



WEB COPY

W.P. (MD) No.2272 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.02.2020

PRONOUNCED ON : **28.02.2020**

CORAM:

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

W.P. (MD) No.2272 of 2018

and

W.M.P. (MD) No.2487 of 2018

M.Kennedy

... Petitioner

/vs./

1.The Secretary,
Home (Police-IVA) Department,
For St.George, Chennai-600 009.

2.The Director General of Police,
Tamil Nadu, Chennai.

3.The Commissioner,
The Office of the Commissioner,
for Disciplinary Proceedings,
5/1B, Vinayaga Nagar,
Madurai-20.

4.The Vigilance and Anti Corruption Department,
Madurai District, Madurai.

5.The Superintendent of Police,
The District Police Office,
Tiruppur District, Tiruppur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 3rd respondent on respect of the TDP.No.3/2008 of Tribunal for disciplinary proceedings, Madurai dated 21.02.2011 and its consequential order passed by the 2nd respondent dated 11.08.2012 and the subsequent order passed by the 1st respondent vide G.O.(D).No.70, Home (Police-IVA) Department, dated 12.01.2018 and quash the same as illegal and consequently direct the first respondent to reinstate the petitioner into service within a stipulated time.



For Petitioner : Mr. T.K. Akalya
For Respondents : Mr. M. Jeyakumar
Additional Government Pleader

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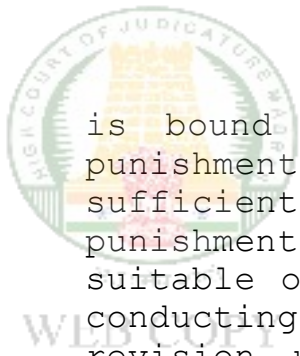
ORDER

On a set of levelled charges, the petitioner herein was proceeded with disciplinary action by the Commissioner for Disciplinary proceedings and based on the findings therein, the charges were held to be proved. The Government, on 14.10.2011, had remitted the findings to the Director General of Police for further action under Rule 10(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. Accordingly, on 11.08.2012, the second respondent herein had awarded the punishment of reduction of pay by two stages for two years and further held that the period of deduction shall not operate to postpone his future increment.

2. The first respondent herein had *suo motu* taken up the matter for revision of the order passed by the disciplinary authority and issued a notice on 06.11.2017 calling for the petitioner's explanation. The petitioner herein had submitted his explanation on 13.04.2017. Thereafter, the first respondent herein had passed the impugned order, imposing the punishment of compulsory retirement on the petitioner. The said order as well as the original punishment are put under challenge in the present writ petition.

3. A perusal of the order of the first respondent dated 12.01.2018 reveals that, though the petitioner herein had submitted various grounds opposing the *suo-motu* revision, the first respondent had, in a few lines, held that the trap proceedings was corroborated by the witness P. Madasamy and that the trap was proved before the Tribunal for disciplinary proceedings based on the findings of the witness P. Madasamy with regard to the telephone conversation of the petitioner and the witness P. Madasamy. Apart from the aforesaid findings, there is absolutely no discussion on the various objections raised by the petitioner in his further representation dated 13.04.2017.

4. Rule 15(A) of the Tamil Nadu Police (Discipline and Appeal) Conduct Rules [hereinafter referred to as 'said Rules' for the sake of brevity], empowers the Government to review any order at any time. However, the Rule 15 (A) (iii) of the said Rules, provides that the application for review shall be dealt with in the same manner as if it were an appeal under these rules. The procedure for consideration of an appeal is provided under Rule 6 of the said Rules and the authority while considering the appeal



is bound to consider as to whether 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. After such consideration, suitable orders are required to be passed. When the procedure for conducting the appeal is required to be followed in a *suo motu* revision under Rule 15(A) of the Rules, the first respondent herein, in a very cryptic manner, narrated the facts of the case, findings of the Enquiry Officer and the petitioner's objection in its further representation and in three lines rejected the objections and enhanced the penalty to one of compulsory retirement. Such a procedure is against Rule 15(A)(iii) of the said Rules. As such, the punishment of compulsory retirement on *suo motu* revision is liable to be set aside.

5. In normal circumstances, when this Court finds the order imposing punishment to be a non-speaking order, the matter would be remanded back to the same authority for re-consideration. However, in the instant case, the original punishment was imposed on the petitioner by the second respondent herein on 11.08.2012 and the first respondent herein had initiated steps of *suo-motu* revision on 06.11.2017, after a period of five years. Though Rule 15 (A) of the said Rules empowers the Government to initiate *suo-motu* revision 'at any time', such powers requires to be exercised within a reasonable time. In the present case, the first respondent had opted to *suo-motu* revise the order, after more than five years and there is absolutely no reason assigned as to what prompted the first respondent to wait for five years to initiate such *suo-motu* action. While that being so, remanding back the matter to the first respondent for re-consideration may not be appropriate.

6. The second respondent herein, while considering the enquiry report, had awarded the punishment of reduction of pay by two stages for two years and had held that the period of reduction shall not operate to postpone the petitioner's future increment, through his order dated 11.08.2012. The said punishment had taken care of the report of the enquiry officer and on a preponderance of probabilities of the case, the said punishment was awarded. The punishment, in my view, cannot be termed as 'disproportionate' to the levelled charges. Since the order of the first respondent itself has been found to be illegal, the original punishment imposed by the second respondent herein, "reducing the petitioner's pay by two stages for two years and the period of reduction shall not operate to postpone his future increment." shall hold good.



7. For the reasons stated above, the impugned order passed by the first respondent herein in G.O.(D).No.70 Home (Police-IVA) Department, dated 12.01.2018, is quashed. Consequently, the first respondent herein is directed to reinstate the petitioner back into service, atleast within a period of four weeks, from the date of receipt of a copy of this order, along with all service and monetary benefits to which the petitioner may be entitled to, if the order of punishment of compulsory retirement had not been imposed on the petitioner.

8. Accordingly, this Writ Petition stand partly allowed. No costs.

Sd/-

Assistant Registrar(AE)

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/ /2020

Sub Assistant Registrar(CS)

Ns/sm

To

1.The Secretary,
Home (Police-IVA) Department,
For St.George, Chennai-600 009.

2.The Director General of Police, Tamil Nadu, Chennai.

3.The Commissioner,
The Office of the Commissioner,
for Disciplinary Proceedings,
5/1B, Vinayaga Nagar, Madurai-20.

4.The Vigilance and Anti Corruption Department,
Madurai District, Madurai.

5.The Superintendent of Police,
The District Police Office,
Tiruppur District, Tiruppur.

+1 CC to M/s.SPL.GP (SR-9455[F] dated 02/03/2020)

Order made in

W.P. (MD) No.2272 of 2018

Dated: 28.02.2020

SBS (CO)

TR(13.03.2020) 4P 7C