



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.19150 of 2018

and

W.M.P. (MD) .Nos.17001, 17002 and 17003 of 2018

S.Udhayakumar

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Additional Chief Secretary,
Home (Police-5) Department,
Secretariat,
Chennai - 600 009.

2.The Director General of Police of Tamil Nadu,
Mylapore,
Chennai - 600 004.

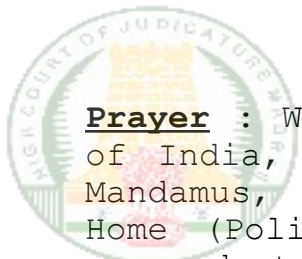
3.The Commissioner of Police,
Madurai City,
Madurai.

4.The Deputy Commissioner of Police (Headquarters),
Office of the Commissioner of Police,
Madurai City,
Madurai.

5.Mr.Ellapparaju,
The Enquiry Officer and Formerly Assistant
Commissioner of Police,
Tallakulam Traffic,
Madurai - 625 002.

6.The Principal Accountant General (A & E),
Teynampet,
Anna Salai,
Chennai - 600 018.

... Respondents



Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the G.O.(D).No.244 Home (Police-5) Department dated 12.03.2018 passed by the first respondent and quash the same and consequently, direct the respondents to treat the period of suspension from 01.02.2013 to 28.05.2013 as duty and to promote the petitioner as Assistant by including the name of the petitioner in the Promotion Panel ("C" list) for promotion as Assistant for the year 2016-2017 (crucial date 15.03.2016) and grant all the service, pension and monetary benefits within a time limit to be fixed by this Court.

For Petitioner : Mr.A.Thirumurthy

For R-1 to R-5 : Mr.P.Thambidurai,
Government Advocate (Civil Side).

For R-6 : Mr.P.Gunasekaran,
Accountant General Standing Counsel.

ORDER

This Writ Petition has been filed to quash the G.O.(D). No.244 Home (Police-5) Department dated 12.03.2018 and consequently direct the respondents to treat the period of suspension from 01.02.2013 to 28.05.2013 as duty and to promote the petitioner as Assistant by including the name of the petitioner in the Promotion Panel ("C" list) for promotion as Assistant for the year 2016-2017 (crucial date 15.03.2016) and grant all the service, pension and monetary benefits.

2. The brief facts of the case are that the petitioner was appointed as Office Assistant on 01.06.1982, then promoted as Junior Assistant on 08.06.1995. Then granted Selection Grade in the Junior Assistant post with effect from 08.06.2005. The petitioner was eligible for promotion as Assistant by including the name in the "C" list promotion panel for the year 2016-2017 prepared as on 15.03.2016. In the meanwhile, a charge memo was issued for the allegations that the petitioner along with the co-delinquent has promised one Anandhi to settle Rs.60,000/- and 6 sovereign jewel. Since the settlement was not ended, the police complaint was preferred against the petitioner and other accused in FIR No.2 of 2013 dated 28.01.2013. Based on the FIR, the petitioner was suspended vide order dated 30.11.2013. The suspension was revoked on 09.05.2013. The petitioner joined the duty on 21.05.2013. The suspension period for 01.02.2013 to 25.08.2013 was settled as eligible leave including extraordinary leave dated 19.06.2014. In the meanwhile, on 08.04.2013, the said Anandhi submitted a Petition to the respondents for withdrawal of the complaint and has given a statement also. In spite of such statement, the charge memo under Rule 17(b) was issued on 07.05.2013 framing three charges which are



"(1) I advised Anandhi to give Police Complaint, for which I demanded money.

(2) After she gave Police Complaint on 14.05.2012, I and Ravi demanded and got Rs.40,000/- from Anandhi, and

(3) In drunken condition shouted in front of the house of Anandhi and abused her and threatened over phone demanding Rs.6000/- as Advocate fee and thus defamed the Police department, which is a misconduct".

3. The contention of the petitioner is that the said complaint was withdrawn by the said Anandhi on 08.04.2013. Therefore, there is no complaint at all as on the date of issuance of charge memo. However, the respondents conducted an enquiry and has imposed the punishment in P.R.No.46 of 2013 dated 24.03.2014 imposing the major punishment of postponement of increment for three years and this shall operate to postpone his future increments also. Aggrieved over, the petitioner has preferred an appeal and the same was dismissed confirming the punishment. Thereafter, Review Petition was also confirmed. In the meanwhile, the FIR No.2 of 2013 was quashed in CrI.O.P. (MD) No.7741 of 2014 dated 04.06.2014 on the file of Judicial Magistrate Court No. I, Madurai and the C.C.No.171 of 2013 was closed.

4. The respondents have filed a counter stating that the petitioner has indulged in compromise and the criminal case was quashed based on the compromise and the same is not a Hon'ble acquittal. Therefore, based on the records, the disciplinary proceedings were initiated and the punishment was imposed on the petitioner. All the relevant documents are circulated to the petitioner. The petitioner participated in the enquiry. There is no violation of principles of natural justice and subsequently, an order was passed and the petitioner preferred an appeal and the same was dismissed and the review application was also dismissed. The petitioner has not raised any grounds to interfere with the order and prayed to dismiss the Writ Petition.

5. Heard Mr.A.Thirumurthy, learned counsel for the petitioner and Mr.P.Thambidurai, learned Government Advocate (Civil Side) for respondents 1 to 5 and Mr.P.Gunasekaran, learned Standing Counsel for the sixth respondent.

6. The learned counsel for the petitioner submitted that in the review order in G.O.(D).No.244 Home (Police-5) Department dated 12.03.2018, the Government has relied on letter dated 23.01.2013 and the said letter was not circulated to the petitioner and it was not shown in the suspension order as well as in the charge memo. Without circulating such letter, the respondents have relied on letter dated 23.01.2013 and has punished the petitioner.



7. On perusing the suspension order as well as the charge memo, the letter dated 23.01.2013 is not at all mentioned. Moreover, it is seen from the records that the petitioner has attained superannuation. Therefore, remitting back the case will not survive any purpose. Therefore, this Court is modifying the punishment as stoppage of increment for six (6) months without cumulative effect. The respondents are directed to implement the said order and grant consequential effect with pensionary benefits and consider the petitioner's name for notional promotion. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

8. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// 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 Chief Secretary,
The Government of Tamil Nadu,
Home (Police-5) Department,
Secretariat,
Chennai - 600 009.
- 2.The Director General of Police of Tamil Nadu,
Mylapore,
Chennai - 600 004.
- 3.The Commissioner of Police,
Madurai City,
Madurai.



4.The Deputy Commissioner of Police (Headquarters),
Office of the Commissioner of Police,
Madurai City,
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5.Mr.Ellapparaju,
The Enquiry Officer and Formerly Assistant
Commissioner of Police,
Tallakulam Traffic,
Madurai - 625 002.

6.The Principal Accountant General (A & E),
Teynampet,
Anna Salai,
Chennai - 600 018.

+1 CC to M/s.T. SAKTHI KUMARAN, Advocate (SR-17801[F] dated
11/04/2022)

+1 CC to M/s.SPL.GP. (SR-18371[F] dated 12/04/2022)

**W.P. (MD) .No.19150 of 2018
11.04.2022**

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