



WP.No.31485/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.09.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.31485/2016

K.Baskaran

... Petitioner

Versus

The Principal Secretary to Government
Home [Police-2] Department
Secretariat, Chennai 600 009.

... Respondent

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records pertaining to the order by the respondent herein in G.O.(2D) No.276, Home (Police-2) Department dated 07.08.2014 imposing the punishment of compulsory retirement from service and the consequential order passed by the respondent herein in G.O.(2D) No.171 Home (Police-2) Department dated 09.03.2016 giving effect to the compulsory retirement order from 07.08.2014 and quash the same and consequently direct the respondent herein to allow the petitioner retire from service with effect from 31.03.2014 with all consequential service and monetary benefits.



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For Petitioner : Mr.A.E.Ravichandran
For Respondent : Mr.Haja Nazirudeen
Additional Advocate General
assisted by Mr.V.Nanmaran
Additional Government Pleader

ORDER

- (1) The writ petition has been filed in the nature of a certiorarified mandamus seeking records relating to an order passed by the respondent herein, Principal Secretary to Government, Home [Pol-2] Department, Chennai, in G.O.(2D) No.276, Home (Police-2) Department, dated 07.08.2014, by which order, the respondent imposed a punishment of compulsory retirement as against the petitioner herein and the consequential order of the very same respondent passed in G.O.(2D) No.171, Home (Police-2) Department dated 09.03.2016 giving effect to the earlier order dated 07.08.2014 and to quash both the Government Orders. The petitioner also sought a direction, to direct the respondent herein to allow the petitioner to retire from service with effect from 31.03.2014 and to pay all consequential service and monetary benefits to him.



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(2) The petitioner herein was directly recruited as Sub Inspector of Police on 2.11.1979 and was promoted as Inspector of Police on 01.10.1993 and further promoted as Deputy Superintendent of Police [Cat.I] on 05.02.2005. In the affidavit, it had been very specifically stated that he had received 38 good service entries and 3 meritorious service entries. He was due to be promoted as Additional Superintendent of Police on 29.09.2013. It had been further stated that the Director General of Police, by proceedings dated 03.12.2007, had issued a charge memo under Rule 17[b] of the Tamil Nadu Civil Servants [Discipline and Appeal] Rules, alleging that the petitioner and his wife had acquired assets disproportionate to the known sources of income during the check period which was stated to be between 01.01.1990 and 30.11.2000. In the affidavit, it had been stated that the petitioner had given an explanation and thereafter, the Deputy Inspector General of Police, Thanjavur Range, was appointed as an Enquiry Officer. The enquiry was also concluded. But however, final orders had not been passed. It must also be stated that orders had been passed placing the petitioner under suspension and just prior



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to his retiring on attaining the age of superannuation, the petitioner was not permitted to retire and necessary orders in that regard had been passed. Complaining that for a substantial period of time, consequential orders pursuant to the conclusion of the enquiry had not been passed, the petitioner filed WP.No.27709/2013. This came up for consideration before a learned Single Judge of this Court. By an order dated 07.10.2013, taking note of the submission made by the Government Counsel, the learned Single Judge had stipulated an outer time limit of four weeks from the date of receipt of a copy of that particular order. Thereafter, the impugned order dated 07.08.2014 had been passed by the respondent herein.

- (3) The present writ petition has been filed questioning that particular order and the consequential order, putting that order into effect, namely, compulsorily retiring the petitioner from service on the ground that the order had been passed after delay and after the time period stipulated by this Court in WP.No.27709/2013. It was therefore contended that the respondent had no jurisdiction to pass the order. In effect, it is contended that the entire proceedings should



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be termed as having lapsed owing to the default of the respondent herein in not keeping up the time schedule as stipulated by the learned Single Judge. It is also contended by the learned counsel for the petitioner that earlier a charge memo under Rule 17[a] of the said Rules had been issued to the petitioner herein and an order of censure had been passed. It is therefore contended that issuance of the second charge memo under Rule 17[b] of the said Rules would be a double jeopardy as allegations in the charge memo issued under Rule 17[a] and the allegations contained in the charge memo issued under Rule 17[b], according to the learned counsel, overlapped on facts.

- (4) In the counter affidavit filed on behalf of the respondent, with respect to the delay, it had been stated that the respondent had filed an application in MP.No.1/2014, though that number was not specifically mentioned in the counter affidavit, seeking extension of time to pass orders. It had been stated that no orders had been passed by the Court in MP.No.1/2014. But however, the respondent had passed the impugned order on 07.08.2014, within a period of six months which was the time which was sought in MP.No.1/2014.



