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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.03.2022
Pronounced on : 24.03.2022

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.12242 of 2016
and
W.M.P.No.10579 of 2016

M.Palaniswamy

... Petitioner

Vs.

1. The Deputy Inspector General of Police,
Coimbatore Range, Coimbatore.
2. The Addl. Director General of Police,
Law & Order, Chennai 600 004.
3. The Director General of Police,
Tamil Nadu,
Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the first respondent in connection with the impugned order passed by him in C.No.D1/PR.2/2010 dated 24.05.2013, confirmed by the second respondent in RC.No.112699/API(1)/2013 dated 19.08.2014 and third respondent in RC No.193307/API(1)/2014 dated 29.02.2016 and quash the same.

For petitioner : Mr.K.Venkataramani,
Senior Counsel for
Mr. M.Muthappan

For Respondents : Mr.L.S.M.Hasan Fizal,
AGP for R1 to R3

ORDER

This writ petition has been filed to issue a Writ of Certiorari, to call for the records of the first respondent in



connection with the impugned order passed by him in C.No.D1/PR.2/2010 dated 24.05.2013, confirmed by the second respondent in RC.No.112699/API(1)/2013 dated 19.08.2014 and third respondent in RC No.193307/API(1)/2014 dated 29.02.2016 and quash the same.

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2. The case of the petitioner is as follows:

(i) The petitioner was appointed as Sub-Inspector of Police through selection conducted by the Tamil Nadu Uniformed Services Recruitment Board and appointed to service on 22.05.2000. He successfully completed his probation and his name had been included in the 'B' list. On attaining the service seniority and merit, his name has been recommended to be included in the 'C' list of Sub Inspectors, fit for promotion to the next higher post of Inspector of Police for the year 2009-10. At that point of time, the petitioner was issued with the charge memo under rule 3 (b) of the TNPSS (D & A) Rules, 1955, dated 19.12.2009, containing five articles of charges. The substance of the charges against the petitioner was that while conducting a vehicle check, he apprehended one Babulu Singh, who was riding a motor cycle bearing Registration No.TN-38A-4422, without any valid documents in an inebriated condition and the petitioner released the said person without taking any action and failed to hand over the accused before the local police station for further action, immediately. Further, the petitioner parked the seized vehicle in a private cycle stand at Satyamangalam for more than one year and handed over the document to one Kannaiyan, Sub-Inspector of Police, without getting any permission from the higher officers. The said vehicle had been misused by the said Kannaiyan with the connivance of the petitioner for his own purpose for considerable length of time.

(ii) An enquiry was initiated into the charges and on conclusion of the enquiry, a report was submitted on 22.01.2010, holding the charges proved against the petitioner. The petitioner represented against the findings as contained in the enquiry report, on 28.01.2010. After a lapse of about three years, the disciplinary authority vide his proceedings dated 24.05.2013, agreed with the findings of the enquiry report and imposed the penalty of compulsory retirement from service on the petitioner. The petitioner being aggrieved by the penalty, preferred a statutory appeal to the second respondent on 03.07.2013. The second respondent appellate authority by his proceedings dated 19.08.2014, rejected the appeal and thereby confirmed the order of penalty of compulsory retirement imposed on the petitioner. As against the appellate authority's order, the petitioner filed a review petition before the third respondent on 01.10.2014. However, the same was not disposed of on time.



(iii) The petitioner was therefore constrained to approach this Court in W.P.No.33399 of 2015, seeking direction to dispose of the review petition by the third respondent. The said writ petition was disposed of on 16.10.2014, directing the third respondent to pass orders on the review petition within a period of eight weeks from the date of receipt of a copy of that order. In pursuance of the direction of this Court, the third respondent by order dated 29.02.2016, rejected the review petition by passing a non-speaking order as in the case of the appellate authority. As against the orders of the respondents, the petitioner is before this Court.

3. Mr.K.Venkataramani, learned Senior Counsel appeared for the petitioner and made elaborate submissions. Number of grounds have been raised in the writ petition and the same have been re-enforced by oral submissions made by the learned Senior Counsel. However, the learned Senior Counsel ultimately confined his arguments on the proportionality of the punishment imposed on the petitioner. A simple act of misconduct has been split into five charges for the purpose of making it appear as if the charges were grave and warranting imposition of major punishment of compulsory retirement from service.

