



W.A.No.3483 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2023

CORAM:

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY**

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and C.M.P.No.22316 of 2019

- 1) The State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Home Police (IV) Department,
Secretariat, Chennai 600 009
- 2) The Director General of Police,
Kamarajar Road, Chennai 600 004
- 3) The Additional Director General of Police,
Law and Order,
Kamarajar Road, Chennai 600 004
- 4) The Commissioner of Police,
Chennai Sub Urban Police,
Head Quarters,
Commissioner Office, Saint Thomas Mount,
Chennai 600 016

... Appellants/ Respondents

Vs.

L.Venkatesan

... Respondent/ Petitioner



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PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, against the order of Her Lordship passed in W.P.No.17392 of 2014 dated 04.01.2019.

For Appellants : Mr.P.Anandakumar,
Government Advocate

For Respondent : Mr.M.Ravi

J U D G M E N T

The Writ Appeal is directed against the order of the learned Single Judge, dated 04.01.2019 in W.P.No.17392 of 2014 in and by which, the writ petition filed by the respondent, challenging the orders of punishment of an increment cut, without cumulative effect and the Appellate and the Revisional orders, confirming the said punishment were quashed and consequently, directing the respondents therein to promote the petitioner to the post of Deputy Superintendent of Police with effect from the date of promotion of his immediate juniors.

2. The factual matrix on which the case arises is that the respondent was appointed as Sub Inspector of Police on 28.09.1987. Thereafter, he was promoted as Inspector on 12.07.2001. While so, on 28.02.2009, a charge memo was issued to him containing a charge that he stopped the lorry carrying



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rice bags and demanded a bribe of Rs.5,000/- from one lorry driver and received a sum of Rs.690/- along with two bags of rice weighing 75 kilograms each, through the Grade I Police Constable, namely Kumar, and the lorry was unnecessarily detained unlawfully for more than 5 hours at the Kathipara Grade Separator.

3. However, after disciplinary enquiry on 02.04.2009, a punishment of *'one increment cut for a period of one year without cumulative effect'* was imposed on the respondent. The appeal filed by the respondent was rejected by an order dated 12.02.2010. Further, a mercy petition and review petition were dismissed by orders dated 09.02.2011 and 03.10.2011 respectively. Thereafter, promotions were made to the post of Deputy Superintendent of Police for the year 2011-12, when the respondent came within the zone of consideration. But, considering the fact that there was currency of punishment as of the crucial date of 01.06.2011, the respondent's case was passed over.

4. Subsequently, for the next year i.e. 2012-13, since there was no other impediment as of the crucial date of 01.06.2012, he was included in the panel and was granted the order of promotion as Deputy Superintendent of Police, as on 30.01.2014. The respondent also worked in the said post and retired



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upon superannuation in the year 2019. While so, the present writ petition was filed on 30.06.2014 challenging the punishment order and the appellate orders with a consequential prayer to grant him promotion from the date of promotion of his immediate juniors, as stated supra.

5. The writ petition was resisted by the appellants herein by filing a detailed counter affidavit by stating that when the respondent was facing disciplinary proceedings, ultimately after due opportunity and proper conduct of enquiry, the order of punishment was imposed. Since the respondent kept on filing appeal and revision petitions, only after the disposal of the review application, the punishment was implemented and therefore, as on the crucial date of 01.06.2011, there was currency of punishment and therefore, his case was not considered. Therefore, there was no error, whatsoever, in the imposition of punishment as well as the consequential denial of promotion.

6. The learned Single Judge, after hearing the parties, set aside the impugned orders and allowed the writ petition as prayed for. It is pertinent to state that even though the learned Single Judge has allowed the writ petition as prayed for, no reason whatsoever, is mentioned in the order of the learned Single Judge, regarding the illegality of the punishment order or the appellate



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and revisional orders. The learned Single Judge in paragraph no.6 has only reasoned that merely because the increment cut is belatedly implemented, the currency of the same cannot be a reason to deny the promotion. But however, the learned Single Judge has allowed the writ petition as prayed for. Aggrieved by the same, the present appeal is laid before this Court.

7. Mr.P.Anandakumar, learned Government Advocate appearing on behalf of the appellants submitted that while the learned Single Judge had not found any fault whatsoever with the order of punishment, ought not to have allowed the writ petition, as prayed for. In any event, the respondent has superannuated. His consequential claim for promotion came up for consideration only in the year 2011 & 2012, which was deferred since there was currency of punishment. When the respondent himself has filed an appeal and review petitions, the implementation of the increment cut has rightly been deferred and therefore, when there was currency of punishment as on the crucial date 01.06.2011, his promotion was rightly deferred and he was granted promotion in the next panel year of 2012-13 and therefore, the order of the learned Single Judge deserves to be set aside.

8. Mr.M.Ravi, learned counsel appearing on behalf of the respondent would submit that even on the last hearing, after hearing the parties, the



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predecessor Bench has made it clear that he can also argue on the merits of the punishment. The learned Single Judge has allowed the writ petition as prayed for and therefore, the respondents therein need not file a separate appeal for non-mentioning of reasons for setting aside the impugned punishment. Therefore, he would file a detailed written submissions, delineating various grounds raised in the writ petition, and would submit that firstly, the very charge itself is that the petitioner had demanded, accepted bribe and rice bags through a Police Constable, no disciplinary enquiry, whatsoever, was initiated against the said Police Constable. Secondly, the Enquiry Officer in this case, took a biased attitude and even cross examined the delinquent official and therefore, the procedure followed is illegal which would vitiate the order of punishment. The entire charge is demanding and accepting bribe and rice from one Ramu, the driver of the lorry, who was never examined as a witness in the disciplinary enquiry. When the primary and best evidence is available to prove the delinquency and the Department does not bring the same before the Enquiry Officer, then the same is a valid ground to hold that the findings are perverse.

