



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2020

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P. (MD) No.1951 of 2020

and

W.M.P. (MD) Nos.1633 and 1634 of 2020

Gopalakrishnan

... Petitioner

Vs.

1. The Director General of Police,
Post Box No.601, Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.

2. The Deputy Inspector General of Police,
Tirunelveli Range, Palayamkottai,
Tirunelveli-627 001.

3. The Superintendent of Police,
Tirunelveli, Tirunelveli District.

... Respondents

[2nd respondent is amended vide memo
dated 31.01.2020 filed by the petitioner.]

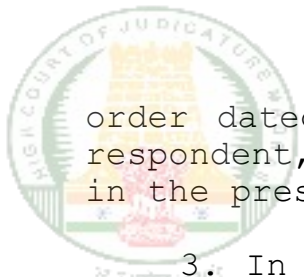
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorari Mandamus, to call for the entire record relating to the impugned order passed by the third respondent in P.R.No.89 of 2018, under Section 3(b), dated 22.04.2019 as confirmed by the second respondent in C.No.C4/AP.26/2019, dated 28.05.2019 and quash the same as illegal and further directing the respondents to re-initiate the petitioner in service with all consequent benefits.

For Petitioner : Mr.C.Susikumar
For Respondents : Mr.R.Sethuraman
Special Government Pleader

ORDER

By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

2. On a set of charges under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, the petitioner herein was subjected to departmental enquiry and based on the proven charges, the third respondent herein had imposed punishment of dismissal from service through an order dated 22.04.2019. An appeal preferred by the petitioner against the punishment was also rejected by the second respondent through his



order dated 28.05.2019. The said punishment imposed by the third respondent, as confirmed by the second respondent is under challenge in the present writ petition.

3. In the appeal, the second respondent had merely stated that the offence has been made out clearly from the statements of PW1 to PW4 and that the petitioner had accepted the charges and apologized for the same and that since the delinquency is serious, the appeal was rejected. No other reasoning has been adduced by the second respondent while rejecting the appeal, though the petitioner claims to have raised several grounds in the appeal petition.

4. Without going into merits of the grounds raised by the petitioner in the present writ petition, this Court is of the view that the matter requires to be remanded back to the second respondent, since there is no discussion as to how the second respondent had independently come to a conclusion that the enquiry was duly conducted and that the punishment of removal from service was proportionately awarded to the petitioner.

5. Rule 6 of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules stipulates the procedure to be followed by the Appellate Authority while imposing the punishment of removal from service. The said rule reads as follows:-

..Rule.6(1)In the case of an appeal against an order imposing any penalty specified in rule2, the appellate authority shall consider:

(a)Whether the facts on which the order was based have been established;

(b)Whether the facts established afford sufficient ground for taking action; and

(c)Whether the penalty is excessive, adequate or inadequate and after such consideration, shall pass orders.

(i)confirming, enhancing, reducing, or setting aside the penalty; or

(ii)remitting the case to the authority which imposed the penalty or to any other authority with such direction, as it may deem, fit in the circumstances of the case:

Provided that

(a)if the enhanced penalty which the appellate authority proposed to impose is one of the penalties specified in clauses (d),(e),(3),(h),(i) and (j) of rule 2 and an enquiry under sub rule (b) of rule 3 has not already been held in the case, the appellant authority shall, subject to the provisions, of sub rule (c) of rule 3, itself hold such enquiry or direct that such enquiry be held in accordance with



the provisions of sub rule (b) of rule 3 and thereafter on consideration of the proceedings of such enquiry and after giving the appellant a reasonable opportunity of making representation against the penalty proposal on the basis of the evidence adduced during such enquiry, make such order as it may deem it.

(b) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties, specified in clauses (d), (e) (3), (h), (i) and (j) of rule 2 and an enquiry under sub rule (b) of rule 3 has already been held in the case, the appellate authority shall, after giving the appellant reasonable opportunity of making representation against the penalty proposed to be imposed on the basis of the evidence adduced during the enquiry, make such order as it may deem fit; and

(c) no order imposing an enhanced penalty shall be passed in any other case unless the appellant has been given a reasonable opportunity as far as may be in accordance with the provisions of sub rule (b) or rule 3 of making representation against such enhanced penalty.

(2) Any error or defect in the procedure followed in imposing a penalty may be disregarded by the appellate authority if such authority considers, for reasons to be recorded in writing, that the error or defect was not material and has neither caused injustice to the person concerned nor affected the decision of the case."

6. The rule is self explanatory to the effect that the appellate authority is required to ascertain and consider the facts, on which, the punishment was established; whether the facts established afford sufficient ground for taking action; the proportionateness of the punishment vi-a-viz the charges, etc. A mere statement that the petitioner had accepted the charges and tendered his apology may not establish that the punishment was in proportion to the levelled charges. When the rule itself stipulates the guidelines for consideration of the appeal, the second respondent herein was not justified in simply confirming the punishment without following these guidelines. As such, it could be said that the order itself is in violation of the rules and a non-speaking order.

7. In view of the aforesaid observations, this Court is of the view that the order passed by the second respondent, is in violation of procedure contemplated under Rule 6 of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules and therefore, ~~the order is to be set aside and remanded back for fresh consideration.~~



8. In the light of the above observations, the impugned order dated 28.05.2019 passed by the second respondent herein is set aside and the matter is remanded back to the second respondent for fresh consideration by following the guidelines provided under Rule 6 of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules. The second respondent shall also pass a speaking order. It is made clear that this Court has not expressed any of its view with regard to the original punishment imposed by the third respondent and that the second respondent is at liberty to come an independent conclusion based on the merits of the appeal. The second respondent shall also endeavour to pass final orders atleast within a period of three months from the date of receipt of the copy of this order after giving due opportunity to the petitioner herein. This Writ Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sjj/sm

Note: Registry is directed to carry out necessary amendment in the cause title with regard to the second respondent.

To

1.The Director General of Police,
Post Box No.601,Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.

2.The Deputy Inspector General of Police,
Tirunelveli Range,
Palayamkottai,Tirunelveli-627 001.

3.The Superintendent of Police,
Tirunelveli, Tirunelveli District.

+1 CC to M/s.R.MAHESWARAN, Advocate (SR-4281[F])

+1 CC to M/s.SPL.GP (SR-4415[F])

Order made in
W.P. (MD) No.1951 of 2020

Dated:
31.01.2020