



WEB COPY



W.P.No.16620 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

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THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P.No.16620 of 2021 and
W.M.P.Nos.17613 & 17614 of 2021

Mr.E.Elangovan

... Petitioner

Vs.

- 1.The Director General of Police,
Dr.Radhakrishnan Salai Road,
Mylapore, Chennai 600 004.
- 2.The Commissioner of Police,
Greater Chennai Corporation,
No.132, Commissioner Office Building,
EVK Sampath Road,Vepery, Periyamet,
Chennai 600 007.
- 3.The Deputy Commissioner of Police,
Madhavaram Police District,
Kanakan Chatram, Ponniammanmedu,
Chennai 600 110.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the impugned order dated 27.03.2021 bearing number RC.No.527873/AP.3(2)/2020 passed by the first respondent which confirms the order bearing number PR.No.28/PRN(2)/2019, U/R 3(b) dated 25.11.2019 passed by the third respondent and quash the same and to hold proper enquiry within the time frame as fixed by this Court.



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For Petitioner : Mr.B.Leelesh Sundaram for
M/s.Nathan and Associates
For Respondents : Mr.G.Nanmaran, SGP

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus, to call for the impugned order dated 27.03.2021 bearing number RC.No.527873/AP.3(2)/2020 passed by the first respondent which confirms the order bearing number PR.No.28/PRN(2)/2019, U/R 3(b) dated 25.11.2019 passed by the third respondent and quash the same and to hold proper enquiry within the time frame as fixed by this Court.

2. Heard Mr.B.Leelesh Sundaram, learned counsel for the petitioner and Mr.G.Nanmaran, learned Special Government Pleader for the respondents.

3. The learned counsel for the petitioner submitted that there is a lack of jurisdiction in competence because the Deputy Commissioner of Police who has been appointed as an Enquiry Officer himself has passed



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the impugned order. He further submitted that it is the Superintendent of Police who is the appropriate authority to pass order and it is not the Deputy Commissioner of Police. He also submitted that the past service records of the petitioner has not been considered properly before passing the order of punishment. Despite it has been alleged during the time of enquiry that there are some eight or nine previous disciplinary action taken against the petitioner, the punishment order does not make any reference about the same.

4. It is also submitted by the learned counsel for the petitioner that the petitioner filed an appeal and the same was rejected on the ground of limitation however by giving liberty to the petitioner to file a mercy petition. The petitioner filed a mercy petition that was also not considered for the reason that the petitioner had not filed any appeal and not exhausted the appeal remedy.

5. The learned Special Government Pleader for the respondents submitted that there is no lack of competence as alleged by the petitioner



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because in the city, the post of Deputy Commissioner of Police is equivalent to Superintendent of Police in the District Level and that the petitioner was in the habit of deserting from duty quite often.

6. So far as the point of lack of competence is concerned, the petitioner does not make out any acceptable ground because the cadre of Deputy Commissioner in the city is equivalent to the Superintendent of Police in the District. The remaining submission is that in the order of punishment, the authority did not make any reference about the previous service track record of the petitioner. In the mercy petition filed by the petitioner, the Director General of Police has passed an order on 27.03.2021 by stating that the petitioner has not preferred any appeal against the punishment imposed against him. But the appeal filed by the petitioner was rejected on the ground of limitation. Atleast in the mercy petition the said fact could have been considered and the petitioner could have been given with a liberty to file an appeal and get an order before the invoking the mercy provision.



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7. Since the impugned order did not consider the fact that the petitioner had tried an appeal but it was not entertained, I feel on that ground alone, the impugned order can be set aside by giving liberty to the petitioner for filing an appeal within a period of two weeks.

8. In the result, this Writ Petition is allowed and the impugned order in RC.No.527873/AP.3(2)/2020 dated 27.03.2021 passed by the first respondent is set aside and the petitioner is at liberty to file an appeal within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the second respondent shall consider and pass orders by also taking into account of the previous service records of the petitioner, within a period of eight weeks thereafter. This order will not have any impact on the order of punishment already imposed. No costs. Consequently, connected miscellaneous petitions are closed.

15.12.2023

Index : Yes

Internet : Yes/No

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R.N.MANJULA, J.

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