



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.09.2021

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THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)Nos.19656 of 2016 and 4394 of 2017

and

W.M.P. (MD)Nos.14168 of 2016, 3548 and 3549 of 2017 and 868 of 2021

J.Yuvaraj

... Petitioner in both cases

vs.

1.The State of Tamil Nadu,
represented by its Secretary to Government,
Home Department,
Fort St.George, Chennai - 600 009.

2.The Commissioner of Police,
Madurai City, Madurai.

3.The Deputy Commissioner of Police (Law and Order),
Madurai City, Madurai.

4.The Assistant Commissioner of Police,
Thideernagar (Law and Order) Division,
Madurai City, Madurai.

... Respondents in both

cases

PRAYER in W.P.(MD)No.19656 of 2016:-: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned charge memo issued by the respondent No.3 herein, dated 08.09.2016 in Tha.Pa.No.D` (1)/75/K.Aa/Maa/2016 and to quash the same.

PRAYER in W.P.(MD)No.4394 of 2017:-: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relates to the impugned proceedings of the respondent No.2 in CPO No.318/2017 - C.No.A3/7700/2017, dated 03.03.2017 and to quash the same insofar as treating the petitioner as not eligible for upgradation to the post of Head Constable and further to direct the respondents to promote the petitioner to the post of Head Constable with effect from 01.03.2017 by suitably placing him above his immediate junior with all monetary and consequential benefits.

For Petitioner : Mr.D.Sivaraman

For Respondents : Mr.M.Linga Durai
Government Advocate



ORDER

W.P (MD) No.19656 of 2016 is filed for issuance of a Writ of Certiorari, to quash the impugned charge memo, issued by the third respondent, dated 08.09.2016.

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2.W.P.(MD) No.4394 of 2017 is filed for issuance of a Writ of Certiorari and Mandamus to quash the impugned proceedings of the second respondent, dated 03.03.2017, insofar as it treats that the petitioner as ineligible for upgradation to the post of Head Constable and to direct the respondents to promote the petitioner to the post of Head Constable with effect from 01.03.2017 by placing the petitioner above his immediate junior with all monetary and consequential benefits.

3.Heard Mr.D.Sivaraman, learned Counsel appearing for the petitioner and Mr.M.Linga Durai, learned Government Advocate appearing for the respondents.

4.Since both the Writ Petitions are connected and it is filed by the same petitioner, they are taken up together and disposed of by this common order.

5.Brief facts, that are necessary for the purpose of disposal of these Writ Petitions, are as follows:

5.1.The petitioner was working as Police Constable Grade-I in Police Department. It is the specific case of the petitioner that his father died leaving behind his mother and three children including the petitioner, who is one of his sons. Since the petitioner's father lefts some properties, the family, as a whole, decided to sell one of the properties inherited from the petitioner's mother for the purpose of purchasing another property. Formally, the petitioner submitted a representation to the second respondent on 15.04.2013 seeking permission to purchase the property. It was, thereafter, the petitioner along with his family members sold the co-ownership property on 10.06.2013. Out of the sale proceeds, it is stated that the petitioner and his brother jointly purchased a land.

5.2.It is also stated by the petitioner that the consideration for the joint purchase by the petitioner and his brother was from the share of the petitioner and his brother in the sale proceeds realised by selling the co-ownership property. It is admitted that the petitioner has informed the respondents regarding the sale and the subsequent purchase by another communication, dated 12.02.2014. In the representation, dated 12.02.2014, the petitioner specifically requested the respondents to make endorsement about the sale transaction in the service register of the petitioner. After the prior application and the later communication, dated 12.02.2014, the petitioner received communication, dated 10.06.2015, seeking further



particulars about the newly purchased property. Since application seeking permission is pending, further details were required.

5.3.The petitioner submitted a reply, dated 05.07.2015. It was thereafter, the second respondent issued a memo to the petitioner seeking explanation from the petitioner, as if the explanations earlier submitted by the petitioner on 05.07.2015, are not sufficient and the petitioner was to submit his explanation, as to why the information regarding acquisition of property, by a sale deed, dated 28.06.2013, was communicated only on 12.02.2014 (with a delay of eight months). To put it short, the second respondent wanted the petitioner to submit an explanation, why the petitioner did not submit any application for permission before 28.06.2013, when the property was purchased and why the petitioner started construction with a bank loan on 14.08.2013.

5.4.A detailed explanation was also submitted by the petitioner to the notice/communication on 25.09.2015. It is to be seen that the second respondent in the communication, dated 10.06.2015, has specifically acknowledged the receipt of the application submitted by the petitioner on 15.04.2013, 03.05.2015 and the communication dated 12.02.2014. However, the memo, that was issued to the petitioner, does not refer to the application submitted by the petitioner on 15.04.2013 to purchase the property.