4. The learned Senior Counsel has also drawn the attention of this Court to the crucial development which subsequently had taken place after filing of the writ petition. According to him, the co-delinquent viz., Kannaiyan, Sub-Inspector of Police, under whose custody the bike was left by the petitioner herein, has been recently let off with the minor penalty of cut in pension of Rs.1000/- per month for a period of 24 months vide proceedings of the third respondent dated 17.12.2020. According to the said order, since the said Sub-Inspector of Police was retired from service on 31.10.2010, the original order of postponement of increment for three years with cumulative effect was modified as above.

5. In this regard, the learned Senior Counsel would submit that even the charge against the said Sub-Inspector was very serious in nature which related to the same incident for which the petitioner was imposed with the punishment of compulsory retirement from service. The said Kannaiyan suffered originally the penalty of postponement of increment for three years with cumulative effect. But the same has been subsequently modified as cut in pension of Rs.1000/- per month for a period of 24 months. The said Kannaiyan had been treated leniently, even though he was involved in the act that gave rise to the disciplinary action against both the officers.

6. The learned Senior Counsel, in this regard, would submit that the Courts have consistently held that there has to be



parity in imposition of penalty and there cannot be any discrimination as between the delinquent employees who are charged for the same acts of misconduct. The learned Senior Counsel relied upon the following judgments in support of his contention:-

(i) The decision of the Hon'ble Supreme Court of India, reported in (1998) 2 SCC 407, in the case of Director General of Police and others Vs. G.Dasayan. This Court's attention has been drawn to paragraph Nos.9 to 11, which are extracted hereunder:

"9. Mr. Murlidhar, learned counsel appearing for the respondent, while agreeing with the contentions of the learned counsel for the appellants on the first two grounds, submitted that the order of dismissal at any rate cannot be sustained and if at all an order of compulsory retirement as was made in the case of the Head Constable, who was tried along with the respondent, has to be imposed.

10. We have perused the order of the Tribunal and the relevant documents. We find merit in the arguments of the learned counsel for the appellants. At the same time, we are of the view that as pointed out by the learned counsel for the respondent that a punishment of compulsory retirement in the case of the respondent as well would meet the ends of justice on the facts and circumstances of this case.

11. Accordingly, we set aside the order of the Tribunal and in the place of order of dismissal passed by the Disciplinary Authority, the order of compulsory retirement is substituted. The appeal will stand disposed of accordingly with no order as to costs."

(ii) The decision of the Hon'ble Supreme Court, reported in (2001) 10 SCC 530, in the case of Tata Engineering & Locomotive Co.Ltd., Vs. Jitendra P.D.Singh and Another. This Court's attention has been drawn to paragraph Nos.1 to 3, which are extracted hereunder:-

"1. These appeals are filed in a proceeding arising out of a reference to the Labour Court on the allegation that certain acts of the first respondent in an incident that took place on April 14, 1985, amounted to misconduct under Standing Order 24 (XIV) of the Certified Standing Orders which reads as follows:

"Drunkenness, fighting or riotous or disorderly or indecent behavior or any act subversive of discipline or efficiency."



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2. On an inquiry being held, the inquiry authority found that the allegation of misconduct is proved and the disciplinary authority on consideration of the report of the inquiry authority and the other relevant material dismissed the first respondent from service. Thereafter, a reference to the Labour Court at the instance of the first respondent was made. The Labour Court, though held on a preliminary question that the disciplinary inquiry conducted against the first respondent is valid, came to the conclusion after perusing the documentary and oral evidence on record that the dismissal was not justified and held that he was entitled to reinstatement with full back-wages with continuity in service and other consequential benefits. A writ petition was filed in the High Court which was allowed but on the basis of certain offer made, the learned single Judge also directed that the appellant shall pay, to the first respondent, salary from the date of discharge till the date of the order in a lump sum of Rs. 50,000/-. Thereupon, both the management and the workman filed two appeals. In the appeals several questions were raised as to whether the act attributed to the first respondent would amount to misconduct at all which will entail a disciplinary inquiry at the instance of the management to end up with his dismissal; strong reliance was placed on *Glaxo Laboratories v. The Presiding Officer, Labour Court, Meerut and Ors.* . Ultimately, however, the two learned Judges agreed on the aspect of the matter that the question whether on misconduct, attributed to the workman there should have been causal connection between misconduct and employment of the workman may not be of much significance when such acts have taken place within premises of the factory should be decided in an appropriate case. What influenced the Court in deciding the matter is that:

"Since as many as three workmen on almost identical charges were found guilty of misconduct in connection with the same incident, though in separate proceedings, and one was punished with only one month's suspension, and the other was ultimately reinstated in view of the findings recorded by the Labour Court and affirmed by the High Court and the Supreme Court, it would be denial of justice to the appellant if he alone is singled out for punishment by way of dismissal from service."



