

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 21.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.12190 of 2005
and
W.M.P.No.13321 of 2005

V.Jambulingam

...Petitioner

Vs

1.The Secretary to Government,
Home Department,
Fort St.George,
Chennai-600 009.

2.The Director General of Police,
Chennai-4.

3.The Deputy Commissioner of Police,
Traffic, South Chennai.
Chennai.

....Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd Respondent pertaining to R.C.No.GB.II(1)692/113390/2001 dated 23.01.2002 and quash the same and consequently directing the Respondents to include the name of the Petitioner in the Promotion panel dated 04.11.1998 on par with the petitioners Junior with all monetary and attendant benefits.

For Petitioner : Mrs.S.T.P.Kuilmozhi

For Respondents: Mrs.K.Bhuvaneswari, AGP

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O R D E R

The petitioner herein was dealt with a charge under Rule 3 (a) of the during his tenure as Inspector of Police, Thirumangalam Police Station, (Traffic Investigation) on 3 grounds and was imposed with the punishment of censure on 05.11.1996, by the Deputy Commissioner of Police Traffic (North). The petitioner herein, had filed an appeal against the said order to the Joint Commissioner of Police, Traffic,

Chennai, which came to be rejected on 12.06.1999. Thereafter, he had preferred a review petition before the Commissioner of Police, Chennai City on 30.06.1999, and the Commissioner of Police has modified the punishment of "Censure" into one of deferred censure for 3 months.

2. After more than 2 years, the Director General of Police, Tamil Nadu had restored the original status of the punishment by confirming the censure awarded to the petitioner passed by the Deputy Commissioner of Police, through his order dated 23.01.2002. Since the censure of punishment had deprived the petitioner of being included in the promotion panel, the writ petition has been filed.

3. The learned counsel for the petitioner submitted that the 2nd respondent had not followed the mandatory provisions of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, by giving reasonable opportunity to the petitioner herein, wherein the impugned order came to be passed, as such, the impugned order is liable to be set-aside and consequently, the petitioner requires to be notionally promoted from the date, when his juniors were promoted as Deputy Superintendent of Police, since the petitioner has already reached the age of superannuation.

4. The learned Additional Government Pleader, on the other hand, vehemently opposed the submission stating that the petitioner, who was dealt with the charge under Rule 3(a), was awarded with a minor punishment of censure. The Government in their letter No.16572/POL.II/2003, dated 01.08.2000 have pointed out the exhaustion of the appeal remedy by the petitioner and called for provision rule of the competency of the Commissioner of Police, Greater Chennai to pass an order. The Director General of Police had rightly set-aside the orders of the Commissioner, since as per rule 15(a)(1) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, the head of the department is the reviewing authority and not the Commissioner of Police, Chennai. As such, the orders of the Commissioner of Police, Chennai cannot be sustained and therefore, the original punishment of censure was restored. Since there was no illegality in the findings of the Director General of Police, the writ petition is liable to be dismissed.

5. I have given careful consideration to the submissions made by the respective counsels.

6. The writ petition deserves to be allowed, on the ground of principles of natural Justice. It is seen that the Deputy Commissioner of Police had awarded the punishment of censure on 15.11.1996. The appeal before the Joint Commissioner of Police

came to be rejected on 12.06.1999 as time barred. Thereafter, the petitioner had preferred a review petition before the Commissioner of Police, Greater Chennai, in which the punishment of censure was modified into deferred censure for three months. Subsequently, the punishment imposed was canceled on 04.10.1999 stating that the petitioner had not come to adverse notice during the deferment period, by the Commissioner of Police. It is in this background, the Director General of Police had passed the impugned order dated 23.01.2002 stating that the Commissioner of Police is not the reviewing authority as per Rule 15(a)(1) of the Tamilnadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 and thereby set aside the order and restored the original punishment of censure imposed by the Deputy Commissioner of Police on 05.11.1996.

7.Apparently, when the Director General of Police had chosen to restore the punishment of censure on the petitioner, the petitioner was not undergoing any punishment at all, in view of the earlier order of the Commissioner, cancelling the punishment of censure imposed. As such, it would amount to imposition of new punishment, after more than two years from the date of cancellation. On a perusal of the order of the Director General of Police on 23.01.2002, it is seen that the same has been made without any notice to the petitioner by not giving him any opportunity to putforth his objections. The impugned order dated 23.01.2002, seems to have been passed by invoking the suo motu powers of the Director General of Police.

8.Rule 15(a) provides that no order imposing or enhancing any penalty shall be made by any reviewing authority, unless the Government servants concerned, are given a reasonable opportunity for making a representation against the penalty proposed. Admittedly, the petitioner herein was not given any opportunity for making his representation, when the impugned order came to be passed by the Director General of Police. As such, it would amount to violation of fundamental principles of natural Justice and thereby, the impugned order is liable to be set aside.