5.5.Perturbed by the repeated memos issued by the second respondent, the petitioner submitted an application under Right to Information Act, seeking certain particulars with reference to the Service Rules and the Service Conditions and the steps that were taken by the respondents pursuant to the application submitted by the petitioner seeking permission to purchase the property. Thereafter, the second respondent directed the fourth respondent to conduct a preliminary enquiry and forward the draft charge memo. In response to the communication, dated 23.01.2016, the petitioner submitted a detailed explanation and requested the fourth respondent to drop the proposal to frame charges against the petitioner. In the meanwhile, in response to the application submitted by the petitioner under Right to Information Act, a reply was given specifically stating that though an application for permission was submitted on 15.04.2013, the petitioner purchased the property on 28.06.2013 before obtaining prior permission and that therefore, departmental action has been initiated.

5.6.A representation was also sent by the petitioner to the second respondent on 01.09.2016, before issuance of the charge memo explaining the real position to the second respondent. Thereafter, the charge memo, dated 08.09.2016, was issued to the petitioner by the third respondent. The only charge that was framed against the petitioner reads as follows:



“திரு.யுவராஜ், முதல் நிலைக்காவலர் 588, C-1 திடீர்நகர் காவல் நிலையம் ச&ஓ, மதுரை மாநகர் என்பவர் மீதான குற்றம். குற்றம் :-1

மதுரை மாநகர் காவல் C-1 திடீர்நகர் காவல் நிலையம் ச&ஓ பிரிவில் காவலராக பணியாற்றி வரும் நீவிர் கடந்த 15.04.2013நதேதி மதுரை மாடக்குளம் கிராமத்தில் வீடு கட்ட உள்ளதாக அனுமதி கோரி மனு தாக்கல் செய்தும், அம்மனு மீதான விசாரணை முடித்து எந்தவிதமான உத்தரவும் காவல் ஆணையர் அலுவலகம் மூலமாக தெரிவிக்காத நிலையிலேயே மேற்படி இடத்தை 28.06.2013நதேதி மதுரை சார்பதிவாளர் தெற்கு பத்திரபதிவு அலுவலகத்தில் உமது பெயரிலும், உமது அண்ணன் பெயரிலும், பதிவு செய்து கொண்டும், மதுரை பைபாஸ் ரோடு வசந்தநகர் கிளையில் வீடு கடன் லோன் பெற்று உள்ளது தமிழ்நாடு காவலர் நடத்தை விதி 9 (1)(ய)(டி) மீறிய ஒழுங்கீனமான குற்றம்.”

5.7.In response to the charge memo, dated 08.09.2016, the petitioner also submitted a detailed explanation by a representation, dated 30.09.2016. After submitting the explanation, the petitioner filed the first Writ Petition to quash the impugned charge memo, dated 08.09.2016.

5.8.Since the petitioner's promotion was not considered and the second respondent held that the petitioner is not eligible for upgradation to the post of Head Constable, the petitioner filed the second Writ Petition in W.P.(MD)No.4394 of 2017 challenging the proceedings of the second respondent, dated 03.03.2017 and for further direction for promotion. During the pendency of the Writ Petition, the petitioner obtained an order of interim stay of further proceedings pursuant to the impugned charge memo in W.P.(MD).No.19656 of 2016.

6.The question arise before this Court is whether the charge memo is legally sustainable, as the relief is to quash the charge memo.

7.In the counter affidavit, it is stated that the petitioner has violated Rules 9(1)(a) and (b) of Tamil Nadu Subordinate Police Officers Conduct Rules, 1964, as no permission was accorded to the petitioner for the purchase of a land.

8.The learned Counsel for the petitioner submitted that the charge memo is contrary to the settled principles of law and the specific provisions, under which charge is framed. Referring to Tamil Nadu Subordinate Police Officers Conduct Rules, 1964, the learned Counsel for the petitioner submitted that the petitioner has duly applied for permission on 15.04.2013 and that it is also acknowledged by the respondents in their communication. Since Rules 9(1)(a) and (b), does not contemplate prior permission either to acquire or to put up construction, the whole charge is contrary to the Rules framed under Tamil Nadu Subordinate Police Officers Conduct Rules, 1964. Since the averments found in the charge memo does not construe a misconduct in terms of Rule 9(i)(a) of Tamil Nadu Subordinate Police Officers Conduct Rules, 1964, the impugned



charge memo, according to the learned Counsel for the petitioner, is liable to be quashed. For understanding the Rule position, it is necessary to extract Rule 9 of Tamil Nadu Subordinate Police Officers Conduct Rules, 1964, and accordingly, the Rule 9 is extracted below:

"Rule 9. Movable, immovable and valuable property:

(1) (a) No Police officer shall except after notice to the prescribed authority acquire or dispose of any immovable property by lease, mortgage purchase, sale, gift, exchange or otherwise either in his own name or in the name of any member of his family:

Provided that any such transaction conducted otherwise than through a regular or reputed dealer, shall require the previous sanction of the prescribed authority.

