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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2019

CORUM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.No.1898 of 2019
and
C.M.P.No.12909 of 2019

The Director General of Police,
Chennai- 600 004

... Appellant

Vs.

K.Suresh Kumar

... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order passed by the learned single Judge of this Court in W.P.No.10995/2013 dated 02.09.2016.

Prayer in W.P.No.10995/2013;

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Certiorarified Mandamus Calling for the records relating to the proceedings of the respondent dated 30.04.2008 issued in Rc.No. 80028/Staff II(2)/2008 C.O.O.No.79/2008 and quash the same and consequently to direct the respondent to reinstate the Petitioner into service subject to the outcome of the criminal case pending against the Petitioner with all eligible attendant benefits.

For Appellant : Mrs.A.Srijayanthi
Special Government Pleader

J U D G M E N T

(Judgment of the Court was made by K.K.SASIDHARAN, J.,)

The learned single Judge, by placing reliance on the earlier order in W.P.No.27842 of 2013, allowed the writ petition filed by the respondent and a Mandamus was issued for his reinstatement. The said order is under challenge at the instance of the State.



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2. When the appeal was taken up for admission, we posed a question to the learned Special Government Pleader as to whether the order in W.P.No.27842/2013 has become final. The learned Special Government Pleader, on instruction, submitted that the Government Pleader certified that no case is made out for filing appeal against the order in W.P.No.27842/2013. The opinion furnished by the Government Pleader was accepted by the Government and an order was passed, in and by which, the petitioner in W.P.No.27842/2013 was reinstated into service.

3. The respondent is a similarly situated person, as he was involved in the very same misconduct. The learned single Judge placed reliance on the order in the case of V.Senthamaraikannan (W.P.No.27842/2013) to allow the writ petition filed by the respondent.

4. It is too strange on the part of the Government to file an appeal in one matter accepting the opinion of the Government Pleader that it is a fit case for appeal forgetting the fact the the learned single Judge has followed the earlier order in W.P.No.27842/2013, in respect of which, opinion was given that it is not a fit case for appeal, which was accepted by the Government.

5. In case, the Government is of the view that there is merit in the case in W.P.No.27842/2013, Appeal ought to have been filed against said order. In the said writ petition, it was only relying on the said order, the learned single Judge has allowed the writ petition filed by the respondent. The Government has now come up with a case that the learned single Judge was not correct. This contrary stand taken by the Government cannot be appreciated.

6. The intra court appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsi

To,

The Director General of Police, Chennai- 600 004

W.A.No.1898 of 2019

A.SK(06/08/2019)