



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2020

CORAM:

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

W.P.(MD) No.10732 of 2016

and

W.M.P.(MD) No.8311 of 2016

S.Muthupandi

... Petitioner

vs.

1.The Additional Director General of Police (L&O)
Tamil Nadu, Kamaraj Salai,
Chennai-600 004.

2.The Deputy Inspector General of Police,
Dindigul.

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

4.The Deputy Superintendent of Police,
Nilakottai, Dindigul District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 28.12.2015 in C.No.208518/AP II (3)/2015 passed by the first respondent confirming the order passed by the second respondent by his proceedings dated 19.09.2014 in PR/03/A2/2013 and quash the same and consequently direct the respondent to release the retirement benefits and all other monetary benefits to the petitioner.

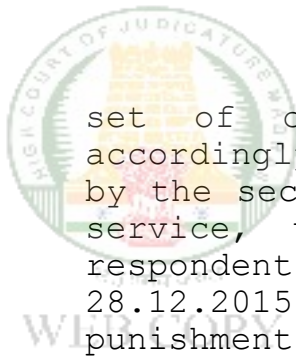
[Prayer amended vide order dated 08.01.2020 in W.M.P.(MD) No.10949 of 2019]

For Petitioner : Mr.V.Sasikumar

For Respondents : Mr.M.Jeyakumar
Additional Government Pleader

O R D E R

The petitioner herein was appointed as Police Constable on 13.07.1977. In the year 2011, the petitioner was promoted as Sub-Inspector of Police. On 28.05.2013, the petitioner was placed under suspension and departmental proceedings were initiated on certain



set of charges which came to be proved after enquiry and accordingly, the petitioner was ordered to be removed from service by the second respondent on 19.09.2014. As against the removal from service, the petitioner had filed an appeal before the first respondent on 05.11.2014, which also came to be rejected on 28.12.2015. The present writ petition has been filed against the punishment that was confirmed by the first respondent herein.

2.The learned counsel appearing for the petitioner would submit that the action on the part of the respondents in imposing the punishment in just and three days before the petitioner's age of superannuation is improper and with an *malafide* intention. He would also submit that the first respondent herein had not considered the appeal petition in its proper perspective.

3.The learned Additional Government Pleader would rely on the counter affidavit filed by the third respondent herein and submit that the petitioner herein, belonging to a disciplined force, has not conducted himself properly and had entered into a second marriage which is a penal offence. The petitioner had also begotten a female child through the second marriage and in view of the fact that the second marriage was not disputed, the charges were properly framed. The learned Government Additional Government Pleader also submitted that the enquiry was conducted after following the principles of natural justice and in view of the gravity of the charges, the punishment of removal from service is just and proper. It is his further submission that the first respondent herein had properly appreciated the enquiry report and had affirmed the punishment imposed by the second respondent.

4.I have given careful consideration to the submissions made by the respective counsel.

5.Punishment of removal from service has been confirmed by the first respondent herein through his order dated 28.12.2015. A perusal of the said order passed in appeal by the first respondent herein reveals that there is absolutely no consideration of the facts of that case as evidenced from the enquiry report. The portion of the order of the first respondent confirming the punishment imposed by the second respondent reads as follows:-

"I have gone through the representation and connected records carefully. I do not find any clinching material warranting my interference with the punishment awarded. The appeal is rejected."

6.Apart from the aforesaid portion, there is no other discussion as to how the first 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.



7.Rule 6 of the Tamil Nadu Civil Services (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:-

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..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."

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8. 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. When the rule itself stipulates the guidelines for consideration of the appeal, the first 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.

9. The learned counsel for the petitioner had relied upon a decision of the Hon'ble Division Bench of this Court, dated 21.07.2017, passed in W.A.No.473 of 2017 in the case of **P.Soundararajan Vs. The Principal Secretary to the Government and others** and submitted that the petitioner's punishment may be considered for modification into compulsory retirement. The facts involved in the aforesaid decisions before the Hon'ble Division Bench of this Court is identical to the facts in hand, wherein, the appellant therein had also entered into a second marriage, when the legal wedded first wife was alive. The Hon'ble Division Bench of this Court, by taking into account of the fact that the conduct of the appellant therein should not affect his family, had converted the punishment into one of compulsory retirement. The relevant portion of the order reads thus:-

"...14. In view of the factual finding that when the first wife is alive and the marriage between the appellant and his first wife is in subsistence, he married one Ms. Tamilarasi and the appellant also admitted the said fact before the Enquiry Officer, this Court is of the view that for the sin committed by the appellant, his first wife and her child who are very innocent need not be made to suffer.

15. In this situation, we are of the view that instead of dismissing the appellant from service, the appellant may be permitted to retire compulsorily so that, the first wife and her child and the appellant may get some monetary benefits and the same would meet the ends of justice..."

10. In normal circumstances, when the appellate authorities has not passed a speaking order and the order in appeal itself was in



violation of the procedure contemplated under the rules, this Court would be inclined to remanded back the matter to the appellate authority for reconsideration. However, in the present case, the petitioner was awarded with the punishment, just three days before his retirement and he is now aged about 65 years. At this juncture, if the matter is remanded back to the respondents for fresh consideration, further prejudice would be caused to the petitioner. In this background, by following the decision rendered by the Hon'ble Division Bench of this Court in the aforesaid decision, I am also inclined to modify the petitioner's punishment into one of compulsory retirement and while doing so, this Court has also taken into account that the petitioner herein has been serving in the respondents department for more than 37 years.

11.In the light of the above observations, the impugned order dated 28.12.2015 in C.No.208518/APII(3)/2015, passed by the first respondent is quashed. Consequently, the punishment imposed on the petitioner by the second respondent herein on 19.09.2014 is modified into one of compulsory retirement and the petitioner would therefore be entitled to all the retirement benefits. The respondents shall endeavour to disburse the monetary benefits to the petitioner as expeditiously as possible, in any event, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

12.Accordingly, the Writ Petition stand allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

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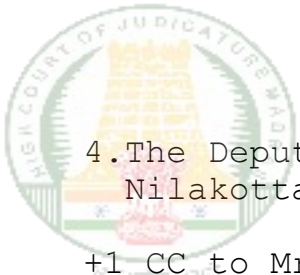
To

1.The Additional Director General of Police (L&O)
Tamil Nadu, Kamaraj Salai,
Chennai-600 004.

2.The Deputy Inspector General of Police,
Dindigul.

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

<https://hcservices.ecourts.gov.in/hcservices/>



4.The Deputy Superintendent of Police,
Nilakottai, Dindigul District.

+1 CC to Mr.M.VAIKKAM KARUNANITHI, Advocate (SR-776[F] dated
08/01/2020)

+1 CC to SPL.GP (SR-948[F] dated 09/01/2020)

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