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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.01.2022
Pronounced on	07.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.646 & 647 of 2016

S.Durai

... Petitioner in both W.Ps

-Vs-

The Superintendent of Police,
Villupuram.

... Respondent in both W.Ps

Prayer in W.P.No.646 of 2016:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus calling for the records on the file of the respondent in connection with the orders passed by the respondent bearing D.O.No.1043/2015 C.No.A3/48628/2015 dated 15.10.2015 and quash the same and consequently direct the respondent to restore the order of upgradation of the petitioner as Gr.I.R.C. with effect from 28.10.2004 and Head Constable with effect from 28.10.2009.

Prayer in W.P.No.647 of 2016:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus calling for the records on the file of the respondent in connection with the orders passed by the respondent bearing C.No.N4/34016/2015-D.No.1054/2015 dated 28.10.2015 and quash the same and consequently direct the respondent to refund the recovery amount to the petitioner.

For Petitioner : Mr.V.Vijay Shankar
(in both W.Ps)

For Respondent : Mr.C.Selvaraj,
(in both W.Ps) Additional Government Pleader

C O M M O N O R D E R

Heard the learned counsel on either side.



2. The petitioner herein, while serving as a Grade-II Police Constable, was subjected to departmental action and on 01.04.1997, he was imposed with a punishment of removal from service. Challenging the order of removal, he had filed an original application in O.A.No.4547 of 1997 before the Tamil Nadu Administrative Tribunal and by order dated 11.12.2001, his case was remitted back for reconsideration of the punishment imposed, on the ground that the punishment was disproportionate to the charges. Consequently, the respondent herein had altered the original punishment of removal from service into one of "postponement of annual increment for one year, without cumulative effect", through their order dated 18.12.2002 and it was clarified by the respondent that the period of his non-employment will be settled as eligible leave including leave without pay.

3. In this background, the petitioner, who was serving as a Grade-II Police Constable, was upgraded into Grade-I Police Constable on completion of 10 years, with effect from 28.10.2004 and subsequently, he was further upgraded to Head Constable on completion of 5 years with effect from 28.10.2009.

4. While that being so, the respondent herein has now issued the impugned order dated 15.10.2015, stating that his period of non-employment of 2095 days between the date of dismissal till reinstatement, should be treated as non-qualifying service and thereby had interfered with the original upgradation orders of Grade-I Police Constable and Head Constable, by affecting his Selection Grade pay scale. Accordingly, the respondent had passed consequential orders on 15.10.2015, modifying his upgradation as Grade-I Police Constable and Head Constable and consequently, through an order dated 28.10.2015, had ordered for recovery of the excess payment made. Aggrieved against these actions, the present Writ Petitions have been filed.

5. The learned counsel for the petitioner would submit that when the original punishment is modified into one of a lesser punishment, the same requires to be given effect to, from the date of the original punishment of dismissal and therefore, the action taken through the impugned orders, cannot be sustained. In support of such a contention, the learned counsel placed reliance on a decision of the Hon'ble Supreme Court in the case of Union of India and others Vs. P.Gunasekaran reported in (2015) 2 SCC 610.

6. Per contra, the learned Additional Government Pleader appearing for the respondent placed reliance on the counter statements and submitted that the petitioner herein was not on duty for 2095 days, which was treated as "leave without pay" and



therefore has not fulfilled the qualifying service for upgradation as Grade-I Police Constable as well as the subsequent upgradation as Head Constable. In view of this non-qualifying service, the respondent herein had rightly modified the upgradation and ordered for recovery through the impugned orders.

7. I have given careful consideration to the submissions made by the respective counsels.

8. It is a settled proposition of law that whenever the original punishment is subsequently modified into a lesser punishment, the date of giving effect to the lesser punishment would revert to the date of the original punishment. In other words, the modified punishment imposed, is deemed to have been imposed on the original date of punishment and accordingly, the qualifying service of the employee is to be reckoned from that date only. This proposition was laid down in various decisions including the order in the case of P.Gunasekaran (supra). The relevant portion of the order reads as follows:-

"25. The last contention is with regard to date of effect of the punishment. According to the respondent, even assuming that compulsory retirement is to be imposed, it could be only with effect from the date of order, viz., 28.02.2000. We are unable to appreciate the contention. The respondent stood dismissed from service as per order dated 10.06.1997. It was that punishment which was directed to be reconsidered. Consequent thereon only, the punishment was altered/substituted to compulsory retirement. Necessarily, it has to be from the date of dismissal from service, viz., 10.06.1997."

9. In the light of the above discussions, the action of the respondent in modifying the petitioner's upgradation as Grade-I Police Constable, through the impugned order dated 15.10.2015, cannot be sustained and hence quashed. Consequently, there shall be a direction to the respondent herein to restore the upgradation of the petitioner as Grade-I Police Constable with effect from 28.10.2004 and for the post of Head Constable with effect from 28.10.2009, together with all service and monetary benefits. The respondent shall endeavor to pass such an order, within a period of two weeks from the date of receipt of a copy of this order. In view of quashing of the order dated 15.10.2015, the consequential order of recovery dated 28.10.2015, is quashed and the respondent is directed to refund the recovered salaries to the petitioner, within a period of two



weeks from the date of receipt of a copy of this order. Thus both the Writ Petitions stand allowed. There shall be no orders as to costs.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

DP

To

The Superintendent of Police,
Villupuram.

+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.7602
+1cc to the Government Pleader, S.R.No.8339

W.P.Nos.646 & 647 of 2016

SVI (CO)
CT 17/02/2022