



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.01.2022
CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.11717 of 2015

and

M.P. (MD)No.1 of 2015

WEB COPY

A.Mariya Vella Pandi (Died)
M.Maragatham (Substituted)

... Petitioner

(Petitioner is substituted for the deceased sole petitioner, vide Court order, dated 11.07.2019, in W.M.P. (MD)No.1231 of 2018, in W.P. (MD)No.11717 of 2015)

vs.

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

2.The Director General of Police,
(Law and Order),
Mylapore, Chennai 600 004.

3.The Superintendent of Police,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to impugned order of the first respondent, vide G.O.2(D). No.62, Home (Police-VI) Department, dated 23.02.2015 and consequential order on punishment roll issued by the third respondent in A.S.O.No.11 of 2015, dated 21.04.2015 and to quash the same.

For Petitioner : Mr.Radhakrishnan

For Respondents : Mr.R.Ragavendran

Government Advocate (Civil side)

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorari, to quash punishment pertaining to No.62, Home (Police-VI) Department, dated 23.02.2015 and consequential order on punishment roll issued by the third respondent in A.S.O.No.11 of 2015, dated 21.04.2015 and to quash the same.

2.The petitioner was appointed as Police Constable on 03.10.1963 then promoted as Head Constable on 21.05.1975 then as Sub Inspector of Police on 13.11.1993 and retired on 30.06.2002.



3.The brief facts of the case are that a criminal case was registered against one Kali Muthu in Crime No.47 of 1982 and the said Kali Muthu was brought to the Judicial Magistrate Court for remand on 16.02.1982 at about 08:30 am and the said accused Kali Muthu was sent to Hospital as he was suffering from Fits and the accused Kali Muthu died in the Hospital at about 01:55 pm. The deceased wife lodged a complaint against his brother-in-law namely, Subramanian alleging that the deceased Kali Muthu quarreled with Subramanian and the said Subramanian beat the deceased Kali Muthu with Vel stick and kicked him with his leg and as a result the said accused Kali Muthu died. Accordingly, a criminal case was registered under 302 IPC in Crime No.49 of 1982 against the said Subramaniam, i.e. deceased's brother. However, based on RDO's report, the criminal prosecution was lodged against the petitioner herein, alleging that as a result of physical torture given by the petitioner the said Kali Muthu died.

4. Accordingly, the case was taken on file in P.R.C.No.10 of 1984 before the Judicial Second Class Magistrate, Thenkasi. The petitioner preferred a quash petition before the High Court of Madras in CrI.M.P.No.553 of 1985 and this Court, vide order, dated 29.06.1988, had quashed the criminal prosecution launched under P.R.C.No.10 of 1984. Thereafter, the disciplinary action initiated against the petitioner under Rule 3(b) of Tamil Nadu Police Subordinate Service Rules (Disciplinary and Appeal Rules) in P.R.No.15 of 1980. The Enquiry Officer has held the charges are not proved and the disciplinary proceedings were dropped by the third respondent, vide proceedings, dated 28.03.1989. Since the petitioner was placed under suspension, the petitioner filed W.P.No.9400 of 1988 and which was renumbered as T.A.No.529 of 1989, vide order, dated 15.05.1989. The Administrative Tribunal had allowed the application and directed the respondents to reinstate the petitioner and regularize the period of suspension as per Rules. Thereafter, the petitioner was reinstated by the third respondent.

