



W.P.(MD)No.7088 of 2017

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.7088 of 2017
and
W.M.P.(MD).Nos.5603 and 19605 of 2017

R.Rajamani

... Petitioner

Vs.

- 1.The Principal Secretary to Government,
Home (Police IX) Department,
Fort St.George,
Chennai – 600 009.
- 2.The Director General of Police,
O/o. The Director General of Police,
Radhakrishnan Salai,
Mylapore,
Chennai – 600 004.
- 3.The Deputy Inspector General of Police,
Armed Police,
Trichy Range,
Trichy.
- 4.The Commissioner,
O/o. The Commandant,
Tamil Nadu Special Police IX Battalion,
Manimuthar,
Tirunelveli District.

... Respondents



W.P.(MD)No.7088 of 2017

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the second respondent in Rc.No.18414/AP III (1)/2012 dated 13.01.2016 and confirmed by the first respondent in G.O.(2D).No.427 dated 16.09.2016 and quash the same as illegal and consequently direct the respondents to reinstate the petitioner in service with all attendant service benefits including continuity of service etc.

For Petitioner : Mr.M.Kannan

For Respondents : Mr.C.Baskaran,
Government Advocate,
(Civil Side).

ORDER

This Writ Petition has been filed for Writ of Certiorarified Mandamus to quash the impugned order dated 13.01.2016 confirmed by the first respondent in G.O.(2D).No.427 dated 16.09.2016 and quash the same as illegal and consequently direct the respondents to reinstate the petitioner in service with all attendant service benefits including continuity of service etc.

2. The brief facts as stated in the affidavit are that the petitioner had appeared for the selection of Grade-II Police Constable and selected on merits. Even though he was selected on merits, the petitioner was not issued with the appointment order for more than 3 years. Inspite of repeated representations to



W.P.(MD)No.7088 of 2017

the Government, the appointment order was issued only in the year 2000.

Thereafter, the petitioner was promoted as Havildrar on 18.03.2004. The petitioner's seniority was not appropriately fixed with his batchmates who were placed 3 years above the petitioner. The petitioner was financially affected and he was also affected by delay in promotion. Hence, the petitioner made repeated representations to his superior officers to fix the seniority appropriately and grant promotion. In the meanwhile, the petitioner's wife had undergone medical treatment and the petitioner could not bear the medical expenses due to financial constraints. The petitioner was paid much less than his batch mates and such difficulties forced the petitioner to erect flex board demanding 14 points from the Government. Therefore, the respondents have initiated disciplinary proceedings after the issuance of suspension order dated 07.03.2011. The four charges were framed against the petitioner including failure to report for duty after leave, travelling to Chennai without prior permission, indulging in fasting protest by distributing notice, etc., The fourth respondent after completion of departmental enquiry by an order dated 16.06.2011 imposed a punishment of "reduction in time scale of pay by two stages for one year with cumulative effect". The petitioner has undergone the punishment imposed by the fourth respondent. The third respondent *suo motu* reviewed the order of punishment and confirmed the punishment by its proceedings dated 01.08.2011 and the punishment imposed has



W.P.(MD)No.7088 of 2017

WEB COPY

attained finality and the disciplinary proceedings were finally concluded.

Thereafter, the petitioner submitted Mercy Petition on 01.02.2012 to the second respondent requesting him to consider the case of the petitioner sympathetically by taking into consideration of his family situation. The second respondent issued show cause notice dated 02.11.2014 and the petitioner submitted a detailed reply dated 19.11.2014. The second respondent without following the procedure prescribed under law, without any authority and after a period of 4 ½ years, passed an order dated 13.01.2016 imposed punishment of dismissal from service to the petitioner. Thereafter, the petitioner presented a petition before the first respondent against the order of the second respondent dated 13.01.2016. The first respondent without applying his mind simply confirmed the order of the second respondent vide G.O.(2D).No.427 dated 16.09.2016. The contention of the petitioner is that the *suo moto* exercise of power of revision by the second respondent against the original order of punishment imposed by the fourth respondent after a period of 4 ½ years is clearly without jurisdiction. Aggrieved over the same, the present Writ Petition is filed.

