

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 03.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.27600 of 2005

- 1.D.Kumar (Deceased)
 - 2.K.Mala alias Malathi
 - 3.K.Samuel
 - 4.K.John
 - 5.K.Sheepa
 - 6.Minor K.Jacob
- rep.by Mother and Natural
Guardian K.Mala alias Malathi

...Petitioners

(P2 to P6-substituted as Legal
representatives in the place of
the Deceased Petitioner (P1))

- 1.State of Tamil Nadu represented by
Secretary to Government,
Home Department,
Fort St.George,
Chennai - 9.

- 2.The Inspector General of Police
(Technical),
Kamarajar Salai,
Mylapore,
Chennai - 4.

- 3.The Deputy Inspector
General of Police (Technical),
Mylapore,
Chennai - 4.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for records relating to the proceeding of the third respondent in Ta.Pa.No.2/99 dated 10.07.2002 and the consequent proceedings of the second respondent in C.No.A2/6364/2002 dated 28.08.2002 and quash the same.

For Petitioners : Mr.K.Ramu

For Respondents : Mrs.K.Bhuvaneswari, AGP

ORDER

When the 1st petitioner was levied with certain charges by the 3rd respondent on 02.11.1999, he had denied the charges through his reply dated 15.11.1999. Not being satisfied with the reason given in the reply, the respondent had chosen to conduct an enquiry and accordingly, the 3rd respondent herein had passed an order on 10.07.2002, removing the petitioner from his services. As against the same, the petitioner herein had filed an appeal before the 2nd respondent on 29.07.2002, in which the punishment of removal of service was modified into one of compulsory retirement. As against the orders passed by the 2nd and 3rd respondents herein, the present writ petition has been filed.

2. The learned counsel for the petitioners submitted that during the enquiry, he had sought for various documents and statements of some of the witnesses, which were not supplied to the petitioner and the original order of removal of service came to be passed. Even in the grounds of appeal filed

before the 2nd respondent, he had specifically sought for the copies to effectively present an appeal. Since the 2nd respondent herein had passed the impugned order without reference to the documents sought for by him, both the orders of 2nd and 3rd respondents cannot be sustained.

3. The learned Additional Government Pleader, by reiterating the averments made in the counter affidavit, stated that the reply given by the petitioner was duly gone through by the Enquiry Officer in the disciplinary proceedings and action was initiated as per rules in force. The learned Additional government Pleader also submitted that the documents sought for by the petitioner deserves no consideration, as it is for the Enquiry Officer, whether the records can be given or not. As such, she would submit that there is no infirmity in the procedure adopted by the Enquiry Officer as well as the appellate authority.

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

5. The petitioner herein was originally imposed with the punishment of removal from service by the 3rd respondent herein, which came to be modified by the 2nd respondent into one of compulsory retirement. Both the

(Discipline and Appeal) Rules. Rule 6 contemplates the mode in which the appellate authority should consider the appeal. As per the said rule, when an appeal has been filed against an order imposing penalty of removal from service, the 2nd respondent herein shall consider, whether the facts on which the order was passed has been established and if established, whether there was sufficient ground for taking action and also as to whether, the penalty is excessive, adequate or inadequate and only after such consideration, he is entitled to modify the penalty.

6. In the instant case, the petitioner has raised various grounds in his appeal dated 29.01.2002, before the 2nd respondent. Among such grounds, he had also sought for copies of certain documents as well as the statements of the witness. Such a requisition was also made to the Enquiry Officer in the enquiry proceedings. Further, without any reference to the documents sought for, the impugned orders have been passed. It is pertinent to mention here that during the course of an enquiry, the delinquent is entitled for the documents, he has sought for the purpose of effectively defending his case, subject to the entitlement of such documents. In case, the petitioner is not entitled for such documents, which he has sought for, there is a duty cast on the authority to state as to why such documents cannot be furnished to him. In the present case, the

namely the 2nd respondent herein, stating that these documents were not furnished to him and therefore, he could not effectively defend his case. The appellate authority, while passing the order dated 28.02.2002, has not made any reference to this ground at all. On the other hand, by simply stating that he has carefully gone through the appeal, he had agreed with the conclusion of the Enquiry Officer. The specific ground raised by the petitioner herein in the appeal has not been addressed by the 2nd respondent. Further, the requirements of Rule 6 has not been met, to the effect that, he has failed to establish that the facts on which the order of the 3rd respondent was passed, has been established.