9. The Disciplinary Authority as well as the Enquiry Authority have very much relied upon the evidence of P.W.7 / the Preliminary Enquiry



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Officer and the materials collected during the preliminary enquiry and the said materials were considered as proof of delinquency. When the statements which were collected during the preliminary enquiry are sought to be relied upon, the concerned persons have to be examined as a witness in the disciplinary enquiry with due opportunity to the delinquent to cross examine them. Without such opportunity, the material collected during the preliminary enquiry cannot be relied upon.

10. We have considered the rival submissions made on either side and perused the material records of the case.

11. On consideration thereof, the points which are raised for consideration are that:-

(i) whether or not the impugned orders of punishment of the original Disciplinary Authority and that of the Appellate and Revisional Authority are liable to be interfered with? ; and

(ii) If so, whether the petitioner is entitled for further relief of promotion from the date of his immediate junior?



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12. On consideration of the materials placed before us, it can be seen from the impugned order of the Disciplinary Authority that the materials collected during preliminary enquiry are very much relied upon. Paragraph no.7 of the order reads thus:-

“7. P.W.7 the preliminary Enquiry Officer has properly tracked the circumstances leading to the allegations levelled by PW.1 and collected vital evidence in the preliminary enquiry and submitted a report with a conclusion that a prima-facie case is made out against the delinquent. The charge is proved. I concur with the findings of the enquiry officer”.

13. In that view of the matter, the order of punishment is vitiated. If the Disciplinary Authority or the Enquiry Authority wants to rely upon the statements recorded in the preliminary enquiry, unless the concerned individuals are examined as witness with due opportunity for cross examination, such statements and materials collected during the preliminary enquiry cannot be relied upon for imposing the punishment. In this regard, it is useful to extract paragraph no.32 of the Judgment of the Hon'ble Supreme



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Court in ***Kuldeep Singh v. Commissioner of Police***¹ and the same is as follows:-

“32. Apart from the above, Rule 16(3) has to be considered in the light of the provisions contained in Article 311(2) of the Constitution to find out whether it purports to provide reasonable opportunity of hearing to the delinquent. Reasonable opportunity contemplated by Article 311(2) means “hearing” in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of that statement should first be supplied to the delinquent who should thereafter be given an opportunity to cross-examine that witness. ”

14. Considering the same, we are inclined to hold that even though the learned Single Judge did not specifically spell out the reasons for setting aside the impugned orders, the ultimate conclusion arrived at by the learned Single

¹ (1999) 2 SCC 10



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Judge, in allowing the writ petition as prayed for, does not call for any interference. Secondly, even as per the contentions made by the learned Government Advocate, it can be seen that the above punishment is the only impediment in the respondent being overlooked for promotion. Therefore, the respondent as a natural corollary, is entitled for promotion from the date of promotion of his immediate juniors.

15. Besides, the reasoning of the learned Single Judge that the respondent is entitled for promotion on the ground of belated implementation of punishment is also, in order. But however, in this case, when the punishment itself is being set aside, the said finding is superfluous. Even though for violation of principles of natural justice, impugned orders are set aside and normally this Court, would only remit the matter back to the Authorities to conduct an enquiry in accordance with law, however, in this case, since the respondent has attained the age of superannuation in the year 2019 itself, no purpose would be served by remitting the matter back. On the other hand, by directing the appellants to refix the salary of the applicant, by notionally granting the promotion as Deputy Superintendent of Police, from the date of promotion of his immediate juniors and by refixing his pension



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accordingly would suffice.

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16. Considering the fact that the review was dismissed in the year 2011 and the respondent himself has filed the writ petition itself in the year 2014 also, it may not be appropriate to order the entire arrears to be paid. Therefore, the respondent will be only entitled to the arrears of pension alone, from the date of his superannuation and the other things will be notional.

17. In the result, the Writ Appeal is disposed on the following terms:-

(i) the orders impugned in the writ petition in PR.No.38/H.2/2009 dated 02.09.2009, R.C.No.167480/AP.3(3)/2009 dated 12.02.2010, Rc.No.96030/AP.3(3)/2010 dated 09.02.2011 and review petition in G.O.2(D)No.350, Home (Pol.IV) Dept. dated 03.10.2011 and G.O.Ms.No.1983, Home (Pol.2) Department 04.12.2013 are quashed; and

(ii) the appellants shall grant notional promotion to the respondent in respect of the panel year 2011-12 from the date of promotion of his immediate juniors and accordingly, his last drawn salary shall be refixed and consequently upon his superannuation, the pension shall be refixed. The respondent will be entitled for the arrears



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*of such refixed pension alone and no other monetary
benefits need be paid to the respondent.*

18. However, there shall be no order as to costs. Consequently,
connected miscellaneous petition is closed.

(J.N.B., J.) (D.B.C., J.)

12.06.2023

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Index : Yes / No
Internet : Yes
Neutral Citation : Yes / No
Speaking Order / Non-Speaking Order

To:

- 1) The Principal Secretary to Government
State of Tamil Nadu,
Home Police (IV) Department,
Secretariat, Chennai 600 009
- 2) The Director General of Police,
Kamarajar Road, Chennai 600 004
- 3) The Additional Director General of Police,
Law and Order,
Kamarajar Road, Chennai 600 004



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4) The Commissioner of Police,
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Chennai 600 016



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J. NISHA BANU, J.,
and
D.BHARATHA CHAKRAVARTHY, J.,

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Judgment made in
W.A.No.3483 of 2019

Dated:
12.06.2023