



W.P.No.16765 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15.12.2022
Pronounced on	02.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.16765 of 2018
and
W.M.P.Nos.19947 & 19948 of 2018 & 24755 of 2022

M.Karunarajan

... Petitioner

Vs.

1.The Additional Chief Secretary to
the Government,
Home Department,
Fort St. George,
Chennai-600 009.

2.The Deputy Inspector General of Police,
Railways, Egmore,
Chennai-600 008.

3.The Superintendent of Police,
Railways, Egmore,
Chennai-600 008.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records of the records of the respondents in connection with the impugned orders passed by the third respondent in C.No.G1/PR/2/2009 dated 22.01.2010, modified order passed by the second respondent in Na.Ka.No.A2/665/2010 dated 06.09.2010 and confirmed by the first respondent in his proceedings G.O.(D) No.1529, Home (Pol.XV) Department dated 15.12.2017, quash the same and direct the respondents to revise the salary of the petitioner and grant him all consequential service and monetary benefits.

(Prayer amended vide order dated 22.09.2022 made in WMP.24751/2022 in W.P.16767/2018 by AQJ).

For Petitioner : Mr.K.Venkataramani, Sr. Counsel
for Mr.M.Muthappan

For Respondent : Mr.T.Chezhiyan, AGP
Nos.1 to 3

O R D E R

The petitioner herein while serving as a Sweeper in the Egmore Railway Police Station, was levelled with charges of unauthorized absence and pursuant to the proven charges in the inquiry report, he was originally imposed with the punishment of compulsory retirement by the third respondent herein on 22.01.2010. On appeal before the second respondent herein, the punishment of compulsory retirement



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was modified into one of "postponement of increment for a period of three years with cumulative effect" through an order dated 06.09.2010.

Since the modified punishment was a major penalty, he had preferred a Mercy Petition before the first respondent herein, which came to be rejected on 15.12.2017, confirming the modified punishment imposed by the second respondent herein. Challenging the orders passed in the appeal, as well as the mercy petition, the present Writ Petition has been filed.

2. Heard Mr.K.Venkataramani, learned Senior counsel for the petitioner and Mr.T.Chezhiyan, learned Additional Government Pleader for the respondents.

3. The learned Senior counsel for the petitioner submitted that the reason for the unauthorized absence of the petitioner was that, he was suffering from tuberculosis disease for the past five years prior to the charge memo and during the period of his absence, the disease intensified, owing to which, he was unable to attend his duties. Hence, he submitted that the modified punishment of postponement of increment for a period of three years with cumulative effect, requires interference by this Court.



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4. Per contra, the learned Additional Government Pleader submitted that, though the disciplinary authority had imposed the punishment of compulsory retirement, the same came to be modified in the appeal, into a lesser punishment of “postponement of increment for a period of three years with cumulative effect” which enabled the petitioner to be reinstated into service and hence, this modified punishment is proportionate to the levelled charges. With such a submission, the learned Additional Government Pleader sought for dismissal of the Writ Petition.

5. As per the charges levelled against the petitioner, he was originally sanctioned with medical leave from 09.12.2007 to 21.02.2008. Since the petitioner had taken continuous leave for more than 60 days, he had been referred to the Medical Board. The report of the Medical Board dated 02.05.2008 opined that he was fit for joining duty and was required to report for duty from 02.05.2008 onwards. In spite of the same, he had failed to report for duty and therefore, was declared to be 'desertor' and a punishment of compulsory retirement has been imposed on him by the third respondent.



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6. This punishment of the third respondent may require interference at the first glance itself, by drawing an analogy from the circular of the Director General of Police dated 06.12.2007, wherein it was ordered that, in all the cases of desertion in cases relating to Head Constables and Police Constables, the major penalty of dismissal or removal from service or compulsory retirement should not be imposed, but rather any other punishment can be imposed.

7. The petitioner in the present case was a sweeper under the respondents herein, who is a last grade employee. When the Director General of Police had issued instructions to protect the services of the Constables and Head Constables in their service by directing the disciplinary authority to refrain from issuing orders of dismissal / removal from service or compulsory retirement, it is only for the welfare of such Grade-D service personnels, who may lose their entire livelihood, if their services were terminated in any manner. While that being so, the disciplinary authority / third respondent herein ought not to have imposed the major punishment of compulsory retirement in the first instance, but could have awarded a lesser punishment. If such a lesser punishment had been awarded, the petitioner could have availed his appeal remedy and such a lesser punishment may have been further



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modified into a lesser punishment by the Appellate Authority / second respondent herein. If considered from this point of view, it is seen that the second respondent had modified the original punishment on the ground that the petitioner was suffering from tuberculosis for the past five years and had been taken treatment and that his family which was in financially distressed circumstances, was totally dependant on the earnings of the petitioner alone and accordingly modified the punishment awarded by the third respondent herein. In other words, the original punishment of compulsory retirement imposed by the third respondent was totally disproportionate to the levelled charges. Thus, the petitioner was deprived of his valuable right of challenging a lesser punishment that ought to have been awarded by the third respondent in the first instance. Thus, this Court is of the view that the modified punishment imposed by the second respondent herein, may require further modification.

8. This Court has also taken a sympathetic view on the plight of the medical ailment of the petitioner, as well as his poor financial background and dependency of the family members on his sole earnings and therefore, this order shall not act as a binding precedent for any other case.



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9. It is now brought to the notice of this Court that the petitioner had retired from services. Since the present order has been passed more on a sympathetic ground, the petitioner would not be entitled for arrears of salary till the date of his superannuation, but would be entitled only for the pensionary benefits.

10. In the light of the above findings, the impugned order dated 06.09.2010 passed by the second respondent in the appeal, as well as the order of the first respondent in the Mercy Petition dated 15.12.2017, are set aside. Consequently, there shall be a direction to the first respondent herein to pass appropriate orders, modifying the punishment imposed by the second respondent dated 06.09.2010 and award the punishment of "postponement of increment for a period of three years 'without' cumulative effect" and thereby, disburse the arrears of revised pensionary benefits to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

11. It is made clear that the petitioner shall not be entitled for the arrears of salary from the date of the modified punishment, till the date of his superannuation.



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12. With the above observations and directions, the Writ Petition stands partly allowed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

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Internet:Yes/No

Order :Speaking/Non Speaking

DP



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To

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the Government,
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M.S.RAMESH,J.

DP

ORDER MADE IN

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