5.The contention of the petitioner is that the second respondent suo moto reviewed the order and passed a final order, dated 13.06.1990, awarding a punishment of reduction in time scale of pay by two stages for a period of two years with cumulative effect from the date of receipt of the order. In the meanwhile, the third respondent had regularized the suspension period from 30.10.1983 to 06.10.1989 as leave period. Against the suo moto review, the petitioner preferred an appeal to the second respondent. The contention of the petitioner is that the first respondent had not passed any orders, in spite of several request. But, suddenly G.O.2D.No.62, Home (Police-VI) Department, dated 23.02.2015, was issued by the first respondent and the same was received by the petitioner on 03.06.2015, wherein the respondents have stated that



the petitioner's appeal, dated 03.08.1990, was rejected by the Government in G.O.2(D)No.172, dated 19.11.1992. The specific contention of the petitioner is that he had not served any copies of the said G.O.2(D)No.172, dated 19.11.1992. Hence, the petitioner has challenged the G.O.2(D).No.62, dated 23.02.2015, in this Writ Petition. In G.O.2(D).No.62, dated 23.02.2015, it was stated that the petitioner's mercy petition, dated 28.06.2010, was also rejected. Aggrieved over the same, the petitioner has preferred this Writ Petition.

6.The respondents have filed a detailed counter affidavit. The respondents have stated in para 4 of their counter affidavit that the orders of the Government in G.O.2(D)No.172, dated 19.11.1992, was served to the petitioner and the petitioner has acknowledged the receipt on 05.02.1993 itself. But the petitioner after the lapse of 19 years has preferred a Petition to the Government regarding the punishment imposed in the year 1992 and that petition was also rejected by the Government on 23.02.2015, on the ground that the same prayer was already considered by the Government and orders were issued way back in the year 1993. Hence, the contention of the petitioner is not acceptable.

7.Heard Mr.Radhakrishnan, learned Counsel appearing for the petitioner and M.R.Ragavendran, learned Government Advocate appearing for the respondents.

8.On perusal of the materials placed on records, it is seen that the petitioner filed the petition in the year 2015 and he had died on 02.03.2017 and this Court has allowed the substitution petition, vide order, dated 11.07.2019. The contention of the petitioner is that in spite of the Enquiry Officer's report that the charges are not proved, the second respondent, herein has passed an order, dated 13.06.1990, by invoking his suo moto power of review and had awarded a punishment of reduction in scale of pay by two stages for a period of two years with cumulative effect. When the third respondent dropped the entire proceedings, while the second respondent passing an order by inflicting punishment, then, it is incumbent on the respondents for calling explanation for imposing a punishment that too the punishment of reduction in time scale of pay by two stages for a period of two years, since this is affecting the civil rights of the petitioner.

9. There is no evidence on the record that notice was issued to the petitioner before passing the review order. The respondents have also not stated that notice was issued to the petitioner before imposing a punishment. As rightly pointed out by the petitioner, the said review order was passed after a lapse of two years.



10. Therefore, this Court is of the considered opinion that before passing the impugned punishment order, that too after the lapse of two years, the respondents are incumbent to issue notice before inflicting the punishment. This is clearly violative of principles of natural justice. However, the respondents contended that the petitioner has not challenged the Government order passed in the year 1992. But, the contention of the petitioner is that he had not received but, the respondents specifically contended in the counter affidavit that the said order was served on the petitioner on 05.02.1993. Admittedly, the petitioner has not challenged the G.O.2(D)No.172, dated 19.11.1992.

11. Since there is a clear violation of principles of natural justice, this Court is of the considered view that the petitioner stands in an advantageous position. Pending writ petition, the petitioner died and the petitioner's wife is being substituted and she is contesting before this Court. The Writ Petition was filed in the year 2015 and during that time itself the petitioner was 72 years. Considering all these facts, this Court deems it fit to reduce the punishment to stoppage of increment without cumulative effect for three months. The impugned order is set aside and the punishment is modified as above.

12. The Writ Petition is disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD II)

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Sub Assistant Registrar(CS)

Tmg

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

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



2.The Director General of Police,
(Law and Order),
Mylapore, Chennai 600 004.

3.The Superintendent of Police,
Tirunelveli District.

+1 CC to M/s.SPL.GP (SR-1507[F] dated 12/01/2022)

W.P.(MD)No.11717 of 2015
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MGJ(15.02.2022) 5P 5C