

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 06.01.2021
CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.32530 of 2005

P.Kannan

.. Petitioner

-Vs-

1. Additional Director General of Police &
Commissioner of Police, Egmore
Chennai 600 008.
2. Deputy Commissioner of Police
Armed Reserve, Chennai City Police
Egmore, Chennai 600 008. .. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records from the file of the 2nd respondent pertaining to its impugned punishment order bearing PR No.49 (South)/02 dated 09.03.2005 and to quash the same.

For Petitioner : Mr.K.M.Ramesh
For Respondents : Mr.K.Magesh,
Special Government Pleader

O R D E R

This writ petition has been filed seeking for a writ of Certiorari calling for the records from the file of the 2nd respondent pertaining to its impugned punishment order bearing PR No.49 (South)/02 dated 09.03.2005 and to quash the same.

2. Against the petitioner, disciplinary proceedings were initiated by the respondent Department which ultimately ended in punishment, whereby through the impugned order, the second respondent inflicted the punishment of reduction in time scale of pay by two stages for a period of two years and the period of reduction shall operate to postpone future increments.

3. Though the petitioner, as against the said punishment order, has preferred an appeal to the first respondent appellate authority on 26.03.2005 and a copy of the said appeal is also annexed in the typed set of papers, it is the case of the respondents, as projected by the learned Special Government Pleader appearing for the respondents that, no such appeal has been filed by the petitioner against the impugned order of punishment.

4. In this context, the learned Special Government Pleader has quoted Para 10 of the counter affidavit and would submit that, since the petitioner has not come forward to prefer any statutory appeal to the first respondent against the punishment order passed by the second respondent, which is impugned in this writ petition, the first respondent suo motu reviewed the said order of punishment and justified the order of punishment awarded by the second respondent. Therefore, the issue has been concluded and hence the question of considering anything further in this regard does not arise, he contended.

5. This Court is not impressed with the said submission made by the learned Special Government Pleader appearing for the respondents, the reason being that, once the employee has suffered with the punishment arising out of disciplinary proceedings, it is for the employee to take a decision to file an appeal. In this regard, it is the definite case of the petitioner that, he has preferred an appeal on 26.03.2005 to the first respondent appellate authority through proper channel and in this context, since the appeal has been preferred under the statutory provision ie., Rule 5 of the Tamil Nadu Police Subordinate Service Rules 1965, against the order of punishment dated 09.03.2005, the same ought to have been considered on merits by the first respondent appellate authority. Instead of deciding the said appeal filed by the petitioner, the respondents especially the first respondent cannot take a stand that suo motu the order of punishment dated 09.03.2005 was reviewed and ultimately it was justified by the decision taken by the appellate authority.

6. Learned counsel for the petitioner would submit that, this method said to have been adopted by the appellate authority, as claimed by them through the counter affidavit, is unknown to the procedural aspect of the service jurisprudence and therefore the said stand taken by the respondents cannot be countenanced.

7. I find force in the said stand taken by the learned counsel for the petitioner. Learned counsel for the petitioner also has submitted that, even though the order impugned ie., the punishment order of the second respondent is under challenge in this writ petition, on instructions, he would submit that the petitioner would confine the prayer only to seek for a direction from this Court to the first respondent appellate authority to decide his appeal dated 26.03.2005 and if the appeal is decided on merits and in accordance with law within a time frame to be stipulated by this Court, he would be satisfied.

8. In view of the said stand taken by the petitioner through his counsel and by taking into account the factual matrix of the case, this Court is inclined to pass the following order.

- (a) The petitioner shall once again send a copy of the appeal dated 26.03.2005 along with a copy of this order to the first respondent appellate authority directly within a period of two weeks from the date of receipt of a copy of this order.
- (b) On receipt of a copy of the appeal dated 26.03.2005 along with a copy of this order, the first respondent shall consider and decide the said appeal of the petitioner on merits and in accordance with law and an order to that effect disposing the said appeal shall be passed by the first respondent / appellate authority, within a period of six weeks thereafter.
- (c) In this regard, if the first respondent wants to give an opportunity of hearing to the petitioner, such opportunity also can be given to the petitioner.

9. With the above directions, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (co)

//True Copy//

Sub Assistant Registrar

KST
To

1. Additional Director General of Police & Commissioner of Police, Egmore
Chennai 600 008.
2. Deputy Commissioner of Police
Armed Reserve, Chennai City Police
Egmore, Chennai 600 008.

+1cc to Mr.K.M.Ramesh , Advocate SR.No. 726
+1 cc to Government Pleader Sr.No. 771

W.P.No.32530 of 2005

A.SK(20.01.2021)