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3. As the judgment is rested upon this position, whatever other views may have been expressed in the course of the judgment may be of no significance. In that view of the matter, we think there is no need to interfere with the order made by the High Court, that too in a proceeding arising under Article 136 of the Constitution. Hence, we decline to interfere with the order made by the Highs Court. The appeals are dismissed accordingly.''

(iii) The decision of the Hon'ble Supreme Court reported in (2006) 6 SCC 548, in the case of Anand Regional Coop. Oil Seedsgrowers' Union Ltd., Vs. Shaileshkumar Harshadbhai Shah. This Court's attention has been drawn to paragraph Nos.25 to 29, which are extracted hereunder:-

"25. It is now well-settled that the industrial courts do not interfere with the quantum of punishment unless there exists sufficient reasons therefor. [See North Eastern Karnataka R.T. Corpn. V. Ashappa, 2006 (6) SCALE 89 State of U.P. v. Sheo Shanker Lal Srivastava and Others, (2006) 3 SCC 276, A. Sudhakar v. Post Master General, Hyderabad & Anr., JT. 2006 (4) SC 68, Mahindra and Mahindra Ltd. v. N.B. Narawade, (2005) 3 SCC 135, M.P. Electricity Board v. Jagdish Chandra Sharma, (2005) 3 SCC 401, Hombe Gowda Educational Trust and Another v. State of Karnataka and Others, (2006) 1 SCC 430, and Chairman & M.D., Bharat Pet. Corpn. Ltd. & Ors. v. T.K. Raju, 2006 (2) SCALE 553].

26. A wrong test was applied herein by the Labour Court in observing "If the nature of the offence is grave he could have been inflicted punishment of stoppage of the increments". On what premise the said observations were made is not known.

27. There is, however, another aspect of the matter which cannot be lost sight of. Identical allegations were made against seven persons. The Management did not take serious note of misconduct committed by six others although they were similarly situated. They were allowed to take the benefit of the voluntary retirement scheme.

28. The First Respondent might not have opted therefor. However, having regard to the peculiar facts and circumstances of this case, he should be, in our opinion, treated on a similar footing. In view of the fact that the First Respondent has succeeded in the Labour Court and the learned Single Judge as also the



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Division Bench; we are of the opinion that having regard to the overall situation, the interest of justice would be subserved if the award of the Labour Court dated 31.1.2003 as affirmed by the High Court is substituted by a direction that the First Respondent shall also be given the benefit of voluntary retirement scheme from the month in which the other workmen were given the benefit thereof.

29. The impugned judgment is modified to the aforementioned extent. This appeal is allowed in part and to the extent mentioned hereinbefore. There shall be no order as to costs.''

(iv) The decision of the Hon'ble Supreme Court reported in (2008) 12 SCC 331, in the case of Man Singh Vs. State of Haryana and Others. This Court's attention has been drawn to paragraph Nos.21 to 24, which are extracted hereunder:-

"21. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the Excise Staff of Andhra Pradesh for violating the Excise Prohibition Orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the Excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the Excise offence by him in the State of Andhra Pradesh. The order of the disciplinary authority would reveal that for the last about three decades the appellant has served the Police Department of Haryana in different capacity with unblemished record of service.

22. In the backdrop of the above-mentioned facts and circumstances of the case, we are of the view that the order of the disciplinary authority imposing punishment upon the appellant for exhibiting slackness



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in the discharge of duties during his visit to Hyderabad when HC Vijay Pal was found involved in Excise offence, as also the orders of the appellate and revisional authorities confirming the said order are unfair, arbitrary, unreasonable, unjustified and also against the doctrine of equality. The High Court has failed to appreciate and consider the precise legal questions raised by the appellant before it and dismissed the Second Appeal by unreasoned judgment. The judgment of the High Court, therefore, confirming the judgments and decrees of the first appellate court and that of the trial court is not sustainable. The appellant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-a-vis HC Vijay Pal, the driver of the vehicle.

23. However, in normal course we could have remitted the case to the High Court for taking fresh decision, but we are of the opinion that in a case of this nature, we should in exercise of our extraordinary jurisdiction under Article 142 of the Constitution of India decided the case on merits to avoid further delay in deciding the Regular Second Appeal by the High Court.

24. In the result, for the above-said reasons and discussions, the appeal is, accordingly, allowed. The judgment dated 20.03.2006 of the High Court in RSA No. 4272 of 2005 confirming the judgments and decrees of the courts below shall stand set aside. Consequently, Civil Suit No. 571/1 of 2002 on the file of the Additional Civil Judge (Senior Division), Sonapat, is decreed in terms of the relief sought for.'

