



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05/01/22
Pronounced on	10.01.2022

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Coram:

The Honourable Mr. Justice M.DURAI SWAMY
and
The Honourable Mr. Justice J.SATHYA NARAYANA PRASAD

W.A.No.2913 of 2012

G.Chakrapani

... Appellant/Petitioner

Versus

1.The Principal Secretary to Government,
Home Department,
Secretariat, Chennai - 600 009.

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

3.The Deputy Inspector General of Police Training,
Chennai - 600 083.

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent,
praying to set aside the order of the learned Judge passed in
W.P.No.4373 of 2009 dated 18.08.2011.

Prayer:- W.P.No.4373 of 2009:-

Writ Petition is preferred under Article 226 of the
Constitution of India, praying for the issue of a writ of
certiorarified mandamus, calling for the records relating to the
2nd respondent proceedings in Rc.No. GB 6 (1)/184815/07 dated
12.06.2008 and consequential order passed by the 3rd respondent
in Rc.No.B1/29/1660/2008 of C.O.No./321/2008 dated 11.07.2008
with respect to the implementation of punishment of postponement
of increment for the period of 1 year without cumulative effect
w.e.f. 1.7.2008 and quash the same and direct the respondents to
promote the petitioner to the post of P.A.(Admn.) from the date
of the promotion of his immediate Junior.

For Appellant : Mr.M.Muthappan



For Respondents : Mr.C.D.Modhi,
Government Advocate

J U D G E M E N T

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The Writ Appeal in W.A.No.2913 of 2012 is directed against the order passed by the learned Single Judge in W.P.No.4373 of 2009 dated 18.08.2011, dismissing the writ petition.

2. Heard the learned counsel on both sides and perused the materials placed before us.

3. The facts of the case in a nutshell are as follows:

The appellant was initially appointed as Junior Assistant in the office of the Commissioner of Police through Tamil Nadu Public Service Commission on 14.07.1976. Thereafter, he was promoted as Assistant on 07.12.1983 and Superintendent on 28.12.1996. When he was working as Superintendent in the office of Crime Branch Criminal Investigation Department (CBCID), Chennai, he was suspended from service on 08.02.1999, for the pending criminal charges. While he was under suspension, on 16.06.1999, the Commandant, Tamil Nadu Special Police VIII Battalion issued a Show Cause Notice in P.R 19/99 for the charges under Rule 17(a) of Tamil Nadu Civil Service (Discipline & Appeal) Rules, 1955, for the delinquencies during the period from 09.05.1997 to 31.10.1997. The appellant did not give any reply to the aforesaid Show Cause Notice, and the Commandant, Tamil Nadu Special Police VIII Battalion, vide proceedings in F.PR 19/99 dated 05.12.1999, imposed a punishment of postponement of increment for a period of three years without cumulative effect on the appellant. However, the appellant did not prefer any appeal against the said proceedings.

4. In the meantime, the Criminal Court, vide order dated 28.06.2002, convicted the appellant for the offence under Section 342 & 354 of IPC, on the basis of which the Deputy Inspector General of Police, CBCID, Chennai-600 002 vide proceedings in K1/CB/2352/99 (DO 665/2002) dated 03.12.2002, dismissed the appellant from service. Challenging the order dated 28.06.2002 passed by the Criminal Court, the appellant preferred a Criminal Appeal No.1056 of 2002 before this Court and the same was allowed on 24.08.2006. As against the judgement dated 24.08.2006 passed by this Court in CrI.A.No.1056 of 2002, the respondents filed a Special Leave Petition (SLP) before the Honourable Supreme Court in Criminal Miscellaneous Petition No.5997 of 2007, however the same came to be dismissed on 15.05.2007. On 24.07.2007, the appellant gave a representation to the second respondent for reinstating him into service with all consequential service benefits. Since no order was passed, the appellant filed a writ petition in W.P.No.30106



of 2007 before this Court praying to quash the dismissal order dated 03.12.2002 and to direct the third respondent therein to reinstate him into service with all service benefits including monetary benefits. The said writ petition was disposed of by this Court, vide order dated 06.10.2007. The operative portion of the order passed by this Court in W.P.No.30106 of 2007 reads as follows:

"3. Considering the facts and circumstances of the case, it would be just and reasonable to direct the second respondent to consider the grievance of the petitioner, as put forth by him, in his representation dated 24.07.2007 and 28.08.2007 on merits and in accordance with law, taking into account that the petitioner was acquitted from the charges that have been levelled against him in CrI.A.No.1056 of 2002.

4. With the above direction, this writ petition is disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs."

5. Pursuant to the aforesaid order passed by this Court in W.P.No.30106 of 2007, the second respondent herein vide order dated 07.11.2007, directed the Deputy Inspector General of Police, CBCID, Chennai to reinstate the appellant into service with all service benefits as per law. Consequently, the Additional Director General of Police, CBCID, Chennai vide order dated 27.11.2007, reinstated the appellant into service and his period of suspension and out of service were regulated as duty for all purposes with reference to the provisions of FR 54. The second respondent vide order dated 29.11.2007, posted the appellant at Police Training College with effect from 28.11.2007 since the appellant reported duty at the office of the second respondent on 28.11.2007. Thereafter, on 03.12.2007, the appellant made a representation to the second respondent, to fix his seniority above his immediate Junior Mr.D.Jokkiah and include his name to get promotion as Personal Assistant (Administration).

