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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2021

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NO.23535 OF 2009

AND

MP.NO.2 OF 2009

R.A.Mani

...Petitioner

Vs

1. The Director General of Police,
Chennai -4.
2. The Deputy Inspector General of Police,
Coimbatore Range, Coimbatore.
3. The Superintendent of Police,
Coimbatore.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the respondents particularly that of the third respondent in his proceedings Na Ka No.PR J1/PR93/2006 dated 15.11.2008 and that of the second respondent in Rc. No.D2/AP-05/2009 dated 20.04.2009 and that of the first respondent in Rc. No.051776/AP1 (1)/2009 dated 18.06.2009 and quash the same and direct the respondents to grant notional promotion to the petitioner to the post of Sub Inspector of Police with effect from the date of promotion given to his juniors and batch-mates in the year 2009 with all service, monetary and pensionary benefits.

For Petitioner : Mr.Selvathirumurugan

For Respondents : Mr.S.John J.Raja Singh,
Government Advocate

ORDER

Heard Mr.Selva Thirumurugan, learned counsel for the petitioner and Mr.S.John J.Raja Singh, learned Government Advocate for the respondents.



2. The petitioner challenges orders passed by R1 to R3 dated 18.06.2009, 20.04.2009 and 15.11.2008 respectively, bearing concurrent facts as to the non-disclosure of a sum of Rs.5,90,000/- in regard to the expenditure incurred towards construction of a property.

3. The brief facts are that the petitioner had entered service as Grade II Police Constable on 22.01.1975. He was thereafter promoted to Grade I in the year 1980 and as Head Constable in 1993. He was permitted to retire upon attaining superannuation on 30.05.2009 as a Head Constable. He was denied promotion as a Sub-Inspector on the ground of disciplinary proceedings that have been initiated against him on 05.09.2006 by R3. The charge memo was based on certain expenditures that had been ear-marked on the construction of immovable property. The explanation put forth by the petitioner was that the expenditure had been incurred by his wife liquidating 35 sovereigns of gold gifted to her as Sreedhana.

4. Rule 9 of the Tamil Nadu Police Officers Conduct Rules, 1964 ('Rules') requires a police officer to seek and obtain prior permission from the concerned superior authority for either acquiring or disposing immovable property. Rule 9, to the extent it is relevant, reads thus:

Rule 9. Movable, immovable and valuable property:
(1) (a) No Police officer shall except after notice to the prescribed authority acquire or dispose of any immovable property by lease, mortgage purchase, sale, gift, exchange or otherwise either in his own name or in the name of any member of his family: Provided that any such transaction conducted otherwise than through a regular or reputed dealer, shall require the previous sanction of the prescribed authority.

Such a notice will be necessary even where any immovable property is acquired by any member of the family of the police officer out of the resources of the Police officer.

(b) Every member of the service, for the construction or extension of a house, shall port to the prescribed authority in the following manner:-

(i) Before starting the construction or extension, he shall report or seek permission as Form VI in Schedule I appended to these rules.



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(ii) After completing the construction or extension, he shall report in Form VII in Schedule I appended to these rules.

(iii) The details in Form VI and VII in Schedule I appended to these rules shall be furnished whenever it is possible to do so. Where, however, it is not possible to furnish details he shall mention the covered area on which the building is proposed to be erected and the estimated cost of the building.

(G.O. Ms. No. 2112 Home dt. 12.8.80).

Explanation :- A Police Officer is not required to give notice to the prescribed authority or seek prior permission from the prescribed authority for acquisition or disposal of immovable properties by the members of his family under sub-rule (1), if the immovable property in question is not acquired from the resources of the Police Officers concerned".

5. Placing reliance on the Rule 9 of the Rules, the petitioner had stated that in a case where the expenditure was incurred by the family members of the concerned police officer, there is no requirement for either notice to the prescribed authority nor permission from the authority to be obtained, for acquisition or disposal of immovable properties.

6. Upon considering the explanation that had been tendered by the petitioner, the Enquiry Officer held that the charge had not been proved. R3 however deviated from the conclusion of the Enquiry Officer imposing punishment of stoppage of increment of one year without cumulative effect, vide proceedings dated 15.11.2008. The petitioner filed an appeal before R2, the Deputy Inspector General of Police who modified the punishment into that of a black mark vide proceedings dated 20.04.2009. A review was filed before R1 who, taking note of the above facts, confirmed the orders of the lower authorities.

7. The petitioner argues that Explanation to Rule 9 has not been considered in proper light by the departmental authorities. However, mere reliance upon the Explanation cannot automatically exonerate the petitioner as the concerned police officer is to establish that his resources have, in fact, not been deployed for the incurrence of the expenditure in question. A responsibility is cast upon him to prove that his resources/sources of income are insufficient to meet the stated expenses. The petitioner has failed to discharge this burden.



8. Moreover, before the appellate authority, the petitioner adopted the stand that a typographical error had crept into the reconciliation of the expenditures and that Rs.1.00 lakh should read as Rs.1.30 lakhs. Even assuming so, an amount of Rs.60,000/- still stands unreconciled. Perhaps, it was taking note of the aforesaid submission, that the superior authority had reduced the punishment from stoppage of increment to a black mark.

9. In the light of the narration of facts as aforesaid, I do not find any justification to interfere in the impugned orders. The explanation tendered by the petitioner has been taken note of in proper perspective by the authorities and as noted by me earlier, mere reliance on the Explanation to Rule 9 without establishing his financial position, would not be of any benefit to the petitioner.

10. This Writ Petition is dismissed. No costs. Connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(L.A)

// True Copy //

Sub Assistant Registrar

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To

1. The Director General of Police,
Chennai -4.
2. The Deputy Inspector General of Police,
Coimbatore Range, Coimbatore.
3. The Superintendent of Police,
Coimbatore.

+1cc to the Government Pleader, S.R.No.46493 (26/05/2022)

W.P.No.23535 of 2009
and
MP.No.2 of 2009

SRA(CO)
RLP(11/11/2021)