

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and

THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.A.No. 2078 of 2019

K.Murugan

... Appellant

-Vs-

The Additional Commissioner of Police,
Headquarters,
Greater Chennai Police,
Vepery, Chennai - 600 007. Respondent

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 30.01.2019 made in W.P.No.36040 of 2016.

Prayer in WP.No.36040 of 2016 : Writ 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 impugned order of the respondent in the proceeding in RC No. COP/Pen.1/04/5145/2014 dated 19.7.2016 and quash the same and directing the respondents herein to disbursement his DCRG Rs.5 65 950/- (Five Lakhs Sixty Five Thousand Nine Hundred and Fifty Rupees) along with the interest as per G.O.No. 173 Finance (Pension) Department dated 01.04.2004 and grant the petitioner all consequential benefits.

For Appellant : Mr. V.Karnan

For Respondent : 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 Additional Commissioner of Police, after the retirement of the appellant from service on attaining the age of superannuation, issued a notice dated 18.03.2016, to show cause as to why a sum of Rs.5,94,866/- being the excess salary paid to him should not be adjusted with the Death-Cum-Retirement-Gratuity (DCRG) payable to him. The appellant submitted his explanation to the show cause notice. However, without considering the explanation to the show cause notice, the Additional Commissioner of Police passed an order dated 19.07.2016, directing recovery.

2. The order dated 19.07.2016 was challenged before the Writ Court in W.P.No.36040 of 2016. The learned Single Judge, by making reference to the order passed by the Additional Commissioner of Police, dismissed the Writ Petition. The said order is under challenge at the instance of the unsuccessful writ petitioner.

3. The order passed by the Additional Commissioner of Police, Greater Chennai, dated 19.07.2016, proceeds as if there was no denial at the instance of the appellant and he has admitted the fact that the pay scale was fixed wrongly.

4. We have perused the explanation submitted by the appellant. The appellant, in very clear terms, disputed all the contentions taken by the Additional Commissioner of Police that pay was wrongly fixed. The only piece of admission made by the appellant appears to be the drawal of House Rent Allowance. However, there was no admission with regard to the pay scale given to him. This aspect was not considered by the Additional Commissioner of Police, while confirming the Provisional Notice.

5. Since the appellant has taken up certain contentions in the explanation, the same should have been considered by the Additional Commissioner of Police, before passing the order directing recovery. We are therefore, of the view that the matter requires fresh consideration by the Additional Commissioner of Police, Chennai.

6. The order dated 19.07.2016 is set aside. The matter is remitted to the respondent for fresh consideration.

7. It is open to the appellant to place materials before the respondent to prove his defence, including the order dated 03.01.2011, regulating the period of suspension. The respondent is directed to consider the explanation.

8. Since the order would involve civil consequences, opportunity of personal hearing should also be given to the appellant. The respondent shall consider the explanation and appropriate orders shall be passed as expeditiously as possible, and in any case, within a period of four weeks from the date of receipt of a copy of this Judgment.

9. The intra court appeal is allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

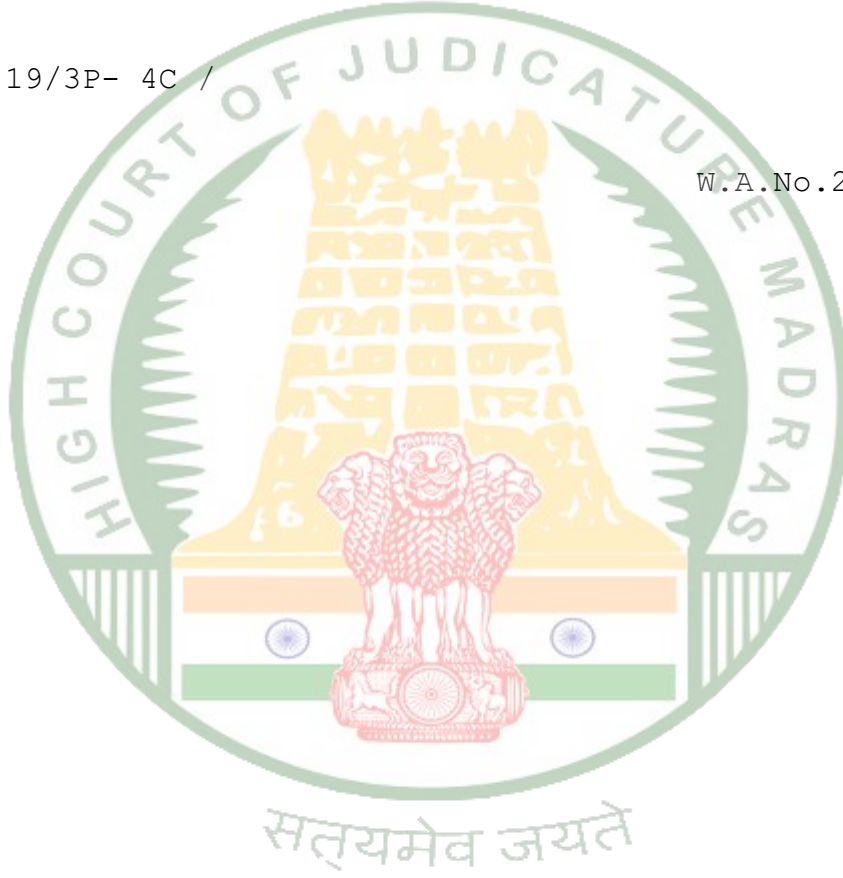
To

The Additional Commissioner of Police,
Headquarters,
Greater Chennai Police,
Vepery, Chennai - 600 007.

+1 cc to M/s.V.Karnan, Advocate Sr.No. 66977
+1 cc to The Special Government Pleader Sr.No.67542

AKM/23.09.19/3P- 4C /

W.A.No.2078 of 2019



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