6. The third respondent vide proceedings dated 07.02.2008, regularized the appellant's period of suspension as well as out of service and also fixed the pay, after deducting the pay for the punishment imposed by the Commandant Tamil Nadu Special Police VIII Battalion under Rule 17(a) of Tamil Nadu Civil Service (Discipline & Appeal) Rules, 1955, by postponement of increment, for a period of 3 years without cumulative effect from 01.07.2001 to 01.07.2003. As against the punishment imposed on the appellant by the Commandant, he gave a Mercy Petition to the second respondent and the same was considered by the second respondent and by his order dated 14.05.2008,



modified the punishment of the appellant for a period of one year postponement of increment without cumulative effect. But, the second respondent vide order dated 12.06.2008, directed to modify the pay regulation order dated 07.02.2008 passed by the third respondent, that the modified punishment of postponement of increment for the period of one year without cumulative effect should be given effect only from 01.07.2008 to 30.06.2009 as per ruling (6) under FR 24 since the appellant joined service only on 28.11.2007 and directed the third respondent to issue the modified order. Accordingly, the third respondent issued fresh order vide proceedings dated 11.07.2008. In view of the aforesaid order, the promotion of the appellant as Personal Assistant on par with his junior is also affected on the ground of currency of the punishment. Aggrieved by the order dated 12.06.2008 issued by the second respondent as well as the order dated 11.07.2008 issued by the third respondent, the appellant has filed the writ petition in W.P.No.4373 of 2009 before this Court and the same was dismissed on 18.08.2011, as against which, the appellant preferred the present writ appeal.

7. It can be seen that pursuant to the modified punishment, consequential proceedings dated 12.06.2008 and 11.07.2008 respectively were issued by the respondents 2 & 3. The modified punishment was directed to be implemented only after the date of joining of the appellant pursuant to his reinstatement on 28.11.2007. The pay and allowances, due to the appellant, consequent to the settlement of his suspension period and out of employment period as duty, has to be first regularized upto 28.11.2007 and the subsequent increment due to him on 01.07.2008 was to be postponed for one year without cumulative effect. The appellant was also informed that he has to undergo punishment in full for the whole period of one year in service from 01.07.2008 to 30.06.2009.

8. The main contention raised by the appellant is that the consequential order passed by the second respondent dated 12.06.2008 was erroneous and had failed to consider the spirit of FR 29(A), wherein, he should withhold the increment only at the first instance. Then, the punishment of postponement of increment should have been given immediately after the order and the same cannot be postponed and the interpretation given under Ruling 6 under FR 24 has nothing to do with the case of the appellant and his arrears of pay was also not paid pursuant to the direction issued.

9. Consequent to the reinstatement of the appellant into service on 28.11.2007, there were two periods of suspension undergone by him viz., from 08.02.1999 to 07.12.2002 and from 08.12.2002 to 27.11.2007 and those periods were directed to be regulated for duty for all purposes including for drawal of pay



and other allowances. While the appellant was under suspension, he had earned two punishments viz.,

(i) 'Postponement of increment for a period of three years without cumulative effect' in P.R.19/1999, which was subsequently modified into that of 'Postponement of increment for a period of one year' and

(ii) 'Postponement of increment for a period of three years without cumulative effect' in P.R.12/1999.

10. The above punishments could not be imposed on the appellant since he was under suspension. Under Ruling 6 of FR 24, an increment shall ordinarily be drawn as a matter of course unless it is withheld. Therefore, the charges which were pending against the appellant was an adequate reason for not authorizing the increment due to him. If the penalty of stoppage of increment is imposed on him as a result of the charges against him, his next increment could be withheld as there was no objection to withhold the increment subsequent to the period of service to which the charges relate. The two punishments, which were not implemented, were directed to be implemented with effect from 28.11.2007, the date on which he was reinstated to service. The spirit of FR 29(A) will not apply to the case of the appellant.

11. Moreover, it is admitted by the appellant that he has not challenged neither the penalty nor to regulate the period of suspension but has come up with the subject matter writ appeal only on the modality of giving effect to the two minor punishments which had become final. Hence, the stand taken by the respondents is not contrary to the existing rules.

12. While dismissing the writ petition, the learned Single Judge had taken into consideration all the aspects. The order passed by the learned Single Judge is just and proper. Hence, we do not find any ground to interfere with the order passed by the learned Single Judge. The Writ Appeal is devoid of merits and the same is liable to be dismissed.

13. Accordingly, the Writ Appeal is dismissed and the order passed by the learned Single Judge in W.P.No.4373 of 2009 dated 18.08.2011 is confirmed. No costs.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar



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1. The Principal Secretary to Government of Tamil Nadu,
Home Department,
Secretariat, Chennai - 600 009.
2. The Director General of Police,
Chennai - 600 004.
3. The Deputy Inspector General of Police Training,
Chennai - 600 083.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.2104
+1cc to the Government Pleader, S.R.No.2266

W.A.No.2913 of 2012

NR(CO)
CT 24/01/2022