

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.35756 of 2005

U.Sankar
Ex.Gr.I.PC.1476

... Petitioner

Vs.

1. Secretary to Government,
Home Department (Police), Fort St. George,
Chennai 600 009.
2. Director General of Police,
Chennai 600 004.
3. Inspector General of Police,
Law & Order, Chennai 600 004.
4. Deputy Inspector General of Police,
Tirunelveli Range, Tirunelveli.
5. Superintendent of Police,
District Police Office,
Tuticorin.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the fifth respondent herein in his proceedings dated 15.03.2001 and confirmed by the fourth respondent in his proceedings C.No.C1/Ap/65/2001, dated 31.08.2001, the proceedings of the third respondents in Rc.No.153/49962/AP 2(1)/2002, dated 10.06.2002, the proceedings of the second respondent in Rc.No.PR.II(1)/134140/2003, dated 25.03.2004 and further confirmed by the first respondent herein in his proceedings G.O. (2D) No.110, Home (Police IV), Department dated 08.04.2005 and quash the same and consequently reinstate the petitioner into service with all service and monetary benefits.

For Petitioner : Mr.L.P.Balaji Ram

For Respondents : Mr.K.Bhuvaneswari, AGP

O R D E R

The petitioner has filed this petition to set aside the punishment of removal from service and reinstate him into service with all service and monetary benefits.

2. The petitioner herein was dealt with the delinquency of desertion by absenting himself for 21 days from 15.05.2000 onwards. The Enquiry Officer held that the charges were proved on 10.12.2000 and agreeing on the finding of the Enquiry Officer, the Superintendent of Police, Tuticorin District had imposed the punishment of removal from service on 15.03.2001. Thereafter, the petitioner's Appeal and Review Petition were rejected by the Deputy Inspector General of Police and Inspector General of Police on 31.08.2001 and 10.06.2002, respectively. As against the same, the petitioner herein had filed a review before the second respondent herein and the second respondent had treated it as a mercy petition under Rule 15A(i)(ii) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules and rejected the same. Challenging the same, the present Writ Petition has been filed.

3. The proviso of Section 15(A) of Sub Rule 3 provides that the application for review shall be dealt with in the same manner as if it were an appeal under the Rules. The procedure for disposing of the appeal is contemplated under Rule 6 of the Rules, which reads as follows:

"6.(1) In the case of an appeal against an order imposing any penalty specified in rule 2, the appellate authority shall consider-

(a) whether the facts on which the order was based have been established;

(b) whether the facts established afford sufficient ground for taking action; and

(c) whether the penalty is excessive, adequate or inadequate and after such consideration, shall pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction, as it may deem fit in the circumstances of the case:

Provided that--

(a) if the enhanced penalty which the appellate authority proposed to impose is one of the penalties specified in clauses (d), (e), (g), (h), (i) and (j) of rule 2 and an enquiry under sub-rule (b) of rule 3 has not already been held in the case, the appellate

authority shall, subject to the provisions of sub-rule (c) of rule 3, itself hold such enquiry or direct that such enquiry be held in accordance with the provisions of sub-rule (b) of rule 3 and thereafter on consideration of the proceedings of such enquiry and after giving the appellant a reasonable opportunity of making representation against the penalty proposed on the basis of the evidence adduced during such enquiry, make such order as it may deem it;

(b) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (d), (e), (g), (h), (i) and (j) of rule 2 and an enquiry under sub-rule (b) of rule 3 has already been held in the case, the appellate authority shall, after giving the appellant a reasonable opportunity of making representation against the penalty proposed to be imposed on the basis of the evidence adduced during the enquiry, make such order as it may deem fit; and

(c) no order imposing an enhanced penalty shall be passed in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of sub-rule (b) of rule 3 of making representation against such enhanced penalty.

- (2) Any error or defect in the procedure followed in imposing a penalty may be disregarded by the appellate authority if such authority considers, for reasons to be recorded in writing, that the error or defect was not material and has neither caused injustice to the person concerned nor affected decision of the case."

4. Since the second respondent had treated the petitioner's application as review under Rule 15A(i)(ii) of the said Rules, in view of Sub-rule 3, the procedure to be adopted for disposing of the Review Application would be as contemplated under Sub-rule 6.

5. In the instant case, the petitioner's petition under Rule 15A(i)(ii) was disposed of in a single line stating that no fresh points had been raised for consideration and therefore, the petition was rejected. Such a finding is opposed to the procedures contemplated under the aforesaid Rules. On this ground, the petitioner would be entitled to succeed.

6. It is seen that the original order of removal from service was imposed in the year 2000 and after a lapse of 18 years, it would not be appropriate to direct the reinstatement of the petitioner and also since the present order is being

passed based on the procedural irregularities, without going into the merits of the charges framed against the petitioner.

7. In the light of the above observations, the impugned order of punishment imposed on the petitioner and the consequential orders are quashed. Consequently, the punishment of removal from service imposed on the petitioner is modified to one of compulsory retirement. Since the petitioner is claimed to have put in 12 years of service, he would be entitled for all the terminal / retirement benefits along with the pensionary benefits. In this connection, the petitioner is granted liberty to make appropriate application to the second respondent herein seeking his monetary benefits along with pension and on receipt of such representation, the second respondent shall pass appropriate orders releasing the monetary benefits of the petitioner and with further order for grant of pension. Such an exercise shall be completed within a period of twelve weeks from the date of receipt of the said representation of the petitioner.

8. With the above observations and directions, the Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

pvs

To

- 1.The Secretary to Government,
Home Department (Police), Fort St. George, Chennai 600 009.
- 2.The Director General of Police, Chennai 600 004.
- 3.The Inspector General of Police,
Law & Order, Chennai 600 004.
- 4.The Deputy Inspector General of Police,
Tirunelveli Range, Tirunelveli.
- 5.The Superintendent of Police,
District Police Office, Tuticorin.

+1 cc to Mr.M.Subashbabu, Advocate, Sr.No. 24922

+1 cc to The Government Pleader, Sr.No.25169

W.P.No.35756 of 2005

GP(CO)

CSL/26.04.2019