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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.N.MANJULA

Review Application No.102 of 2021
in
and W.P.No.3198 of 2020

1. Additional Chief Secretary to Government,
   Home (Police) Department,
   Fort St. George, Chennai 600 009.

2. The Director General of Police,
   Head quarters,
   Dr.Radhakrishnan Salai,
   Mylapore, Chennai 600 004.

3. The Commissioner of Police,
   No.132, Commissioner Office Building,
   EVK Sampath Road, Vepery,
   Periyamet,Chennai 600 007.
   Tamil Nadu ... Appellants/Respondents 1 to 3

Vs.

P.Jawahar .. Respondent/ Petitioner

* * *

Review Application filed under Order 47 Rule 1 CPC praying to review the order passed by this Court in W.P.No.3198 of 2020, dated 18.09.2020 and pass orders.

* * *

For Appellants : Mr.S.Nanmaran,
Special Government Pleader

For Respondent :Mr.S.Prabakaran
Senior Counsel
for Mr.R.Krishna Kumar

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O R D E R

This Review application has been filed by the Appellants /Respondents 1 to 3 to review the order dated 18.09.2020 made in WP No.3198 of 2020.

2. Heard Mr.S.Nanmaran, Special Government Pleader appearing for the Appellants and Mr.S.Prabakaran, learned Senior Counsel for respondent.

3. Mr.S.Nanmaran, Special Government Pleader appearing for the Appellants submitted that the order has been passed on the erroneous belief that Government has no power to suo-motu review the order passed by the Appellate Authority. The Government as well as the Appellate Authority has much suo-motu power under Section 15A (I) (i) of the Tamil Nadu Police Subordinate Service Rules, 1955 (hereinafter called as the "Rules"). The State Government at any time either on its own motion or otherwise review any order passed under these rules. The power of the Government to review has been upheld by the Full bench in WA No.686 of 2015 by virtue of Judgement dated 14.02.2020. The Government has suo-motu exercised the power of

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review and imposed the punishment even though, the punishing authority had dropped the charges and that was confirmed by the Appellate Authority. The order passed in the writ petition needs to be reviewed on the ground of error apparent on record, as the learned Single Judge did not take into consideration of the judgement of the larger bench, while passing the judgement.

4. Mr.P.Jawahar, learned counsel appearing on behalf of the respondent submitted that there is no error apparent on record in the judgement, because the learned Single Judge has dealt the merits of the matter and held that the matter is not fit for a suo-motu review by the Government. When the Court had appreciated the matter on its own merits and passed a detailed order, there is no need to review the same. On perusal of the order, it is seen that the learned Single Judge had relied on the judgement dated 29.09.2015 made in WA (MD) No.775 of 2015 and recorded that invocation of power of review under Section 15A (1) of the Rules, is legally impermissible.

5. It is submitted by the Mr.Nanmaran, learned counsel for the Appellants that due to the conflicting view given about the power of the Government to invoke Rule 15A(1) of the Rules, by two

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different Judges, reference was made to the Full Bench and in which the Hon'ble Full bench has passed an order on 14.02.2020 wherein it has been settled that the Government has power to invoke Rule 15A(i) for Review. According to the learned counsel, the above Judgement was not brought to the attention of the learned Single Judge and only in view of that the learned Single Judge had given a finding that the Government has got the power to review. The relevant portion in the judgment of the Hon'ble Full Bench is extracted hereunder :-

> *43.On a literal interpretation of the word "or" used in Rule 15A(1) of the Rules would certainly bar the review of an order of Disciplinary Authority, simultaneously by the appellate authority as well as the Head of the Department. When the word "and" is not used or "or" and "and" are used as conjunctives, it is impossible to derive a meaning, which would favour the exercising of power of suo motu review by higher authorities simultaneously to review the same order of Disciplinary Authority. If the rule is so interpreted to pave way for Head of the Department or the State Government to review the order passed by the original authority successively, that will invite undesired results leading to*

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multiplicity of proceedings or conflicting decisions. Such an interpretation will be against public policy insofar as Rule 15A(1) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, is concerned.

6. The observation made by the learned Single Judge in Paragraph 16, is extracted hereunder :-

16. The above ruling would indisputably has to be applied in this case as well. In which case, the invocation of power of review under Section 15(A)(1) of the Tamil Nadu Police Subordinate Service Rules is legally impermissible and the impugned order passed on such exercise of review power is therefore void and illegal. Further, as concluded by this Court above, even on merits, this Court finds that the suo-motu review of the Government, in the facts and circumstances of the case, is not sustainable.

7. The above conclusion of the learned Single Judge is not only based on the technicalities of the applicability of regulation 15A (i) and the power of the Government to invoke the same. The learned

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Single Judge had exhaustively gone into the facts and all other circumstances and had ended up in the concluding Paragraph No.16 that the suo-motu review of the Government even on merits is not sustainable. It is correct for the learned counsel for the Government to state that so far as the power of the Government to invoke 15A(1) is concerned, the position is settled by the Full Bench decision in WA No.686 of 2015. If the Full bench Judgment was brought to the notice of the Court, the learned Single Judge would have restricted his observation for allowing the writ petition only on merits and not on technicalities. Since the Full Bench Judgment was not brought to the attention of the Court, there is an observation as to the technicalities about applicability of Section 15A (i) of the Rules also.

8. Since the order has dealt the merits of the matter along with the scope for review, I feel it is sufficient to clarify about the powers of the Government to invoke Section 15 A (1) for suo-motu review. Since the Full Bench has already settled the above issue by holding that the Government has got the power for suo-motu review, it stands clarified that sofar as Regulation 54 A(1) is concerned, whatever is held in WA. MD No.686 of 2015, by the Hon'ble Full Bench above in the position of law. However, the learned single judge has done a thorough analysis on the facts and other circumstances of

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the case and rendered a finding on the merits also, the result of the Judgment does not require any review or re-appreciation.

9. With the above clarification, this review application is closed. No costs.

13.12.2023

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation :Yes/No

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R.N.MANJULA, J

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