

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2021

CORAM

HONOURABLE MR. JUSTICE R.SUBBIAH

AND

HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.No.917 of 2019

and

CMP.6936 of 2019

1. The Additional Director General of Police,
(Law and Order), Chennai - 4.
 2. The Deputy Inspector General of Police,
Coimbatore Range, Coimbatore - 18.
 3. The Superintendent of Police,
District Police Office,
Coimbatore District,
Coimbatore - 18. ..Appellants/Respondents
- Vs.
- G.Sasitharan
Ex. Grade I Police Constable 1408,
Mudis Police Quarters,
Valparai Taluk,
Coimbatore District. ..Respondent/Petitioner

Prayer: This Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 05.09.2017 made in W.P.No.23999 of 2012 on the file of this Court.

PRAYER IN WP.NO.23999/2012: Petition filed under Article 226 of the Constitution of India, Praying for issuance of a Writ of Certiorarified Mandamus, To call for the records pertaining to the order of the third respondent herein passed in his Rc.No. J1/PR.44/2009 dated 10.10.2009 removing the petitioner from service and the consequential order passed by the second respondent herein passed in his Rc.No. D2/AP/27/2009 dated 16.01.2010 rejecting the petitioner appeal petition and quash the same and consequently direct the respondents herein to modify the punishment of removal from service as compulsory retirement from service with all consequential retirement benefits within a stipulated.

For Appellants ::Mrs.A.Srijayanthi
Special Government Pleader

For Respondent ::Mr.Ravi Shanmugam

JUDGMENT

(Judgment of the Court was delivered by SATHI KUMAR SUKUMARA KURUP, J.)

This Writ Appeal has been filed to set aside the order dated 05.09.2017 made in W.P.No.23999 of 2012.

2. Ms.A.Srijayanthi, the learned Special Government Pleader appearing on behalf of the Appellants submit that the respondent herein was a police constable in the Tamil Nadu Police Department. He was appointed in the year 1976. During his service, on 31.07.2008, he had taken unauthorized leave. Therefore, a charge memo was issued for which he submitted his explanation. As the explanation offered by the respondent was not satisfactory, an enquiry was ordered. In the enquiry the respondent was given adequate chance to defend himself. In the enquiry, the charges framed against the delinquent was held proved. Therefore, he was dismissed from service for dereliction of duty.

3. Challenging the order of dismissal, the respondent herein had approached this Court by filing writ petition in W.P.No.23999 of 2012. In the writ petition notice was ordered, the appellants herein/respondent had filed counter. After hearing both parties, the learned Single Judge had set aside the order of dismissal and directed the appellants herein to consider the case as compulsory retirement, so, that the retirement benefits will be given to the family of the writ petitioner. Aggrieved by the same, the appellants had approached this Court by filing this writ appeal stating that if the order of the single Judge is accepted, then the police force, which is a disciplined force, cannot be expected to maintain discipline.

4. Respondent herein, who is the writ petitioner, continuously absented himself from duty. Therefore, several enquiries were conducted, based on the enquiry, punishment was also effected and finally the service of the respondent was put an end by dismissing himself from service based on the finding in the departmental enquiry.

5. Perused the order passed by the learned Single Judge and the records. The learned Single Judge had observed in para 7 that eventhough the arguments putforth by the learned Special Government Pleader is found justified, if the dismissal order is allowed, the family of the writ petitioner will be made to suffer financially. Only considering the welfare of the family members, the learned Judge had, on humanitarian ground, modified the order in the welfare of the family members of the writ petitioner. The end result of the order passed by the learned

single Judge is the same as that of the order passed by the appointing authority/the respondent in the writ petition considering the larger interest of the public. At the same time for the wrong committed by the writ petitioner the family cannot be punished. Therefore, considering the family circumstances, the learned Single Judge had observed that instead of dismissal from service, it is to be substituted with penalty of compulsory retirement, so, that the family is not affected. This Court finds no error in the order passed by the learned Single Judge for this Court to interfere.

In the result, Writ Appeal is dismissed. Consequently, connected Miscellaneous Appeal is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

dh
To

1. The Additional Director General of Police,
(Law and Order),
Chennai - 4.
2. The Deputy Inspector General of Police,
Coimbatore Range, Coimbatore - 18.
3. The Superintendent of Police,
District Police Office,
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+1cc to the Government Pleader, S.R.No. 82521

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