



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.01.2021

CORAM

**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MRS.JUSTICE S.ANANTHI**

**W.A. (MD)No.1268 of 2020
and
C.M.P. (MD)No.7226 of 2020**

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home Department,
St. George Fort, Chennai - 9.

2.The Director General of Police,
O/o. the Director General of Police,
Post Box No.601,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai - 4.

... Appellants/Respondents

Vs.

N.Baskaran,
Deputy Superintendent of Police,
Prohibition Enforcement Wing,
Ramanathapuram District.
[Now serving in Kanyakumari District]

... Respondent/Petitioner

Prayer : Appeal filed under Clause 15 of the Letters Patent Act against the order passed by this Court in W.P.(MD)No.20929 of 2018, dated 03.03.2020.

Prayer in WP(MD). 20929/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st respondent in G.O.(2D).No.319 Home (SC) Department dated 03.11.2017 and quash the same as illegal and consequently direct the respondents to promote the petitioner as Additional Deputy Superintendent of Police with effect from the date on which his junior got promotion with continuity of service and all



other attended monetary benefits within the period that may be stipulated by this Hon'ble Court.

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For Appellants : Mr.K.P.Krishnadoss
Special Government Pleader

For Respondent : Mr.M.Ajmalkhan
Senior Counsel
for M/s.Ajmal Associates

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J U D G M E N T

(Judgment of the Court was delivered by M.M.SUNDRESH, J)

This Writ Appeal has been preferred by the appellants against the order of the learned Single Judge, who upon hearing the learned counsel appearing for the parties was pleased to set aside the Government Order, passed in G.O.(2D)No.319, Home (SC) Department, dated 03.11.2017, by which, the earlier order passed for compulsory retirement was modified into withholding of increment for a period of three years with cumulative effect.

2.While the respondent herein was working as Inspector of Police, charges have been framed against him. Charge No.1 is with respect to detaining the accused persons under illegal custody from 25.01.1998 to 31.01.1998 at Ramanathapuram Bazaar Police Station, followed by torture, recording of the confession statement and wrongly implicating them in Crime No.61 of 1997, for the offences under Sections 376, 302 and 201 I.P.C. Charge No.2 is with respect to detention of one S.Ramachandran, S/o.Srinivasan, from 25.01.1998 to 05.02.1998 and thereafter, tortured and compelled him to disclose the facts of the above said case, in which, the said S.Ramachandran was in no way connected.

3.Aggrieved over the order of compulsory retirement passed in G.O.(2D)No.19, Home (SC) Department, dated 22.01.2015, the respondent sought for review on the premise that the other Officer, by name, P.Kannappan, against whom also, charges have been framed, got himself exonerated from the said charges.

4.The respondent herein was sent to assist the said R.M.Madhavan only from 28.01.1998 to 31.01.1998, whereas, the illegal detention was between 25.01.1998 and 05.02.1998. In the impugned order, dated 03.11.2017 itself, two factors have been recorded viz., the charges framed against the respondent and R.M.Madhavan are one and the same and while the first charge against the respondent was not proved, the same was proved against the said

also involve

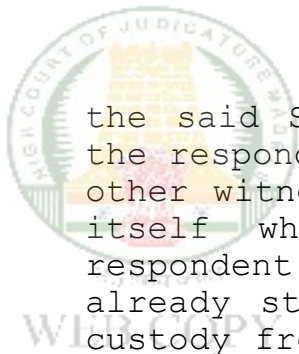
5. The learned Single Judge by taking note of the observation made in the impugned order, was pleased to hold that the respondent is entitled to get the Writ Petition allowed, as it is the other Officer, who was responsible for the occurrence.

6. The learned Special Government Pleader appearing for the appellants submitted that the witness S. Ramachandran did not speak about the complicity of the respondent in the occurrence. Therefore, though he is in a better position than P. Kannappan, Superintendent of Police, he cannot be exonerated fully of the charges.

7. The learned Senior Counsel appearing for the respondent submitted that the impugned order says that there is no evidence other than that of S. Ramachandran and hence, the reasoning given by the disciplinary authority for punishing the respondent cannot be looked into. As the said S. Ramachandran himself has spoken that only the other Officer is responsible, which has been recorded by the learned Single Judge, the same requires to be confirmed. It is further submitted that the respondent came to the place of occurrence to assist the said R. M. Madhavan only on 28.01.1998, whereas the arrest was made on 25.01.1998.

8. We have heard Mr.K.P.Krishnadoss, learned Special Government Pleader appearing for the appellants and Mr.M.Ajmalkhan, learned Senior Counsel appearing for the respondent and perused the materials available on record.

9. Admittedly, as against the respondent herein, one charge was stated to be proved. On a perusal of the impugned order, dated 03.11.2017, it is seen that the statement of S.Ramachandran alone was taken into consideration. Though the learned Special Government Pleader appearing for the appellants placed reliance upon the statements said to have been made by one Alex and Babu Kanna, we are not inclined to give any credence to the same, since the impugned order has been passed by taking into consideration the statement of S.Ramachandran alone. There is no material to hold that the said Service Report on which the order has implicated the respondent herein. Admittedly,



the said S.Ramachandran has implicated the higher officer and not the respondent herein. The alleged implication of the respondent by other witnesses, was not taken into consideration by the Government itself while considering the reduction of punishment. The respondent has also joined duty in the said place on 28.01.1998 as already stated, whereas the said S.Ramachandran was under illegal custody from 25.01.1998 onwards. Therefore, with regard to illegal detention as per Charge No.2, by the respondent itself goes. In a departmental proceedings, it is for the Department to prove the charges on the basis of the preponderance of probabilities. The learned Single Judge has rightly come to the conclusion that the same has not been done in the case on hand, especially, in the light of the Government Order, which has been challenged by the respondent himself.

10.Thus, we do not find any reason to interfere with the reasoning adopted by the learned Single Judge. Accordingly, this Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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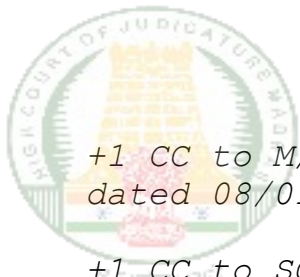
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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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- 2.The Director General of Police,
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<https://hcservices.ecourts.gov.in/hcservices/>



+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-559[F]
dated 08/01/2021)

+1 CC to SGP (SR-440[F] dated 07/01/2021)

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W.A. (MD)No.1268 of 2020

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MJ (CO)

NR (19/01/2020) 5P : 5C