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- (5) Quite apart from this factor of the delay in passing the order, one further fact emanated on perusal of the records, namely that after the enquiry had been concluded, though a copy of the Enquiry Report had been furnished to the petitioner herein, a further show cause notice calling upon the petitioner to show cause as to the punishment to be imposed, had not been issued.
- (6) Learned Additional Advocate General produced the records before this Court. On examination of the records which had been produced, it is to be inferred that a second show cause notice had actually not been issued to the petitioner herein. That would be a serious violation of principles of natural justice.
- (7) The learned counsel for the petitioner then widened the scope of arguments by stating that not only was the second show cause notice was not issued, but the very order was passed after the time limit stipulated by this Court. The learned counsel also raised a doubt about filing of MP.No.1/2014 claiming that copy of the same was not served on the petitioner.



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- (8) Be that as it may, the issue now before this Court is whether to nullify the orders passed by the respondent on the ground of delay and being passed after the time stipulated by this Court in WP.No.27709/2013 and on the ground that the second show cause notice was not issued. If the Court is to take a decision on the procedural violation of the 2nd show cause notice not having been issued, then the Court will have to set back the clock to the position where it originally stood, namely, conclusion of the Enquiry Report. If that is to be taken, once again the question which begs an answer is whether this Court can condone the delay as the order in WP.No.27709/2013 had attained finality fixing the outer time limit of four weeks from the date of receipt of a copy of that particular order and any proceedings thereafter, would be termed as null particularly, as formal extension of time had not been granted by this Court.
- (9) It is contended by the learned counsel for the petitioner that the entire proceedings will have to be struck down.
- (10) However, the learned Additional Advocate General contended that efforts had been taken by the respondent in filing MP.No.1/2014



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seeking extension of time and therefore, the *bona fide* of the respondent cannot be suspected. It is a fact, according to the learned Additional Advocate General, that a miscellaneous petition seeking extension of six months time in passing final orders had actually been filed and within a period of six months, the order impugned herein dated 07.08.2014, had been passed.

- (11) These are issues which will have to be addressed first before the authority concerned. The issues which the petitioner reasonably can take would be [1]the jurisdiction of the authority to now examine the entire aspect since the period stipulated by the Court had long lapsed and no formal orders had been passed in MP.No.1/2014 and though it it had been filed, since no orders had been passed, the said miscellaneous petition can be categorised as only a piece of paper ; [2]the issue of double jeopardy which is insisted by the learned counsel for the petitioner and on which, the respondent will have to necessarily answer and take it up as an issue ; and [3] more importantly, if a second show cause notice is to be issued to the petitioner herein, before final orders are passed, the respondent will



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necessarily have to take up the issue of delay and find out whether they still have the jurisdiction to pass orders and if they come to the conclusion that they have no jurisdiction, then charges will have to be dropped. If they are of the opinion that they have jurisdiction, then it must be substantiated as to how they can claim jurisdiction in spite of there being no extension of time granted by this Court and in spite of no orders being passed in MP.No.1/2014. Let the respondent first answer that particular issue and anyway, the answers will always be tested in Court.

- (12) The petitioner may also take up every other issue questioning the findings of the Enquiry Officer, particularly, the issues raised before this Court with respect to the check period and the explanation given by the petitioner herein about the alleged assets purchased and the explanation given about the sources of income for purchase of such assets.
- (13) The learned counsel for the petitioner remonstrated that this would be sending the petitioner back to square one and once again the entire process will have to be reagitated and therefore, urged that this Court



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should strike down the Impugned Orders and direct charges to be dropped and put an end to the entire issue.

(14) But that would be possible only if the Court were to sit as Appellate Authority over the orders passed. This Court, sitting in judicial review on the order passed, can never examine the punishment imposed but can interfere only if there is any violation in the procedure adopted. To that extent, there has been a violation of procedure adopted in the instant case. If there is violation of procedure, the clock will have to be set back and the procedure to be corrected. The respondent must be given an opportunity to re-examine from that particular point.

(15) Therefore, the following directions are issued:-

(a) The respondent must issue a second show cause notice to the petitioner relating to the punishment to be imposed consequent to the charges having been proved. In the second show cause notice, the respondent must clearly explain their jurisdiction to issue such a show cause notice in spite of the fact that the Court had not granted extension



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of time as stipulated in WP.No.27709/2013.

- (b) The petitioner is given full liberty to take up every issue including the issue of jurisdiction of the respondent to so issue the show cause notice and to proceed further with the enquiry after the time stipulated in WP.No.27709/2013 had long passed.
- (c) The petitioner is also permitted to raise every other issue on facts and also on the issue of law with respect to double jeopardy.
- (d) After issuance of such show cause notice, which should be issued within a period of four weeks from the date of receipt of a copy of this order, the respondent, on receipt of the explanation from the petitioner, may take a decision about the further orders to be passed.
- (e) It is made clear that breach of issuance of show cause notice within the period of four weeks from the date of receipt of a copy of this order, would bring the entire proceedings to a halt and it would become a nullity.



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(16) In view of the order passed, the orders impugned in the present writ petition are set aside. But, since further directions are issued, the writ petition stands **disposed of**. No costs.

22.09.2023

AP

Internet : Yes

To

The Principal Secretary to Government
Home [Police-2] Department
Secretariat, Chennai 600 009.



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C.V.KARTHIKEYAN, J.,

AP

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