3. The fourth respondent has filed a counter stating that after the petitioner was placed under suspension with effect from 07.03.2011, a charge memo in

P.R.No.09/2011 read with 3(b) of TNPSS (D&A) Rules 1955 was initiated against

<https://www.mhc.tn.gov.in/judis>



W.P.(MD)No.7088 of 2017

the petitioner and oral enquiry was conducted as per rules after giving sufficient opportunity and thereafter, the punishment of reduction in time scale of pay by two stages for one year with cumulative effect was imposed on the petitioner. The petitioner submitted a Mercy Petition and thereafter based on the Mercy Petition, the show cause notice was issued directing the petitioner to submit his explanation. After receiving the explanation and perused the records, the Director General of Police, Chennai has issued the dismissal order and subsequently, it was confirmed by the Government vide G.O.(2D)No.427, dated 16.09.2016. The orders passed by the punishing authority should be reviewed *suo motu* by the appellate authority within a period of six (6) months as per rule 15(A) of TNPSS (D&A) Rules, 1955. At the same time, the Head of the Department can take up the review at any time. In the present case, the Head of the Department that is Director General of Police has not taken up the review *suo motu*. The petitioner has submitted the Mercy Petition and thereafter, the Director General of Police has called for the records and then passed an order. Therefore, this cannot be considered as a *suo motu* review. Therefore, the respondents submitted that there is no infirmity in passing the order of dismissal. Hence, prayed to dismiss this Writ Petition.



W.P.(MD)No.7088 of 2017

WEB COPY

4. Heard Mr.M.Kannan, learned counsel appearing for the petitioner and Mr.C.Baskaran, learned Government Advocate Civil Side), appearing for the respondents and perused the records.

5. The learned counsel appearing for the petitioner submitted that the disciplinary authority has imposed a lesser punishment and the third respondent *suo motu* reviewed the order of punishment and confirmed it 01.08.2011. The punishment has also been implemented and the petitioner has undergone the punishment. The petitioner ought not to have filed a mercy petition, because of this mercy petition, the petitioner had faced the wrath of the higher officials. When the mercy petition was filed, the second respondent without mercy, had considered the mercy petition and dismissed the petitioner from service. The second respondent might have considered and rejected the Mercy Petition, but imposed major punishment of dismissal from service. The petitioner was claiming promotion as per his batch mates along with consequential monetary benefits. Since the promotion was not granted for the past 3 years, the petitioner due to frustration, has indulged in fasting and other agitations before the authorities, but ended up is dismissal from service. After the minor punishment was implemented, the second respondent has no power to increase the punishment, moreover in the present case the punishment of dismissal is totally unwarranted. More so, the

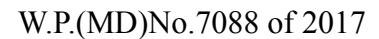


W.P.(MD)No.7088 of 2017

WEB COPY

punishing authority has exercised his discretion by imposing the lesser punishment. In the Mercy Petition, the second respondent cannot impose the higher punishment. Therefore, this Court is of the considered opinion that the punishment ought to be modified.

6. The learned counsel appearing for the Government submitted that the *suo motu* power can be exercised by the second respondent within a period of six (6) months. But in the present case, the second respondent exercised his discretionary power under Mercy Petition. Therefore, there is no time limit for considering the Mercy Petition and the second respondent being the Head of the Department has every right to impose the punishment and there is no illegality. Because the petitioner had submitted mercy petition, the second respondent has exercised his power and imposed the dismissal punishment and this submission cannot be accepted. The second respondent ought to have dismissed the mercy petition, but cannot impose major punishment of dismissal from service. The name itself suggests it is only a “Mercy Petition”, the second respondent ought to have dismissed the mercy petition and confirmed the lesser punishment. At times silence is the best thing than voice, the petitioner ought to have been silent, because of his voice he has ended up in dismissal from service.



8. The Writ Petition is allowed. There shall be no order as to costs.

Consequently, connected miscellaneous petitions are closed.

18.10.2022

Internet : Yes

Nsr



W.P.(MD)No.7088 of 2017

WEB COPY

To

- 1.The Principal Secretary to Government,
Home (Police IX) Department,
Fort St.George
Chennai – 600 009.
- 2.The Director General of Police,
O/o. The Director General of Police,
Radhakrishnan Salai,
Mylapore,
Chennai – 600 004.
- 3.The Deputy Inspector General of Police,
Armed Police,
Trichy Range,
Trichy.
- 4.The Commissioner,
O/o. The Commandant,
Tamil Nadu Special Police IX Battalion,
Manimuthar,
Tirunelveli District.



WEB COPY



W.P.(MD)No.7088 of 2017

S.SRIMATHY, J

Nsr

Order made in
W.P.(MD)No.7088 of 2017

18.10.2022