(v) The decision of the Hon'ble Supreme Court reported in (2010) 5 SCC 783, in the case of State of Uttar Pradesh and Others Vs. Raj Pal Singh. This Court's attention has been drawn to paragraph Nos.4 to 6, which are extracted hereunder:-

"4. It is contended on behalf of the appellants that once the charges have been held to be established, it was not appropriate for the High Court to interfere with the quantum of punishment and judged from this standpoint, the order of the High Court cannot be sustained. In support of the said contention, reliance is placed on the decision of this Court in B. C. Chaturvedi v. U.O.I, and Ors. and Secretary to Government, Home Department and Ors. v. Srivaikundathan, JT 1998 (8) SC 470.



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5. Though, on principle, the ratio in aforesaid cases would ordinarily apply, but in the case in hand, the High Court appears to have considered the nature of charges leveled against the 5 employees who stood charged on account of the incident that happened on the same day and then the High Court came to the conclusion that since the gravity of charges was the same, it was not open for the disciplinary authority to impose different punishments for different delinquents. The reasonings given by the High Court cannot be faulted with since the State is not able to indicate as to any difference in the delinquency of these employees.

6. It is undoubtedly open for the disciplinary authority to deal with the delinquency and once charges are established, to award appropriate punishment. But when the charges are same and identical in relation to one and the same incident, then to deal with the delinquents differently in the award of punishment, would be discriminatory. In this view of the matter, we see no infirmity with the impugned order requiring our interference under Article 136 of the Constitution."

(vi) The decision of the Hon'ble Supreme Court, reported in (2013) 3 SCC 73, in the case of Rajendra Yadav Vs. State of Madhya Pradesh and Others. This Court's attention has been drawn to paragraph Nos.9 to 12, which are extracted hereunder:-

"9. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

10. The principle stated above is seen applied in few judgments of this Court. The earliest one is Director General of Police and Others v. G. Dasayan (1998) 2 SCC 407, wherein one Dasayan, a Police



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Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India.

11. In Shaileshkumar Harshadbhai Shah case (supra), the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.

12. We are of the view that the principle laid down in the above mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the Disciplinary Authority imposing a comparatively lighter punishment to the co-delinquent Arjun Pathak and at the same time, harsher punishment to the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. Appellant is, therefore, to be re-instated from the date on which Arjun Pathak was re-instated and be given all consequent benefits as was given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs."

(vii) Apart from the above decisions, the learned Senior Counsel also referred to a recent decision of the Hon'ble Supreme Court of India reported in (2021) 5 SCC 662, in the case of Union of India and others Vs. P.Balasubrahmanayam. He would particularly draw the attention of this Court to paragraph Nos.21 and 22, extracted hereunder:



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"21. It is correct to say that judicial forums do not sit as an appellate authority to substitute their mind with the mind of the disciplinary authority insofar as the finding is concerned. However, disproportionality of punishment is a concept certainly not unknown to service jurisprudence and has received consideration inter alia of this Court⁷. This is what the Tribunal proposed to do. We may examine the finding of the Tribunal on the issue of disproportionality of punishment and are in complete agreement with the view that the punishment of compulsory retirement was completely disproportionate and harsh, keeping in mind the finding arrived at by the disciplinary authority. It, thus, seems to appear that the charges originally levelled may have persuaded the concerned authority to impose punishment; losing sight of the fact that the allegations qua bribery had not been found against the respondent.

22. The question is whether the Tribunal proceeded correctly in passing the final direction to impose appropriate minor penalty. The Tribunal itself did not impose the punishment but left it to the authority concerned (for appropriate course of action). It was of the view that considering the findings of procedural lapses against the respondent, the appropriate punishment could only be a minor penalty and not a major penalty. With this again, we are in agreement with the course of action adopted. The nature of charges found against the respondent can hardly be one to call for a major penalty, keeping in mind that there was no bribery charge. Anyone can make mistakes. The consequences of mistakes should not be unduly harsh. We are, thus, of the view that the direction of the Tribunal is what is liable to be sustained."

In the above matter, the Hon'ble Supreme Court has held that the concept of proportionality of punishment is a part of the service jurisprudential consideration by the Courts.

7. According to the learned Senior Counsel, the above decisions of the Hon'ble Supreme Court have clearly and categorically held that there cannot be any discrimination in the matter of imposition of penalty. The above extracted paragraphs of the judgments as cited above, thus laid down the



settled legal principles that in disciplinary matters, there cannot be any differential treatment when delinquents were charged for the same or similar acts of misconduct and imposed with different penalties.

