



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.6822 of 2015

and

M.P. (MD) .No.1 of 2015 and W.M.P. (MD) .No.9514 of 2016

L.Charles

... Petitioner

Vs.

1.The Additional Director General of Police (L & O),
Chennai - 600 006.

2.The Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli.

3.The Superintendent of Police,
Nagercoil,
Kanyakumari District.

4.The Deputy Superintendent of Police,
Colachal,
Kanyakumari District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the third respondent made in C.No.L1/69376/2013 dated 12.01.2015 and quash the same as illegal and consequential proceedings of the third respondent in Na.Ka.No.L1/69376/2013 dated 02.03.2015 also to be set aside.

For Petitioner : Mr.N.Mohideen Basha

For Respondents : Mrs.D.Farjana Ghoushia,
Special Government Pleader.

ORDER

This Writ Petition has been filed challenging the impugned order dated 12.01.2015 and consequential proceedings dated 02.03.2015.

2. The brief facts of the case are that the petitioner was appointed as Police Constable on 10.12.1977, then promoted as Head Constable. He was transferred to Colachel Police Station on 31.05.2014. He was issued with a charge memo in P.R.No.132 of 1997 dated 12.09.1997 under Rule 3(b) of Tamil Nadu Subordinate Service



(Discipline and Appeal Rules) 1955. The charge against the petitioner is, on 23.04.1996 under the influence of intoxication, the petitioner had made some sarcastic remarks against the Inspector, Rajakkamangalam for not having posted the petitioner in election bandobust duty. The petitioner further entered the Writers room, broke the chair and attempted to throw the CD files and broke the flower pots. On 24.09.1997, he submitted explanation, the petitioner agitated the entire issue before the Administrative Tribunal by filing O.A.No.350 of 1998.

3. After several rounds of litigation, finally the petitioner was imposed the punishment of reduced his rank to that of Grade-I Police Constable for a period of two years without cumulative effect. Aggrieved over the same, the petitioner preferred Writ Petition in W.P.(MD).No.3607 of 2004 and this Court dismissed the Writ Petition. Aggrieved over, again the petitioner filed a Writ Appeal in W.A.(MD).No.579 of 2009 and this Court allowed the Writ Appeal on 07.11.2013 directing the respondents to give proper opportunity to the petitioner and thereafter pass orders. In the meanwhile, the petitioner retired from service on 31.05.2014. Based on the Writ Petition orders, the present enquiry notice dated 08.08.2014 was issued under Rule - 9 (2)(b)(i) of Tamil Nadu Pension Rules 1978. The third respondent vide impugned proceedings dated 12.01.2015 directed the fourth respondent to conduct enquiry in P.R.No.132/97. Based on this, a summon was issued to the petitioner. Hence the petitioner submitted a detailed explanation dated 20.02.2015 to drop the proceedings. The respondents rejected the request on 02.03.2015. Aggrieved over, the present Writ Petition is filed.

4. The respondents had filed a counter stated that based on the Writ Petition orders, the present impugned proceedings were initiated. The Hon'ble Court has set aside the punishment in the Writ Petition order with liberty to the authorities to conduct a fresh enquiry and pass appropriate orders. The petitioner cannot take a technical plea since the punishment was set aside in the Writ Petition. Therefore, the respondents are not entitled to further proceed in the case because of the intervening superannuation. The respondents had taken action against the petitioner under the Pension Rules. Therefore, the claim of the petitioner ought to have been rejected and prayed to dismiss the Writ Petition.

5. Heard Mr.N.Mohideen Basha, learned counsel for the petitioner and Mrs.D.Farjana Ghoushia, learned Special Government Pleader for the respondents and peruse the records.

6. The contention of the petitioner is that the alleging delinquency happened in the year 1996 and the original charge itself is belated because it was issued after the lapse of 1 ½ years that is on 12.09.1997. The punishment is disproportionate to the delinquency. Moreover, in the Writ Petition, the Division Bench has already set aside the punishment order. Therefore, the contention of



the petitioner is that the respondents cannot initiate proceedings under Pension Rules, since, the petitioner was allowed to retire from service.

7. The respondents contended that the punishment order was set aside with a liberty to conduct fresh enquiry. Therefore, the contention of the petitioner once the punishment was set aside, the same cannot be revoked is not known to service jurisprudence. The Pension Rules empower the respondents to take action within a period of four (4) years from the date of attaining superannuation. Therefore, prayed to reject the prayer of the petitioner and dismiss the Writ Petition.

8. This Court is of the considered view it is an admitted fact that the petitioner had retired on 31.05.2015 and the proceedings are initiated under Pension Rules. Since the delinquency occurred in the year 1996 and the petitioner retired from service in the year 2015, this Court is of the considered view if the punishment is modified that would meet the ends of justice. For the erratic behaviour of the petitioner that occurred on a particular date that too in the year 1996 under the influence of intoxication, then the appropriate punishment would be stoppage of increment for one year without cumulative effect. Therefore, this Court set aside the impugned proceedings and modifies the punishment as stoppage of increment for one year without cumulative effect. The respondents are directed to carry out the punishment of stoppage of increment for one year in the service record and modify the pensionary benefits accordingly.

9. With the above direction, this Writ Petition stands disposed. There shall be no order as to costs. Consequently, connected miscellaneous petitions stand closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Nsr

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 Additional Director General of Police (L & O),
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+1 CC to M/s.SPL GP (SR-8311[F] dated 24/02/2022)

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23.02.2022**

RD(21.03.2022) 4P 6C