



W.A.(MD) No.1303 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **18.10.2023**

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THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**
AND
THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD) No.1303 of 2020
and C.M.P(MD) No.7479 of 2020

1.The Deputy Inspector General of Police,
Madurai Range,
Madurai.

2.The Superintendent of Police,
Madurai District,
Madurai.

... Appellants/Respondents

-Vs.-

R.Ramasubbu

... Respondent/Writ Petitioner

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent Act, to
set aside the order dated 11.11.2019 made in W.P.(MD)No.3482 of 2019
on the file of this Court.

For Appellants : Mr.S.P.Maharajan
Special Government Pleader

For Respondent : Mr.C.Jegannathan



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J U D G M E N T

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(Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.**)

The present intra-Court appeal has been instituted against the order dated 11.11.2019, passed in W.P.(MD)No.3482 of 2019.

2. The first respondent was appointed as Sub-Inspector of Police on 28.09.1987 through the Tamil Nadu Uniformed Services Recruitment Board. He was promoted to the post of Inspector of Police on 18.08.1999 and in a Criminal Case the first respondent has committed certain irregularities and consequentially departmental disciplinary proceedings were initiated. A charge memo under Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 was framed and an enquiry was conducted by affording opportunity to the first respondent employee. The first respondent participated in the process of enquiry and defended his case by availing the opportunities provided by the disciplinary authority and the enquiry officer. The enquiry officer filed a report holding that one charge against the delinquent employee was held as proved. The minutes recorded by the enquiry officer was accepted by the disciplinary authority and a major punishment of compulsory retirement was imposed on the first



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respondent on 09.04.2015. Challenging the said order of compulsory retirement, an appeal was filed and the appellate authority rejected the appeal on 08.09.2015. Thus, the first respondent filed the Writ Petition in W.P.(MD) No.23041 of 2018 challenging the punishment of compulsory retirement. The said Writ Petition was disposed of by the learned Single Judge on 07.02.2018, setting aside the punishment of compulsory retirement by remitting the case back to the Deputy Inspector General of Police, Madurai Range, for fresh consideration and to pass orders. Pursuant to the orders issued by this Court, the Deputy Inspector General of Police, Madurai Range passed an order in proceedings dated 10.04.2018, imposing the punishment of postponement of next increment for a period of three years, which shall operate to postpone his future increments. Consequently, the first respondent joined duty on 30.04.2018. It is not in dispute that the period of suspension and compulsory retirement were regulated as leave eligible under the Service Rules in force in proceedings dated 14.12.2018. Challenging the said order passed by the Deputy Inspector General of Police, Madurai Range, regulating the period of suspension and compulsory retirement, Writ Petition in W.P.(MD) No.3482 of 2019 was filed and the order passed in the Writ Petition is impugned in the present Writ Appeal.



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3. Learned Single Judge allowed the Writ Petition mainly on the ground that imposing the penalty of stoppage of increments for three years with cumulative effect and regulating the period of compulsory retirement as leave eligible amounts to double jeopardy and consequently, the order passed in proceedings dated 14.08.2018 was set aside. Challenging the same, the State preferred the present Writ Appeal.

4. Learned Special Government Pleader appearing on behalf of the appellants mainly contended that regulating the period of compulsory retirement is a consequential proceedings issued pursuant to the order passed on 10.04.2018, modifying the original punishment of compulsory retirement. Therefore, the order dated 14.08.2018, is a consequential order passed as per the rules in order to regulate the period of compulsory retirement, which cannot be construed as a separate punishment for the purpose of invoking the principles of double jeopardy.

5. Learned counsel for the first respondent relied on Fundamental Rules 54-A and said that the punishment of compulsory retirement was imposed originally and there was no further enquiry



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conducted and thus, the first respondent is entitled to get all the benefits, including the salary for the period of compulsory retirement. In view of FR 54-A, the order impugned passed by the Deputy Inspector General of Police, Madurai Range, was held as double jeopardy and therefore, there is no infirmity and the Writ Appeal is to be dismissed.

6. We have considered the rival submissions made between the parties. It is not in dispute that the petitioner faced a departmental proceedings, which ended with an order of punishment of compulsory retirement. The punishment was found to be disproportionate by this Court and the matter was remitted back to the disciplinary authority to reconsider the quantum of punishment. Accordingly, the Deputy Inspector General of Police modified the punishment to postponement of increments for three years with cumulative effect. Consequent to the modification of punishment, proceedings dated 14.08.2018 was issued regulating the period of compulsory retirement as leave eligible, which is only a consequential order and it cannot be construed as a separate punishment.



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7. Regarding applicability of FR 54 (A), sub-rule 1, it enumerates that “where the dismissal, removal or retirement of a Government servant is set aside by a Court of law and such Government servant is reinstated without holding any further enquiry, the period of absence of duty shall be regularized and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the Court”.

8. In the present case, the first respondent was compulsorily retired from service. The punishment of compulsory retirement alone was set aside by the Court on the ground of disproportionality and the matter was remanded back to the disciplinary authority for the purpose of reconsidering the punishment and to impose lesser punishment. Therefore, the first respondent was not exonerated from the charges, thus the case of the first respondent would not fall under the ambit of FR 54(A). The facts and circumstances of the present case would not attract FR 54(A) and thus the grounds raised in this regard on behalf of the first respondent is untenable.



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9. We are of the considered opinion that the principles of double jeopardy would not apply in the present case, since the proceedings of the Deputy Inspector General Police dated 14.12.2018 is a consequential order passed to regulate the period of compulsory retirement in lieu of the modification of the punishment imposed on the first respondent dated 10.04.2018. Thus, we find merits in the present appeal.

10. Learned Special Government Pleader made a submission that the retirement benefits of the first respondent had already been settled as per Rules.

11, Accordingly, the order dated 11.11.2019, passed in W.P. (MD)No.3482 of 2019 is set aside and W.A.(MD) No.1303 of 2020 is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

**[S.M.S.J.,] & [V.L.N.J.,]
18.10.2023**

NCC :Yes/No
Index :Yes/No
SJ



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S.M.SUBRAMANIAM, J.
AND
V. LAKSHMINARAYANAN, J.

SJ

To

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