



WEB COPY



W.P.No.28605 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.28605 of 2023
&
W.M.P.No.28151 of 2023

C.Andrews Caldwell

...Petitioner

Vs

- 1.The Commissioner of Police
Greater Chennai Police
Vepery, Chennai – 7
2. The Joint Commissioner of Police (HQ)
O/o.Commissioner of Police
Greater Chennai Police
Vepery, Chennai – 7
3. The Deputy Commissioner of Police
Motor Transport
St. Thomas Mount
Chennai – 16

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of 2nd respondent in connection with the impugned order passed by him in Rc. No.75/51762/PR 2(2)/2023 dated 24.08.2023 and quash the same



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and direct the respondents to condone the delay of 45 days in filing the statutory appeal dated 31.07.2023 and consequently issue further directions to the respondents to consider and pass order on the statutory appeal preferred by the petitioner on merits and in accordance with law within a time frame as deem fit by this Court.

For Petitioner : Mr.K.Venkataramani
Senior Counsel
for Mr.M.Vignesh Raj

For Respondents : Mr.V.P.Elamparithi
Additional Government Pleader

ORDER

Based on certain proven charges, the petitioner was imposed a punishment of removal from service dated 16.05.2023 which was served on him on 19.05.2023. He had preferred an statutory appeal on 31.07.2023 before the second respondent herein which was rejected through the impugned order dated 24.08.2022 stating that the appeal has been preferred after expiry of one month period. Challenging the same, the present writ petition has been filed.



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2. Rule 9 of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 provides that any appeal under Rule 5 should be made within one month from the date on which the copy of the order appealed against was communicated to the appellant. The proviso to the said Rule enables the Appellate Authority to entertain the appeal even after one month if sufficient cause is shown in not preferring the appeal within one month period. However, such powers cannot be exercised for period exceeding another one month. Effectively, the appeal can be entertained by the Appellate Authority only within a period of two months.

3. In the instant case, the order of the original authority was served on the petitioner on 19.05.2023 and the petitioner had preferred the appeal on 31.07.2023, which apparently is after the period of two months. Thus, strictly speaking, the reason for rejection of the petitioner's appeal cannot be found fault with.

4. However, in the present writ petition, learned Senior counsel submitted that the petitioner could not prefer the appeal within the statutory period as he has suffered mental shock on account of



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punishment of removal from service for which he was undergoing treatment for his loss of mental equilibrium. Accepting the reasons, this Court is of the view that a lenient view can be taken and the petitioner may be given an opportunity to contest the appeal, in exercise of powers under Article 226 of the Constitution of India, by condoning the delay.

5. In the light of the above observations, impugned order dated 24.08.2023 is set aside and the delay in preferring the present appeal dated 31.07.2023 is hereby condoned. Consequently, there shall be a direction to the second respondent herein to take up the petitioner's appeal dated 31.07.2023 and dispose of the same on its own merits and in accordance with law, as expeditiously as possible. No costs. Consequently, the connected miscellaneous petition is closed.

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Index:Yes
Speaking order
gpa



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M.S.RAMESH,J.

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