9. The Director General of Police had apparently invoked his power under rule 15(a) for the purpose of reviewing the orders of the Commissioner. Rule 15(a)(3) provides that a review should be dealt in the same manner, as if it is an appeal. As per the procedure for disposal of an appeal under Rule 6, the appellate authority should consider, as to whether the facts on which the order has been passed, would be a sufficient ground for taking action and as to whether the penalty is adequate or inadequate and only after such consideration, can pass orders imposing a penalty.

10.The penalty of censure is prescribed under Rule 2 of

the aforesaid rules and as such, the Deputy Commissioner of Police is bound to follow the procedure contemplated under Rule 6, while reviewing the order and imposing the punishment. This provision has also been violated, since the impugned order does not reflect the consideration of the factors contemplated under Rule 6.

11. On an overall perusal of the facts situation and in the light of the observations made above, it can be summed up that the impugned order of this second respondent herein dated 23.01.2002 has been passed suo moto after more than two years from the earlier cancellation order of the Commissioner dated 04.10.1999, without any liberty to the petitioner. More over, the impugned order is in contravention to the procedure contemplated for review under Rule 15(a)(3) of the Tamilnadu Police Subordinate Services (Discipline and Appeal), which can be termed to be a non-speaking order. Above all, when the petitioner had made an application for review before the Commissioner of Police, the same ought not to have been entertained if Commissioner of Police was not the appropriate authority, and should have forwarded the review petition before the concerned authority and which infirmity should not be put against the petitioner herein.

12. For all the forgoing reasons, I am of the view that the impugned order is illegal and as such, the petitioner would be entitled to all such service and monetary benefits, which he would be otherwise entitled to, if the order of punishment of censure, had not been imposed.

13. In the light of the above observations, the order of the 2nd Respondent in R.C.No.GB.II(1)692/113390/2001 dated 23.01.2002, is set aside. Consequently, the second respondent herein is directed to notionally promote the petitioner from the date, when his junior was promoted as Deputy Superintendent of Police along with all monetary benefits. The exercise of granting of such notional promotion, as well as the monetary benefits shall be disbursed to the petitioner, as expeditiously as possible, in any event, within a period of twelve weeks from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

jas/jrs

To

1.The Secretary to Government,
Home Department,
Fort St.George,
Chennai-600 009.

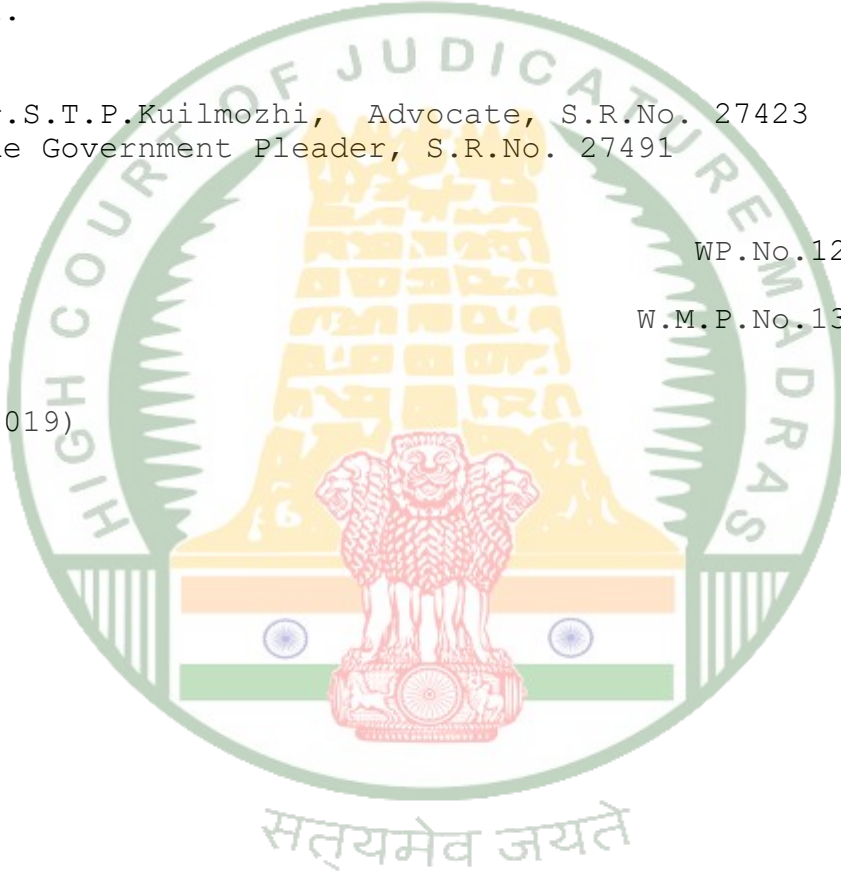
2.The Director General of Police,
Chennai-4.

3.The Deputy Commissioner of Police,
Traffic, South Chennai.
Chennai.

+1cc to Mr.S.T.P.Kuilmozhi, Advocate, S.R.No. 27423
+1cc to the Government Pleader, S.R.No. 27491

WP.No.12190 of 2005
and
W.M.P.No.13321 of 2005

RV(CO)
GN(08/07/2019)



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