

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE T. RAJA

Writ Petition No.21727 of 2011 and
WMP.No.36829 of 2016

C.Ayyachamy

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Petitioner

Vs

1. The Secretary to Government,
Home (Police) Department,
Chennai.
2. Director General of Police,
Chennai-600 004.
3. Deputy Commissioner of Police,
Flower Bazar District,
Chennai.

... Respondents

PRAYER: 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 passed by the 2nd respondent herein in his Proceedings Rc.No.119936/AP.3(3)/2009, dated 1.12.2009 and the order passed by the 3rd respondent herein in his Proceedings P.R.No.34/P.R.(N)(1)/99 dated 07.11.2001 and quash the same and consequently, direct the respondents to reinstate the petitioner into service, with all consequential benefits, or issue any other appropriate writ order, Direction in the nature of a writ of another appropriate relief.

For Petitioner : M/s.G.Anbuchezhian

For Respondents : Mr.M.Digvijaya Pandian,
Addl.G.P. for R1 to R3

O R D E R

Mr.C.Ayyachamy, the petitioner herein, who suffered an order of dismissal on 07.11.2001 for proven grave misconduct of committing dacoity and robbery along with his associates during February, 1998 and November, 1998, has come to this Court with the present Writ Petition, challenging the impugned order dated 01.12.2009 passed by the Director General of

Police, Tamil Nadu, Chennai, in and by which the petitioner's representation dated 24.03.2008 for reinstatement was rejected stating that the case of the petitioner was not similar to that of one Ghoush Basha, Police Constable 801.

2. At the outset, it may be mentioned herein that the writ petition is not maintainable for the sole reason that when the 2nd respondent dismissed the petitioner from service by order dated 07.11.2001 and since that order has not been questioned, that became final and concluded even in the year 2001. Therefore, it is not known how the petitioner can maintain the present writ petition. Secondly, when the petitioner along with his co-accused were criminally prosecuted before the learned Additional District and Sessions Judge, Fast Track Court No.4, Chennai, the learned trial Judge while giving the benefit of doubt, acquitted the petitioner and his co-accused under Section 235(1) of Cr.P.C. After the judgment of acquittal dated 31.01.2006 passed in S.C.Nos.265 and 266/2005, the Director General of Police in his Proceedings dated 21.02.2008 reinstated one Mr.Ghouse Basha PC801, since there was a direction given by this Court on 04.01.2008 in W.P.No.19/2008 to consider the case of Ghouse Basha against his punishment of dismissal from service awarded by the Deputy Commissioner of Police, Flower Bazaar District, Chennai Police in P.R.No.62/2005 dated 13.04.2006.

3. It is, at this stage, the learned Counsel appearing for the petitioner submitted that when Mr.Ghouse Basha, who was also one of the accused, was given the benefit of reinstatement by order dated 21.02.2008 by the Director General of Police, Tamil Nadu, Chennai-4, the case of the petitioner alone cannot be discriminated.

4. A detailed counter affidavit has been filed by the 3rd respondent distinguishing the case of the petitioner from that of Mr.Ghouse Basha in which it is emphatically pleaded that during the course of enquiry, 8 witnesses were examined. But the petitioner has not chosen to cross examine P.Ws.1, 3, 5 and 8 during the course of oral enquiry. Moreover, he has not even submitted his written explanation after completion of the oral enquiry.

5. At this juncture, the learned Counsel for the petitioner further submitted that the petitioner was arrested and remanded to judicial custody and since he was facing incarceration, he was unable to come out on bail. Hence, he has made a request to the 3rd respondent to postpone the enquiry and commence the same after his release on bail. This has been totally rejected by the 3rd respondent, as a result, the petitioner was not even heard before passing of the impugned order.

6. But, this Court is unable to agree with the explanation offered by the learned Counsel for the petitioner. The reason being that when the petitioner was arrested and remanded to judicial custody, there is no need for the department to withhold the enquiry. Further, when notice has already been issued to him, the petitioner could have given a detailed explanation denying or disputing the charges levelled against him. Even, that denial of the charges and consequential explanation also have not been offered by the petitioner. Therefore, without finding any reply from the petitioner, the Enquiry Officer has rightly accepted the charges levelled against him and found him guilty. Finally, accepting the report of the Enquiry Officer, the Disciplinary Authority has passed an order of dismissal dated 07.11.2001. That apart, though it was argued heavily before this Court that the petitioner was held up in the Central Prison undergoing judicial custody, after obtaining an order of bail, no doubt, the petitioner was all along enjoying the bail. Therefore, when the order of dismissal dated 07.11.2001 was passed, it is not known why he has not chosen to challenge the correctness of the said order so far. When the order of dismissal has not been questioned till date, the same has become final and concluded. Hence, it is highly unacceptable on the part of the petitioner to come to this Court seeking an order of reinstatement.

7. In the result, the Writ Petition fails and the same is accordingly dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CO-MDU)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Home (Police) Department,
Chennai.
2. Director General of Police,
Chennai-600 004.
3. Deputy Commissioner of Police,
Flower Bazar District,
Chennai.

4.The Additional District and Sessions Judge,
Fast Track Court No.4,
Chennai.

+1cc to Mr.G.Anbuchezeian, Advocate SR.18422
+1cc to the Government Pleader SR.19252

W.P.No.21727 of 2011

SPD(CO)
CB(27/05/2020)



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