



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2021

CORAM

THE HON'BLE MR. JUSTICE C.SARAVANAN

W.P. No.19078 of 2021

and

W.M.P. No.20353 of 2021

(Through Video Conferencing)

N.Ganesan

... Petitioner

Vs

1. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 08.

2. The Superintendent of Police,
Tiruvannamalai District,
Thiruvannamalai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in connection with the impugned order passed by him in Rc.No.56342/AP2(2)/2017 dated 22.11.2019 and the consequential order passed by the 2nd respondent in C.No.H2/PR.80/2015 dated 29.04.2020 and quash the same and to grant all consequential service and monetary benefits.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.L.S.M.Hasan Fazal,
Government Advocate

ORDER

The petitioner was dismissed from service on 03.03.2016 by the second respondent Vide order dated 03.03.2016 bearing reference in P.R.No.20/2015. Against the aforesaid order passed by the second respondent, the petitioner preferred an appeal before the Appellate Authority and also filed a mercy petition before the first respondent. Later the petitioner has also approached this Court in W.P.No.8733 of 2017.



2. Vide order dated 29.08.2018, this Court held that the petitioner had a valid reason for being absent on account of hospitalization of his wife and that the punishment of compulsory retirement imposed was shockingly disproportionate to the alleged misconduct. The learned Single Judge therefore directed the appellants to revisit the punishment and impose any other punishment. Aggrieved by the said order, the respondents filed an Intra Court Appeal before the Division Bench of this Court in W.A.No.2318 of 2019, Vide order dated 26.08.2019, the Division Bench dismissed W.A.No.2318 of 2019 with the following observations:-

"15. The learned Single Judge has considered the entire background facts and arrived at a right conclusion. Since the learned Single Judge has taken into account all the background facts, there is no reason to take a different view in the Intra Court Appeal.

16. We direct the appellants to comply with the order passed by the Writ Court by revisiting the punishment of compulsory retirement by reinstating him into service and by passing any other punishment other than compulsory retirement. Such exercise shall be completed within a period of one (1) month from the date of receipt of a copy of this Judgment.

17. It is open to the appellants to indicate in the said order that in the event of any misconduct of the like nature in future, no leniency would be shown to the respondent.

18. The Intra Court Appeal is dismissed with the above observation. No cost. Consequently, connected Miscellaneous Petition is closed."

3. Further, appeal against the aforesaid order passed by the Division Bench of this Court was also dismissed by the Hon'ble Supreme Court. Pursuant to the dismissal of the two of the appeals mentioned above, the second respondent passed the impugned order dated 13.12.2019 by reinstating the petitioner into service with modified punishment of "Postponement of increment for a period of three years, which shall operate to postpone his future increments from the date of original orders".

4. It is submitted that the impugned orders passed by the second respondent will have an adverse impact on the pension payable to the petitioner. It is further submitted that the punishment of "Postponement of increment for a period of three years, which shall operate to postpone his future increments from the date of original orders" is also disproportionate for



the alleged delinquency of the petitioner.

5. It is noticed that the petitioner has an alternate remedy to file an appeal against the order imposing the above punishment. Therefore, this writ petition is not maintainable.

6. Therefore, this writ petition is disposed by directing the petitioner to approach the appellate authority against the impugned order passed by the first respondent vide order dated 22.11.2019, bearing reference in Rc.No.56342/AP2[2]/2017 and the consequential direction of the second respondent in so far as it seeks to implement the order of the first respondent.

7. The impugned order imposing the punishment shall however stand suspended for a period of six months from the date of receipt of a copy of this order and to enable the petitioner to file an appeal before the appellate authority. In case, the petitioner files an appeal within a period of 30 days, the Appellate Authority shall dispose the appeal within a period of six months thereafter.

8. This writ petition stands disposed with the above observations. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

rgm/drl

1. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 08.

2. The Superintendent of Police,
Tiruvannamalai District,
Thiruvannamalai.

+1cc to M/s.S.Sivakumar, Advocate SR. No.45977

+1cc to the Government Pleader SR. No.46179

W.P.No.19078 of 2021

and

W.M.P.No.20363 of 2021

AJS (CO)

PR (30/11/2021)