Such a notice will be necessary even where any immovable property is acquired by any member of the family of the police officer out of the resources of the Police officer.

(b) Every member of the service, for the construction or extension of a house, shall report to the prescribed authority in the following manner :-

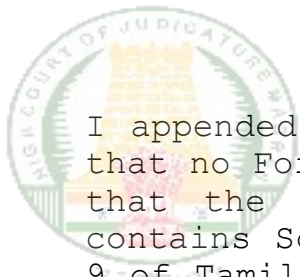
(i) Before starting the construction or extension, he shall report or seek permission as the case may be, in Form VI in Schedule I appended to these rules.

(ii) After completing the construction or extension, he shall report in Form VII in Schedule I appended to these rules,

(iii) The details in Form VI and VII in Schedule I appended to these rules shall be furnished whenever it is possible to do so. Where, however, it is not possible to furnish the details he shall mention the covered area on which the building is proposed to be erected and the estimated cost of the building."

9.As per Rule 9(1)(a), no police officer shall acquire or dispose of any immovable property either in his own name or in the name of any member of his family without notice to the prescribed Authority. In the present case, the admitted fact would reveal that the petitioner has sought for prior permission for disposing of an immovable property owned by his family and for purchasing another property jointly in the name of his brother and in his name. The respondents have probably taken the advantage of the application submitted by the petitioner for permission. As per Rule 9(1)(a), no prior permission is required. The rule only insisted a prior notice to the prescribed Authority. This has been done by the petitioner, as acknowledged by the respondents.

10.Similarly, Rule 9(1)(b) also requires a report to the prescribed Authority for the construction or expansion of a house. It is to be seen that the Tamil Nadu Subordinate Police Officers Conduct Rules, 1964, though refers to Form 6 and Form 7 in Schedule-



I appended to the Rules, it is brought to the notice of this Court that no Form 6 or Form 7 is appended to the Rules. It is to be seen that the Tamil Nadu Government Servants' Conduct Rules, 1973, contains Schedule-I with Form 6 and Form 7. The provisions of Rule 9 of Tamil Nadu Subordinate Police Officers Conduct Rules, 1964, is nothing but a replica of Rule 7 of Tamil Nadu Government Servants' Conduct Rule, 1973. In other words, Rule 9 of Tamil Nadu Subordinate Police Officers Conduct Rules, 1964 and Rule 7 of Tamil Nadu Government Servants' Conduct Rules, 1973, are framed in the same language, though there is a small difference. It is seen that the provisions of Rule 9(1)(a) of Tamil Nadu Subordinate Police Officers Conduct Rules, 1964, and Rule 7(1)(a) of Tamil Nadu Government Servants' Conduct Rules, 1973, are in *pari materia* and the Rule, as a whole, conveys the same meaning, if proper construction is applied.

11.The application submitted by the petitioner would satisfy the requirement of Rule 9(1)(a), as the petitioner has duly informed the second respondent. The said communication is also acknowledged by the second respondent and the receipt of the first communication from the petitioner in April 2013, is admitted in the charge memo. The second respondent even in the counter affidavit has stated that the petitioner has failed to obtain permission from the respondents. When no permission is required as per Rules, the charge framed, as such, is misconceived and it is without any Authority. As contended by the learned Counsel for the petitioner, the petitioner has not committed any misconduct in terms of Rule 9(1)(a) and the charge itself is unsustainable. The contention of the second respondents in the counter affidavit that no permission was granted to the petitioner for the purchase of land, clearly reveals that the respondents have not properly understood the Rule position. The charge memo is, therefore, based on misconception of Rule 9(1)(a) of Tamil Nadu Subordinate Police Officers Conduct Rules, 1964.

12.The learned Counsel for the petitioner relied upon the judgment of a learned Single Judge of this Court in W.P.(MD)No.11099 of 2012, dated 17.04.2018 in the case of **M.S.Subburaman vs the Government of Tamil Nadu and others**. That was a case wherein, in a similar factual situation, a charge memo was issued to a Government servant in terms of Rule 7(1)(a) of Tamil Nadu Government Servants' Conduct Rules, which is applicable to the Government servant and an enquiry was conducted. After holding that the charges are proved against the petitioner therein based on the enquiry report, a punishment was also imposed. Challenging the same, a Writ Petition was filed. While interpreting the Rule, this Court has held as follows:

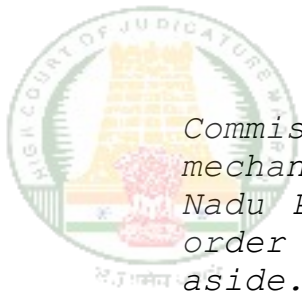
"14.This Court has considered the rival submissions of the learned counsels. As rightly contended by the learned counsel for the petitioner that as far as the first charge is concerned, intimation to the authority is sufficient as



per the Tamil Nadu Government Servant Conduct Rules and therefore, the Charge 1 cannot be legally sustained and therefore, there is merit in the contention put forth by the learned counsel for the petitioner. As far as the second charge is concerned, it has to be seen that the petitioner thought fit to inform the official well in advance about the intention for putting up construction in the land and he had also submitted the necessary particulars about the loan obtained by him from the nationalised bank. In fact, when further details were asked from the petitioner, the same were also complied with by the petitioner. That being the case, how is that the petitioner be blamed for not waiting for actual permission from the Government. When the fact of the matter was that the petitioner was also made to pay substantial interest for house loan obtained by him from the Bank. Therefore, by the force of circumstances, the petitioner had to commence the construction. Needless to mention that by passage of time, the cost of construction materials would also escalate and therefore, the petitioner cannot be made to wait for indefinite period for the permission to be granted by the official concerned.

15. As far as the objection by the respondent that no Government Servant should resort to purchase the property or put up construction without knowledge of the official concerned, in the present case on hand, the petitioner had promptly informed his intention to purchase the land well in advance to the authorities concerned and only when there was no prompt action forth coming from the respondent side, he had to purchase the property and thereafter, he had immediately chosen to inform the officials about his intention for construction of the plot purchased by him. Therefore, the intention of the petitioner to inform the authority cannot be disputed and therefore, this Court is of the considered view that the objection of the respondent also has been fulfilled in this case.

16. Further, the order passed by the Government/the first respondent herein also cannot be sustained in this case for the simple reason that the first respondent seems to have followed the advice given by the Tamil Nadu Public Service Commission and taken a decision in the matter. This Court has held in several decisions that the appellate authority has to exercise his mind independently in dealing with the disciplinary appeals. The appellate authority cannot abdicate its statutory responsibility to any outside agency like Tamil Nadu Public Service



Commission and reject the appeal dutifully and mechanically on the basis of the advice given by the Tamil Nadu Public Service Commission. On this ground alone, the order passed by the appellate authority has to be set aside."

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13. Reading of Rules 9(1)(a) and 9(1)(b), the charge memo issued by the respondents is wholly misconceived, as the petitioner has not violated Rule 9(1)(a) or 9(1)(b) of Conduct Rules. Therefore, the charge memo is liable to be quashed on the ground that it is invalid and contrary to the very Rule on the basis of which charge was framed against the petitioner. Hence, the impugned charge memo, dated 08.09.2016 is quashed and the Writ Petition in W.P.(MD) No.19656 of 2006 is allowed.

14. The prayer in the second Writ Petition is consequential to the prayer sought for in the first Writ Petition. Since the charge memo is pending, the respondents have refused to include the petitioner's name in the list of eligible persons to be upgraded as Head Constable with effect from 01.03.2017. The reason for excluding the name of petitioner is obvious. It is stated in the proceedings dated 03.03.2017, the petitioner's name was found ineligible, as a charge memo under Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, is pending against the petitioner. In view of the order passed in the first Writ Petition quashing the charge memo, dated 08.09.2016, the impugned order, dated 03.03.2017 in W.P.(MD) No.4394 of 2017 is liable to be quashed.

15. Accordingly, the Writ Petition in W.P.(MD) No.4394 of 2017 is also allowed and the impugned proceedings, dated 03.03.2017, insofar as it treats that the petitioner is not eligible for upgradation to the post of Head Constable, is quashed. The second respondent is directed to promote the petitioner to the post of Head Constable with effect from 01.03.2017 by placing the petitioner in suitable posts above his immediate junior and the petitioner is entitled to other monetary and consequential benefits. The entire exercise shall be done by the respondents within a period of twelve weeks from the date of receipt of a copy of a copy of this order.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Tmg/cmr



To

1.The Secretary to Government,
The State of Tamil Nadu,
Home Department,
Fort St.George, Chennai - 600 009.

2.The Commissioner of Police,
Madurai City, Madurai.

3.The Deputy Commissioner of Police (Law and Order),
Madurai City, Madurai.

4.The Assistant Commissioner of Police,
Thideernagar (Law and Order) Division,
Madurai City, Madurai.

+1 CC to M/s.SPL.GP (SR-30852[F] dated 01/10/2021)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-30808[F] dated 30/09/2021)

W.P. (MD)Nos.19656 of 2016 and 4394 of 2017

29.09.2021

RD/JC (29.10.2021) 9P 7C