

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

W.P. 8513 of 2013

M.Madaswamy

.. Petitioner

Versus

1. The Director General of Police,
R.K.Salai, Mylapore,
Chennai.
 2. The Superintendent of Police,
Tirunelveli District,
Tirunelveli.
 3. Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli.
-Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of 1st respondent in Rc.No.297942/AP 2 (1)/2011, dated 30.03.2012 and to quash the same, consequently direct the 1st respondent to pay the entire arrears of salary with interest (i.e. from 04.11.1984 to 22.02.2010).

For Petitioner : Mr.R.Karthikeyan

For Respondents : Mr.S.Thangavel,
Special Govt. Pleader
for R1 to R3

ORDER

This Writ Petition has been filed challenging the order rejecting the petitioner's request to pay salary from 04.11.1984 to 22.02.2010.

2. The brief facts leading to the filing of this Writ Petition is as follows :-

The petitioner was working as Police Constable in the Armed Reserve Police Force. Thereafter, he was transferred to the

local police (Law and Order), and posted at Ottapidaram police station. Earlier, a disciplinary proceeding has been initiated against the petitioner, leveling as many as three charges. The first charge was that, while on duty, he has consumed liquor, and on 17.11.1983, he has attempted to assault Grade I PC 989, Ayyasamy, with Unikambu, second charge was that, he has found with reprehensible conduct in having found with one Arjuna Thevar, an arrack seller, and the third charge was that, he has failed to keep the duty note book with him. Earlier, the enquiry officer has held charges 1 and 2 as not proved, however, held the third charge was proved. Thereafter, the disciplinary authority on disagreeing with the findings of Enquiry Officer, has held that, all the three charges as proved, and imposed a punishment of dismissal from service by an order dated 04.11.1984. Challenging the order of dismissal, the petitioner had approached Tamil Nadu State Administrative Tribunal in T.A. 24 of 1997, and the Tribunal has dismissed the same. Challenging the same, the petitioner has filed a Writ Petition in W.P. 45001 of 2006 before this Court, and a Division Bench of this Court by an order dated 23.06.2009 has allowed the Writ Petition, setting aside the order of dismissal on the ground that, while the disciplinary authority disagreeing with the findings of enquiry officer, and reversing the findings of enquiry officer, the copy of disagreement was not served on to the petitioner explaining the reasons for the disagreement, and without obtaining further explanation, the order has been passed, and remanded the matter back to the disciplinary authority to proceed further.

3. On remand, the disciplinary authority, after following the procedures, has held that, the charges are proved, however, modified the punishment from dismissal of service to compulsory retirement by an order dated 22.02.2010, and held that, the order of punishment with effect from the original order of dismissal from service, dated 04.11.1984. The petitioner did not challenge the order of compulsory retirement. Thereafter, he has given a representation to the respondents, on the ground that, there cannot be any retrospective imposing of punishment, and the order of compulsory retirement will take effect from the date of punishment viz., 22.02.2010. Hence, the petitioner has requested the respondent to pay the salary from 04.11.1984 to 22.10.2010, which was rejected by the impugned order. Challenging the same, the present Writ Petition has been filed.

4. The 2nd respondent has filed a counter affidavit stating that, after the order passed by this Court, the 2nd respondent has called for further explanation, and a dissenting notice was also served on to the petitioner on 05.02.2010. The petitioner was heard in person on 15.02.2010, and his statement was recorded. After considering the explanation, the 2nd respondent disciplinary authority has held that, all the charges are

proved, and took a lenient view, awarded the punishment of compulsory retirement with effect from 04.11.1984, i.e. from the date of dismissal from service. As the petitioner was compulsorily retired with effect from 04.11.1984, and he is entitled to get pensionary benefits with effect from 04.11.1984, and he is not eligible for the drawal of arrears for the period from 04.11.1984 to 22.02.2010. The petitioner is no more Government servant after 04.11.1984, and he has not performed any duty from that date, and he cannot claim any pay, when no work was done. Hence, the petitioner's contentions cannot be considered.

5. I have considered the rival submissions made by learned counsel appearing for petitioner as well as learned Special Government Pleader appearing for respondents, and perused the records carefully.

6. Originally, the petitioner was dismissed from service with effect from 04.11.1984. However, that order was set aside by the Division Bench of this Court on the ground of violation of principles of natural justice, and remanded the matter back to the disciplinary authority to pass a fresh order after giving opportunity to the petitioner. In pursuant to the same, after following all the legal formalities, the disciplinary authority has modified the punishment awarded to the petitioner from dismissal of service to compulsory retirement, and naturally, the order of compulsory retirement will take effect from the date of original order of dismissal from service with effect from 04.11.1984. However, as per the order of compulsory retirement, the petitioner is entitled for pensionary benefits from the date of original order i.e. on 04.11.1984. As rightly contended by the learned Special Government Pleader appearing for respondents that, the petitioner has not challenged the order of compulsory retirement. Hence, he is not entitled to get any salary. The order of dismissal was set aside only on technical ground of violation of principles of natural justice, and the matter was remanded back to the original authority for completing the legal formalities. After following the legal formalities, the punishment was imposed in the year 2010 modifying the earlier order of dismissal from service into the order of compulsory retirement. Therefore, the petitioner is not entitled for any salary for that period. Considering the same, the respondents have rightly rejected the petitioner's representation, and I also find no illegality or irregularity in the order passed by the 1st respondent. Accordingly, this Writ Petition stands dismissed. No costs.

7. Now, the petitioner came up with another petition in W.M.P. 31940 of 2020, to amend the prayer challenging the order of compulsory retirement, which was passed in the year 2010.

Against that order of compulsory retirement, there is an appeal remedy provided, the petitioner has neither filed an appeal nor challenged the order of removal from service before this court earlier. Even after filing this Writ Petition, the petitioner has not challenged the order of compulsory retirement. At this stage, after 10 years, the petitioner cannot challenge the order of punishment without any valid reasons. Hence, I find no merit in the Writ Miscellaneous Petition No. 31940 of 2020. Accordingly, the Writ Miscellaneous Petition was also dismissed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

rpp

To

1. The Director General of Police,
R.K.Salai, Mylapore,
Chennai.
2. The Superintendent of Police,
Tirunelveli District,
Tirunelveli.
3. Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli.

+2cc to Mr.R.Karthikeyan, Advocate, S.R.No. 23237

+1cc to the Government Pleader, S.R.No. 24100

W.P. 8513 of 2013

VG II(CO)
GN(06/08/2020)

WEB COPY