

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2020

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.5696 of 2012

P.Murugesan

..Petitioner

-vs-

1. State of Tamil Nadu rep. By its Secretary to Government, Home (Police) Department, Secretariat, Chennai-9.
 2. The Director General of Police, Chennai-4.
 3. The Superintendent of Police, Salem, Salem District.
- ..Respondents

Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 2nd respondent in C.No.213687/AP2(2)/2011 dated 20.11.2011, as communicated by the 3rd respondent confirming the order passed by the 3rd respondent in his Proceedings Tha.Pa.No.11/H3/2000 dated 2.5.2000 and quash the same and direct the respondents to resinstate the petitioner in service with all the benefits.

For Petitioner :: Mr.P.Ganesan
for M/s C.S.Associates

For Respondents:: Mr.A.N.Thambidurai

Special Government Pleader

ORDER

Heard learned counsel for the parties through video conferencing due to the Covid-19 pandemic.

2. The petitioner, Mr.P.Murugesan was again constrained to come to this Court questioning the correctness of the impugned order dated 20.11.2011 reiterating the previous punishment of compulsory retirement that was already set aside by this Court,

by a reasoned and detailed order dated 23.8.2011 passed in W.P.No.1645 of 2007.

3. Learned counsel appearing for the petitioner submitted that the impugned order of compulsory retirement is liable to be set aside, since it has been passed against the petitioner without considering the grievance of the petitioner and also the direction given by this Court in its order dated 23.8.2011. Above all, when the same and similar punishment of compulsory retirement passed by the second respondent in G.O.(2D) No.349, Home (Pol.VI) Department dated 14.6.2006, confirming the order in his Proceedings in Rc.No.254131/AP/.2(2)/2002 dated 14.2.2004 was set aside by this Court on 23.8.2011 in W.P.No.1645 of 2007, the repetition of passing the same order is in violation of the order passed by this Court. Moreover, when there was a specific finding given by this Court holding that the petitioner cannot be termed as unauthorisedly absent from 5.6.99 to 30.6.99 and therefore the punishment of compulsory retirement imposed against him was held wrong, as it is against the material evidence available on file, once again the same infirmity has been committed in the impugned order.

4. The learned counsel appearing for the petitioner also stated that it is the specific case of the petitioner that when he applied for leave without medical certificate, the same has not been rejected. Admittedly, when the petitioner suffered chest pain which required a medical investigation and treatment to find out as to whether it related to cardiac problem or not, without even examining the medical certificate produced by the petitioner, the impugned order passed by the second respondent is liable to be set aside, for not considering any of the reasoned justification given by the petitioner. Therefore, the question of desertion would never arise. Taking support from the order passed by this Court, learned counsel appearing for the petitioner submitted that when this Court on the earlier occasion, after perusing the file produced by the respondents, has given a clear finding that as rightly contended by the learned Senior Counsel for the petitioner, getting prior sanction of medical leave before availing the same is not possible at all times as sickness may arise at any time and before reporting for duty medical certificate can be submitted with medical leave application for having taken medical treatment, the leave application dated 22.6.99 stating that on 5.6.99 he was suffering from chest pain and he took treatment at the Government Hospital, Sooramangalam, Salem District, was not considered. Again the medical certificate issued by the Medical Officer, found at page 45 of the official file, advising the petitioner to proceed on leave from 5.6.99 to 30.6.99, also has not been considered. Again the leave application dated 16.11.99

found at page 47 of the official file submitted by the petitioner before the Superintendent of Police, Salem District with medical certificate, recommending leave from 30.6.99 to 24.7.99 also, was not properly considered and no reason has been given.

5. Considering all these lapses committed by the respondent-Department, the learned Judge has also given a finding that from the above material available on file, it was evident that the petitioner was suffering from chest pain and he was taking treatment and the submission of leave application for extension of leave. But the official file nowhere contained any order rejecting the leave application of the petitioner. Therefore, this Court has held that the petitioner cannot be termed as unauthorisedly absent from 5.6.99 to 30.6.99, though he had not obtained prior permission for availing the leave. For all these reasons, when this Court has held that the third respondent-Superintendent of Police, Salem was not justified in initiating departmental proceedings against the petitioner regarding charge no.1, as far as charge no.2 is concerned, it was also found that the punishment of compulsory retirement was disproportionate to the charge of unauthorized absence from 1.7.99. Considering these two aspects, when this Court has set aside the punishment of compulsory retirement and remitted the matter back to the Director General of Police, Chennai, the second respondent herein to consider the review petition entertained by the second respondent, as per Rule 15A read with Rule 6 of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955 within a period of six/eight weeks, the impugned order, it is pleaded, does not refer to consideration of the petitioner's case as directed by this Court under Rule 15A read with Rule 6 of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules. Therefore, the impugned order is liable to go.

6. Continuing his arguments, learned counsel appearing for the petitioner submitted that when the Department also, being aggrieved by the order, while seeking opinion regarding the feasibility of filing writ appeal, the learned Government Pleader has also given his opinion stating that it is not a fit case for filing appeal against the judgment. Hence, the second respondent was bound to comply with the direction given by this Court, as it became final and concluded. When a direction was given by this Court to the second respondent to consider the review petition of the petitioner in compliance with Rule 15A read with Rule 6 of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, the non consideration of the same clearly vitiates the impugned order. Hence, the writ petition deserves to be allowed, he pleaded.

