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W.P.No. 13194 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No. 13194 of 2019

V. Selvaraj

... Petitioner

Vs

1. The Principal Secretary to Government,
Home Department,
Fort St. George, Chennai – 600 009.

2. Director of Fire & Rescue Services,
Tamilnadu,
No. 17, Rukmani Lakshmipathy Road,
Chennai 600 008.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the second respondent herein in his proceedings Rc.No.5200/A3/2018 dated 29.08.2018 and quash the same insofar as treatment of the period of out of employment and consequentially direct the respondents herein to treat the period of out of employment from 27.03.2017 till the date of his supperannuation i.e. 31.12.2012 as duty for all purposes in accordance with Fundamental Rules 54. Ruling-9.

For Petitioner : Mr. G. Bala
for M/s. G. Bala and Daisy

For Respondents : Mr. S. Rajesh
Government Advocate



ORDER

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The order passed in a Mercy Petition in proceedings dated 29.08.2018, is under challenge in the present writ petition.

2. The writ petitioner joined in the Fire and Rescue Services in the year 1974. He was promoted as Driver in the year 1981. A criminal case was registered against the writ petitioner in Crime No. 79 of 2007 and the petitioner was arrayed as Accused No. 3 in the said case.

3. The allegation in the criminal case was that one Mr. Umanath was killed in a temple festival by a mob consisting several persons, in which the petitioner is also alleged to be a member. The Trial Court convicted the petitioner to undergo life imprisonment. The criminal appeal filed by the writ petitioner before the High Court was dismissed. Meanwhile, the competent authorities issued a show cause notice under Rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and thereafter, imposed the punishment of dismissal from service with effect from 26.08.2009. The petitioner preferred an appeal before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India acquitted the writ petitioner from



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the criminal charges. Thereafter, the petitioner approached the competent authorities, who in turn, considered the case of the writ petitioner based on the Hon'ble Supreme Court judgment and accordingly, the punishment of dismissal from service was modified to that of compulsory retirement and consequently, all the terminal and full pensionary benefits are settled in favour of the writ petitioner. Now, the writ petitioner is receiving pension. While so, he filed a Mercy Petition before the Director of Fire & Rescue Services on 17.05.2018 to treat the intervening period of service as duty with full salary. However, the same was rejected by the Director in the Mercy petition. The said order is under challenge in the present writ petition.

4. The petitioner was involved in a criminal case and convicted both by the Trial Court and High Court. He was acquitted by the Hon'ble Supreme Court and consequently, the authorities themselves have considered the case of the writ petitioner, took a lenient view and modified the punishment of dismissal from service to that of compulsory retirement. All the terminal and pensionary benefits due to the writ petitioner were settled in full and the petitioner is receiving pension as of now. While so, the petitioner submitted a further application, after the lapse of many years and made a request



to treat the period of non-service as duty, with full salary. The very claim itself is untenable, in view of the fact that the petitioner accepted the modified punishment of compulsory retirement and received all the pensionary benefits. If at all he was not satisfied with the modified punishment of compulsory retirement imposed on him, he should have challenged the said order of compulsory retirement, which he had failed to do. After accepting the modified punishment of compulsory retirement and receiving the terminal and retirement benefits in full, and after a lapse of many years, he had filed a mercy petition, and such mercy petition is not maintainable, as there is no rule to entertain mercy petition by the Director of Fire and Rescue Services.

5. The Director of Fire and Rescue services is incompetent to entertain a mercy petition and grant relief or reject the same. Such mercy petitions are not entertainable and the power of the authority to entertain mercy petition was elaborately considered by this Court with reference to the Rules in W.P.No. 2554 of 2017 and a judgment was delivered on 01.11.2022, which reads as under:

“30. It is brought to the notice of this Court that the Office of the Director General of Police is entertaining mercy petitions/review petitions indiscriminately from many police personnel and the employees. Entertaining mercy petition is illegal and directly in



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violation of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 in force. Any of the Authority under the Rules has power to entertain mercy petition and grant the discretionary relief, which amounts to colourable and improper exercise of power resulting in unconstitutionality. The power of entertaining the mercy petition is conferred only on the Constitutional Authority, namely, the 'Governor of the State' under Article 161 of the Constitution of India. Accordingly, the Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. Such a power conferred to the Governor of a State under Article 161 of the Constitution of India, cannot be exercised by any other Executive Authority in the State. Therefore, entertaining a mercy petition by the Office of the Director General of Police is in violation of the Indian Constitution and no such power has been conferred on any of the Authority of the Police Department under the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 or under any other Rules in force. Neither the Office of the Director General of Police nor any other Authority subordinate to him are empowered to entertain any mercy petition for the purpose of exercise of their discretionary powers in any matters.

31. In the context of the above rule position, it is not in dispute that the Specified Authority under the Rule alone is empowered to exercise the jurisdiction. The excess exercise or improper exercise of powers would lead to colourable exercise of power, resulting in unconstitutionality. No Authority shall exercise excess powers or any power, which is otherwise not conferred under the Statute or the Rules in force. Such an exercise may



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cause anomalous situation in administrative affairs and further cause ill-effect to the administrative discipline, which is constitutional mandate. The administrative discipline in the matter of deciding the issues either as a Punishing Authority, Appellate Authority or Review Authority is to be maintained scrupulously by all the Authorities concerned in accordance with the Rules.

Public Administration exercises large volume of power to meet the citizens need in modern democratic welfare State. Due to this, there is number of chances of them becoming arbitrary. So it is necessary to control them. The underlying object of judicial control is to ensure that the Authority does not abuse (misuse) its power and the individual receives just and fair treatment.