7. Above all, non furnishing of the documents which the petitioner has sought for as a ground before the appellate authority, have not been addressed by the 2nd respondent herein, which would be fatal to the respondents herein. As such, the petitioner would be entitled to succeed in the present writ petition.

8. It is now brought to my notice that the petitioner herein had expired on 24.08.2013 and the petitioners 2 to 6, who are his legal heirs have been substituted. Since the original punishment itself is being set aside in the present order, the legal heirs would be entitled for all the DCRG

9. In the light of the above observations, the order of the third respondent in Ta.Pa.No.2/99 dated 10.07.2002 and the consequent proceedings of the second respondent in C.No.A2/6364/2002 dated 28.08.2002, are set aside. Consequently, the 1st respondent herein shall disburse the DCRG benefits as well as the family pension to the legal heirs of late D.Kumar, as expeditiously as possible, in any event, within a period of 3 months from the date of receipt of copy of this order.

10. Accordingly, the Writ Petition stands allowed. No costs.

03.04.2019

Index:Yes/No
Speaking order/Non-speaking order
jas/hvk

सत्यमेव जयते
WEB COPY

To

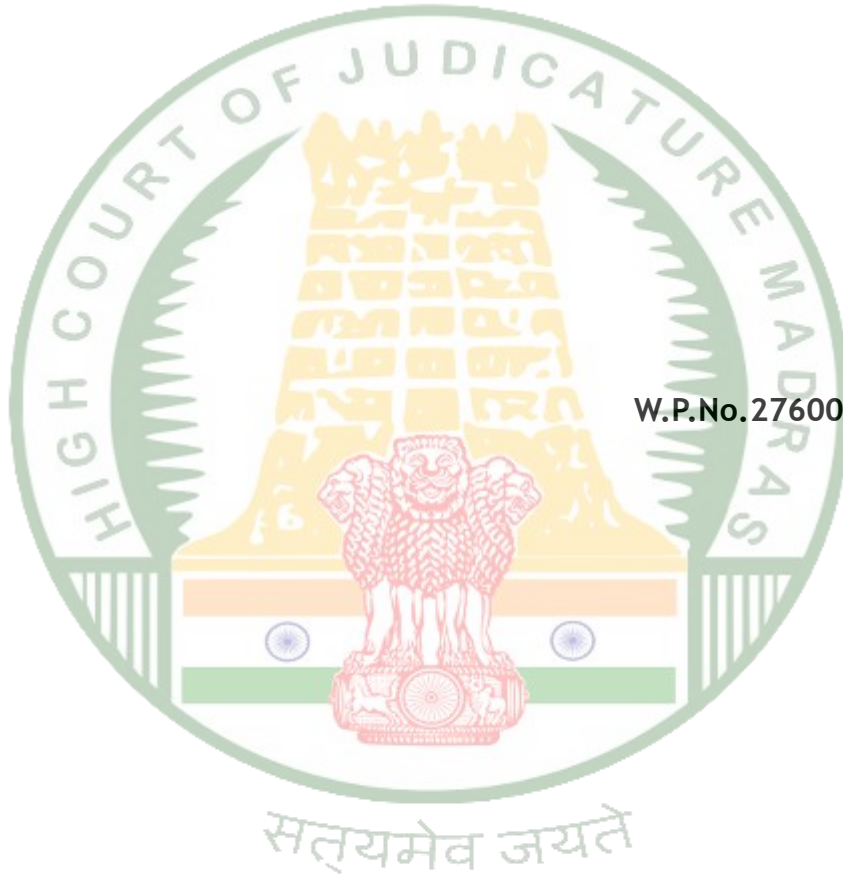
- 1.The Secretary to Government,
State of Tamil Nadu
Home Department,
Fort St.George,
Chennai - 9.
- 2.The Inspector General of Police (Technical),
Kamarajar Salai,
Mylapore,
Chennai - 4.
- 3.The Deputy Inspector General of Police (Technical),
Mylapore,
Chennai - 4.



WEB COPY

M.S.RAMESH.,J

jas/hvk



W.P.No.27600 of 2005

WEB COPY

03.04.2019