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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 13.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.1234 of 2017

E.M.Mohan

...Petitioner

Vs

1.The State of Tamil Nadu
Rep by the Principal Secretary,
Home (Police-V) Department,
Fort St.George, Chennai-600 009.

2.The Director General of Police,
Mylapore, Chennai-600 004.

3.The Deputy Inspector
General of Police,
Mylapore, Chennai-600 004.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the orders of the disciplinary authority/third respondent made in C.No.C2/PR 27/2005 dated 18.12.2006, as confirmed by the appellate authority/second respondent in Rc.No.16933/AP IV(2)/2008 dated 06.05.2008 and that of the consequential rejection by the Government/ first respondent vide its G.O. 2(D) No.104 Home (Pol.V) Department dated 08.04.2014 and that of the further rejection in the review/ cancellation of punishment in Letter No.64708/Pol.V/2015-1 dated 20.10.2015 by the first respondent as communicated vide proceedings Rc.No.C1/1699/2016 dated 03.03.2016 by the third respondent and to quash the same and to consequently direct the respondents to extend all benefits both service and monetary.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.K.V.Sajeew Kumar,
Government Counsel



ORDER

By consent of both the parties, this writ petition is taken up for final disposal.

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2. Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 reads as under:-

"In the case of an appeal against an order imposing any penalty specified in rule 8 or 9, 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 pass orders."

3. A perusal of the aforesaid rule imposes an obligation on the part of the appellate authority to clearly establish the facts of the case on which punishment order was based and further establish that such facts afford sufficient grounds for taking action. Apart from these two requirements, Rule 23 also obligates the appellate authority to establish the proportionateness of the penalty with that of the charges.

4. In the present writ petition, the petitioner herein, who was employed as a Junior Assistant, was imposed with a punishment of dismissal from services for charges relating to unauthorized absence and the disciplinary authority has taken into account all the past punishments imposed on the petitioner for the delinquencies of absence and other official lapses. As against the order of punishment, the petitioner had preferred an appeal before the second respondent herein and by an order dated 06.05.2008, the appeal came to be rejected in the following manner:-

"6) I have gone through the PR file and the mercy petition carefully. Charge against the petitioner is serious and was amply proved by the Enquiry Officer through the prosecution exhibits. He was dismissed from service for the delinquency for 11 months long absence from the service. Hence, I decline to interfere with the punishment imposed on the delinquent. Hence this mercy petition is rejected."

5. Apparently, the aforesaid order is not only a non-speaking order, but also in gross violation of the procedure contemplated under Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The very purpose for which the statutory rules have afforded an opportunity to the delinquent



to prefer an appeal is to put forth their grievances with regard to the infirmities alleged by them as against the order of the disciplinary authority. Though it is claimed by the learned counsel for the petitioner that he was raised several grounds challenging the order of punishment, it is rather unfortunate that the second respondent herein had chosen to reject all these grounds with a simple one line order.

6. In view of the appeal order being in violation of Rule 23, the same cannot be sustained. In this background, this Court is of the view that the appellate authority can be given an opportunity to reconsider the grounds raised by the petitioner in his appeal and pass a detailed order in conformity with the procedure contemplated under Rule 23.

7. In the light of the above observations, the impugned order of the second respondent dated 06.05.2008 is quashed and the matter is remitted back to the second respondent herein for fresh consideration.

8. Though it is stated by the learned Government Counsel appearing for the respondents that the petitioner herein has not preferred an appeal as contemplated under Rule 23, but has only filed a petition to cancel the punishment imposed, the petition submitted by the petitioner dated 30.01.2008 could be construed as an appeal petition.

9. The petitioner herein is granted liberty to file fresh grounds of appeal, within a period of 15 days from the date of receipt of a copy of this order. On receipt of such fresh appeal, if any, the second respondent shall consider the same on its own merits and in accordance with law and pass a detailed speaking order, addressing all the grounds raised by the petitioner herein, in conformity with Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, preferably within a period of 3 months from the date of receipt of the appeal petition.

10. In view of quashing of the order of the second respondent dated 06.05.2008, the subsequent order passed in G.O. (2D) No.104, Home (Pol.V) Department dated 08.04.2014 is also quashed.

11. Accordingly, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



hvk

To

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- 1.The Principal Secretary,
Home (Police-V) Department,
Fort St.George, Chennai-600 009.
- 2.The Director General of Police,
Mylapore, Chennai-600 004.
- 3.The Deputy Inspector
General of Police,
Mylapore, Chennai-600 004.

+1cc to Mr.L.Chandrakumar, Advocate (SR No.32873)

W.P.No.1234 of 2017

RSV (CO)
PR (05/08/2021)