7. A detailed counter affidavit has been filed by the respondents. Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents, although supported the impugned order, was unable to answer why the impugned order failed to comply with the direction given by this Court to comply with Rule 15A read with Rule 6 of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules. As a matter of fact, when the petitioner, aggrieved by the punishment of compulsory retirement, challenged the same in W.P.No.1645 of 2007 (P.Murugesan vs. State of Tamil Nadu rep. by its Secretary to Government, Home (Police) Department, Secretariat, Chennai-9 and two others), this Court, by order dated 23.8.2011, has allowed the said writ petition, holding as follows:-

'7. I have considered the rival submissions of the learned counsel on either side and perused the file.

8. In the file produced by the respondents among other documents, the following documents are also available:

(a) Leave application of the petitioner dated 22.6.1999 (at page No.43 of the file) stating that from 5.6.1999 he was suffering from chest pain and he took treatment from Government Hospital at Suramangalam, Salem District.

(b) Medical certificate issued by the Medical Officer (at page No.45 of the file) advising the petitioner to go on leave from 5.6.1999 to 30.6.1999.

(c) Leave Application dated 16.9.1999 (at page No.47 of the file) submitted by the petitioner before the Superintendent of Police, Salem District with medical certificate recommending leave from 30.6.1999 to 24.7.1999. The medical certificate is found at page No.49 of the file.

(d) Medical Certificate dated 25.7.1999 suggesting to take leave for the period from 25.7.1999 to 31.8.1999 (page No.51).

(e) Medical Certificate dated 1.9.1999 for the period from 1.9.1999 to 15.9.1999 (page No.53)

(f) Fitness Certificate to return to duty dated 15.9.1999 (at page No.55)

(g) Petitioner's representation dated 7.2.2000 addressed to the Superintendent of Police, Salem, requesting permission to report for duty (at page No.57).

(h) The Assistant Commissioner of Police, Athur, issued a memo on 8.10.1999 for not sending the petitioner's leave letter to the second respondent and the said memo is found at page No.161 of the file. From the above materials available in the file it is evident that the petitioner was suffering from chest pain and he was taking treatment and submitted leave application and application for extension of leave. The file nowhere contains any order rejecting the leave application of the petitioner. Thus, the petitioner cannot be termed as an unauthorised absentee from 5.6.1999 to 30.6.1999, though he had not obtained prior permission before availing the leave.

9. As rightly contended by the learned Senior Counsel for the petitioner, getting prior sanction of medical leave before availing the same is not possible at all times as sickness may arise at any time and before reporting for duty medical certificate can be submitted supported with medical leave application for having taken medical treatment. Thus, the third respondent is not justified in initiating proceedings against the petitioner regarding Charge No.1.

10. As far as Charge No.2, the leave application was submitted after 75 days from 30.6.1999 i.e. On 16.9.1999. The petitioner having produced medical certificates and submitted leave applications, though at a later state, the third respondent ought to have considered the said certificates. Even otherwise, petitioner served in the Police Department for about 14 years and in the counter affidavit no previous delinquency of the petitioner is stated. Thus, the learned Senior Counsel is justified in contending that the punishment imposed is disproportionate to the gravity of the charges of unauthorised absence from 1.7.1999.'

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17(b) The above decision was followed by the Supreme Court in its latter judgment reported in (2006) 4 SCC 713 Narinder Mohan Arya v. United India Insurance Company Limited & Others)

(c) Another Division Bench of this Court in 2004 (3) LW 32 (M.Nagarajan & Others v. The Registrar, High Court, Madras-600 104 and another) following the above

referred decision in AIR 1986 SC for non-compliance of Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which is in pari materia with Rule 6 of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 and remitted the matter back to the appellate authority to pass fresh orders by following the said rules.

(d) In (2009) 2 SCC 570 (Roop Singh Negi v. Punjab National Bank and Others) in paragraph 23 the Supreme Court held that if affect the civil right of the employee, reasons must be stated for arriving at the decisions.

18. In the light of the above finds, the orders passed by the respondents 1 and 2 are set aside and the matter is remitted to the second respondent to consider the review petition which was entertained by the second respondent as review and pass fresh orders in compliance with Rule 15A read with Rule 6 of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, within a period of eight weeks from the date of receipt of this order."

8. The above order setting aside the order of compulsory retirement with a direction to the Director General of Police to consider the case of the petitioner in accordance with Rule 15A read with Rule 6 of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules became final and concluded. Secondly, as against the said order, when an opinion was sought for from the learned Government Pleader of Madras High Court, even the impugned order in paragraph-8 states thus:

"In this connection, the opinion of the Government Pleader, Madras High Court has been sought regarding feasibility of filing Writ Appeal against the above said judgment. The Government Pleader, Madras High Court has given his opinion on 2.11.2011 stating that this is not fit case to file an Appeal against the judgment. The Government have also requested to comply with the said High Court order."

9. A perusal of paragraph-8 of the impugned order clearly shows that it is not a fit case for filing appeal. Therefore, the respondent-Department has not filed appeal and that order became final. Once that order became final, the direction given by this Court to consider the case of the petitioner under Rule 15A read with Rule 6 of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, has to be complied with.

Therefore, the impugned order passed by the respondents, not complying with the direction given by this Court on 23.8.2011 in W.P.No.1645 of 2007, is liable to go. Accordingly, the same is set aside and the writ petition stands allowed. Since the petitioner reached the age of superannuation in the year 2016, question of reinstatement does not arise. Therefore, the respondents are directed to settle the retiral benefits, within a period of twelve weeks from the date of receipt of a copy of this order, to the petitioner. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

ss/tsi

To

1. The Secretary to Govrnment,
State of Tamil Nadu,
Home (Police) Department,
Secretariat, Chennai-9.
2. The Director General of Police,
Chennai-4.
3. The Superintendent of Police,
Salem, Salem District.

W.P.No.5696 of 2012

MG (CO)

SP (20/07/2020)

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