil Nadu, rep. by Secretary to Government, Home (Prisons) Department, Chennai-9 and others v. R.Muthamizhan, decided on 25.11.2019 (W.A.No.4039 of 2019) to contend that the Court ought to have left this discretion in the hands of the employer.

8. We agree with the submission of learned counsel for the appellants to the effect that keeping in view the nature of charge and the observation made by the learned Single Judge, the matter did require a reconsideration but only in respect of the proportionality of the punishment and to that extent we modify the impugned judgment dated 06.11.2017 with liberty to the appellants to impose a lesser punishment as may be found appropriate on the facts and circumstances of the case and to that effect, orders shall be passed expeditiously, preferably, within a period of three months from the date of receipt of a certified copy of this order. The impugned judgment of the learned Single Judge dated 06.11.2017 is modified to the said extent.

9. The appeal is disposed of in terms aforesaid. No costs. Consequently, C.M.P.No.26493 of 2019 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

1.The Secretary to Government,
Government of Tamil Nadu,
Home (Police-VI) Department,
Secretariat, Chennai - 600 009.

2.The Direct General of Police,
Chennai - 600 004.

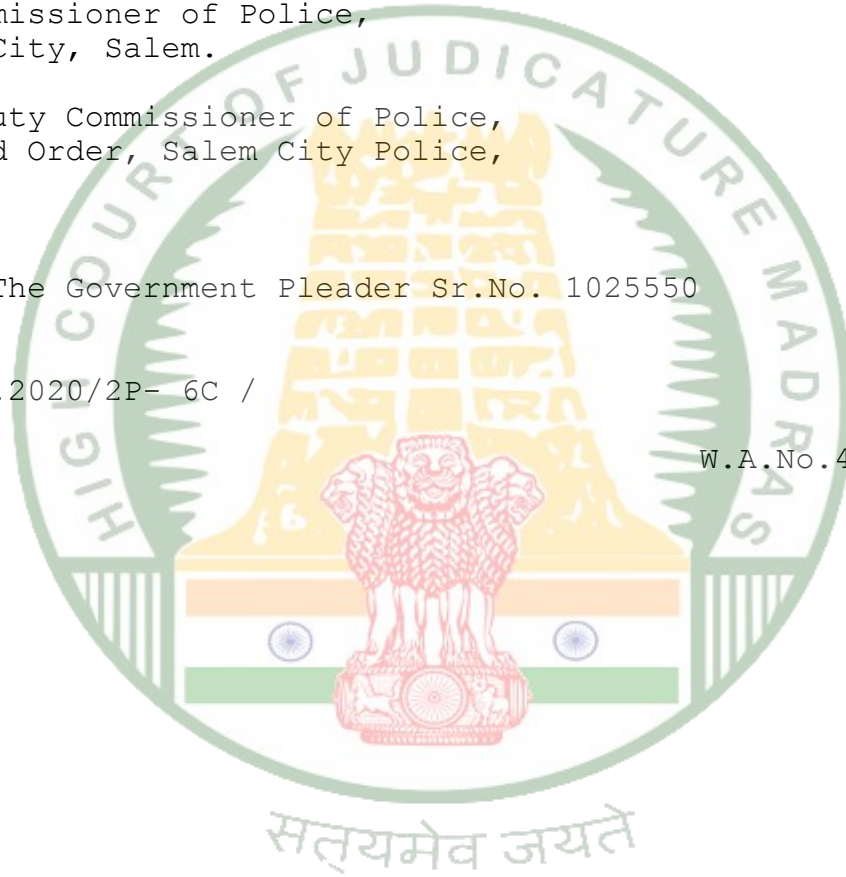
3.The Commissioner of Police,
Salem City, Salem.

4.The Deputy Commissioner of Police,
Law and Order, Salem City Police,
Salem.

+1 cc to The Government Pleader Sr.No. 1025550

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W.A.No.4251 of 2019



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