33. The general principles laid down is that the power conferred on the Executives should not be left entirely to the discretion of any Authority to do anything it likes without any check or control by any Higher Authority.

34. In the context of irrelevant consideration if a Statute confers power for one purpose, its use for a different purpose is not regarded as a valid exercise of power and is likely to be quashed by the Courts. The discretionary power is required to be used for the purpose for which it has been given. If it is given for one purpose and used for another purpose, it will amount to abuse of power. Where the discretionary power is exercised by the Authority on which it has been conferred ostensibly for the purpose for which it has been given but in reality for some other purpose, it is taken as a colourable exercise of discretionary power and it is declared invalid.

35. Importantly, in the matter of exceeding jurisdictional Authority is required to exercise the power within the limits or the



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Statute. Consequently, if the Authority exceeds this limit, its action will be held to be ultra vires and therefore, void. Improper exercise of discretion is also impermissible. Where the discretionary power is exercised inconsistent with the spirit and the purpose of the Statute, then also it amounts to erroneous exercise.

36. The general rule is that the Courts will not interfere with the exercise of discretion by Administrative Authorities. However, they do interfere in public interest, if there is public abuse or lack of jurisdiction. According to the Courts, the 'discretion' should be fair, honest, based on reason and justice and should not be arbitrary, or unjust fanciful or exercised with mala fides or without jurisdiction. 'Judicial Review' is also the basic structure of the Constitution.

37. It is essential that the Authority should exercise its powers within the limits of the Statute or the Rules, otherwise it would be ultra vires on the ground of abuse or excess of jurisdiction. When the power is exercised under 'colour' or guise of legality, but, in reality the purpose of Statute is different, it amounts to 'colourable' exercise of power.

38. In the context of the above principles and with reference to the Rules elaborately considered in the aforementioned paragraphs, this Court is of the humble opinion that the Authorities in the Police Department are not empowered to exercise excessive jurisdiction or pass orders without jurisdiction under the Statute or the Rules and if at all such exercise is made then further scrutiny regarding the other aspects are to be enquired into.

39. The excess exercise of jurisdiction are happening either intentionally or unintentionally. The Authorities are erroneously exercising the powers either fancifully or with some motivation. On many



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occasions, the Authorities assume powers erroneously and decide the issues on various considerations. The motive behind such assumption of powers are to be enquired into as such exercise if permitted, it would result in not only administrative indiscipline, but would pave way for illegality, irregularity, favouritism, nepotism, corrupt practices and exercise of power on extraneous considerations. Therefore, all these important factors are to be taken note of, when an Authority is exercising excessive jurisdiction in violation of the Statutes or under the Rules in force.

40. During the course of arguments, the learned Senior Counsel for the petitioner and the learned Additional Government Pleader appearing on behalf of the respondents, brought several instances to the notice of this Court that the Higher Officials in the Police Department are exercising excess jurisdiction by entertaining mercy petitions/review petitions and setting aside, modifying or reviewing the punishments imposed by the Competent Authorities and such an exercise is not only colourable exercise, but undermining the importance of the Statute and the Rules in force. The exercise of power, which is not made available under the Statute or the Rules, amounts to lapses, negligence, which all are misconducts under the Government Servants Conduct Rules, including the All India Service Officials Conduct Rules. The powers, which all are not contemplated, if allowed to be exercised, it will lead to maladministration and the discipline of the Force will be derailed. The discipline in Police Force, being an important factor, regulating the administrative affairs regarding exercise of powers are one of the important criteria for the purpose of maintaining high discipline in Police Forces. The trust and confidence amongst the members of the Force would be of vital factor, which would guide the Department in falling



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Rules and such excessive exercise is to be construed as an administrative indiscipline or lapses or negligence as the case may be. The fourth respondent shall ensure that the Authorities exercise their powers within the ambit of Statues and Rules in force at all circumstances, for efficient public administration, which is the mandate under the Constitution of India.

44. The petitioner had already exhausted the appellate remedy and therefore, she is entitled to exhaust the revisional remedy, which is contemplated under Rule 15-A of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955. Thus, the petitioner is at liberty to approach the Revisional Authority in the prescribed format in accordance with the Rules in force. In the event of submitting any such revision, the Authority Competent shall decide the same on merits and in accordance with law independently.'

6. There is no provision to entertain mercy petition by any of the executives under the relevant service rules. Entertaining a mercy petition and passing discretionary orders would result in miscarriage of justice, since there is a possibility of favoritism, nepotism and corrupt practice. The authorities competent are expected to exercise their powers in accordance with the statute and rules in force. Therefore, this Court is of the opinion that the mercy petition entertained after several years by the Director itself is infirm. However, in the present case, the relief sought for was rightly rejected and this Court do not find any infirmity, since the petitioner



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accepted the modified punishment of compulsory retirement and not challenged the said order and further received all the terminal and pensionary benefits in full, and he is now receiving pension. Thus, the authorities have considered the case of the writ petitioner, and based on the judgment of the Hon'ble Supreme Court of India, no further consideration is required in the present writ petition. More so, the petitioner approached the authorities by way of mercy petition after several years and therefore, this Court does not find any infirmity in respect of the reasons stated in the order impugned. The writ petition stands dismissed. No costs.

01.12.2022

Index : Yes / No
Speaking order / Non-Speaking order
mrn

To

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S.M.SUBRAMANIAM, J.

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