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8. Upon notice, Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader entered appearance on behalf of the respondents and filed a detailed counter affidavit.

9. In the counter affidavit, the above facts have not been controverted. But, the counter affidavit was dated 13.07.2017 and obviously, it could not have taken into consideration the subsequent development pointed out by the learned Senior Counsel viz., the co-delinquent Kannaiyan, Sub-Inspector of Police, left off with minor penalty of cut in pension of Rs.1000/- per month for 24 months vide proceedings dated 17.12.2020. Even originally, the said delinquent was imposed only with the penalty of postponement of increment for three years with cumulative effect. In the counter affidavit, nothing has been stated as to why the other delinquent viz., Kannaiyan, Sub-Inspector of Police, was imposed with different penalty of postponement of increment for three years with cumulative effect as against the imposition of penalty of compulsory retirement on the petitioner.

10. From the charges as framed against the petitioner and the said Kannaiyan, it appears that the said Kannaiyan's culpability is no less or in fact more than the culpability of the petitioner in the act of misconduct. That being the case, this Court is unable to countenance that the said Kannaiyan, Sub-Inspector of Police was treated leniently, whereas, the petitioner was to suffer compulsory retirement which meant that his services were cut short abruptly, despite several years to go for his normal retirement.

11. As regards the subsequent development as pointed out by the learned Senior Counsel that even the original punishment of postponement of increment for three years with cumulative effect imposed on the said Kannaiyan, Sub-Inspector of Police, came to be modified as one of cut in pension of Rs.1000/- per month for 24 months vide proceedings of the third respondent dated 17.12.2020, the learned Additional Government Pleader, on instructions would submit that the decision was taken on consideration of the fact that the said Sub-Inspector of Police had retired from service.



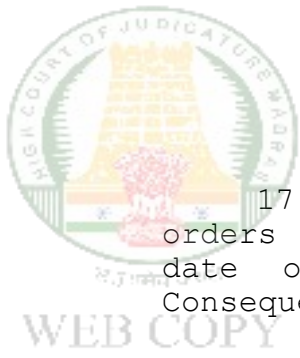
12. This Court is unable to appreciate the stand of the respondents that merely because that officer had attained the age of superannuation and retired from service, he can be shown benevolence of mere cut in pension of Rs.1000/- per month for 24 months and the petitioner can be imposed with the extreme penalty of compulsory retirement, partisanly. The Hon'ble Supreme Court, in various decisions, has consistently held that the authorities have to exhibit fair play, good conscience and justice in discharge of their duties. Treating two similarly placed delinquents differently, tantamounts to discrimination, violative of Article 14 of the Constitution of India. The Courts have, on occasions where it found that the punishment had been imposed disproportionately, not commensurate with the act of misconduct said to have been committed by the delinquent, interfered. The concept of proportionality of punishment is an integral part of judicial examination. The ultimate punishment is always to be subjected to the judicial review and such scrutiny is held to be not alien or unknown to service jurisprudence.

13. In this case, this Court finds that the penalty imposed on the petitioner with compulsory retirement is not only disproportionate, not commensurate with the gravity of the misconduct, but also discriminatory which cannot be countenanced both in law and on facts. By applying the legal principles as evolved and cited supra on the factual matrix of this case, this Court has no hesitation in allowing the writ petition.

14. Accordingly, this writ petition stands allowed and the impugned order passed by the first respondent in C.No.D1/PR.2/2010 dated 24.05.2013, confirmed by the second respondent in RC.No.112699/API(1)/2013 dated 19.08.2014 and third respondent in RC No.193307/API(1)/2014 dated 29.02.2016, are hereby set aside. The petitioner is directed to be reinstated in service forthwith.

15. The petitioner is however not entitled to arrears of salary for the period of his non-employment as the same shall be treated as punishment which as a matter of fact, is more severe than the punishment imposed on the other delinquent.

16. However, it is clarified that the petitioner on reinstatement, is entitled to notional benefits like continuity of service, seniority, promotion etc. and also for the purposes of fixation of pay and allowances.



17. The competent authority is directed to pass appropriate orders in this regard, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Deputy Inspector General of Police,
Coimbatore Range, Coimbatore.
2. The Addl. Director General of Police,
Law & Order, Chennai 600 004.
3. The Director General of Police,
Tamil Nadu, Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.

+lcc to Mr. M.Muthappan , Advocate, S.R.No.19788
+lcc to the Government Pleader, S.R.No.20317

W.P.No.12242 of 2016
and
W.M.P.No.10579 of 2016

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