



W.P.(MD)No.16531 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.16531 of 2019

V.Selvam

... Petitioner

vs.

1.The Director General of Police,
Chennai-4.

2.The Deputy Inspector General of Police,
Trichy Region, Trichy.

3.The Superintendent of Police,
Pudukottai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the entire records pertaining to the order passed by the 3rd respondent vide his proceedings in K1/PR.73/2006 U/r.3(b) of TNPSS (D&A) Rules 1955, dated 30.06.2008 and which was confirmed by the 2nd respondent vide his proceedings in C.No.B2/APP.27/2008, dated 25.09.2008 and which was also confirmed by the 1st respondent vide his proceedings in



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Rc.No.AP.IV(1)/237299/2008, dated 22.01.2009 and to quash the same.

For Petitioner : Mr.M.Pitchai Muthu

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

This writ petition is filed for issuance of writ of Certiorari, to quash the impugned order passed by the 3rd respondent vide his proceedings, dated 30.06.2008 and which was confirmed by the 2nd respondent vide his proceedings, dated 25.09.2008 and which was also confirmed by the 1st respondent vide his proceedings, dated 22.01.2009.

2. A charge memo was issued alleging that on 06.10.2006 while the petitioner was working in Viralimalai Police Station the petitioner deliberately reported to duty belatedly and also on 06.10.2006, the petitioner retained the lost mobile phone and returned the same after demanding Rs.10,000/- and received



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Rs.4000/-. The claim of the petitioner is that he did not demand the said amount at all. The mobile phone was in the hands of somebody else and the person who preferred a complaint also received the mobile phone through the said person and not from the petitioner. It is an admitted fact both by the petitioner as well as the respondents that the amount was not directly paid to the petitioner. Even according to the respondents, the complainant has given the amount to one Senthil and not to the petitioner. The contention of the respondents is that the said Senthil had received the said amount for petitioner, but the same was refuted by the petitioner and the petitioner vehemently submitted that he had not received the amount. Therefore, this Court is of the considered opinion that when the respondents themselves states that the money was paid to one Senthil, the allegation against the petitioner cannot be considered as proved. Even if it is considered that the said Senthil had received it for the petitioner (but the same was refuted by the petitioner), the punishment is disproportionate.



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3. The learned Additional Government Pleader appearing for the respondents further submitted that the petition is filed belatedly, since the impugned orders were passed in the year 2008 and 2009 and relied on the judgment rendered in W.A.(MD)No.727 of 2014, dated 17.02.2017, relevant portion of the judgment is extracted here under:

“8. It is an admitted fact that on completion of enquiry, the first respondent was removed from service, by order dated 01.12.1999. On appeal, the same was modified into one that of compulsory retirement. The first respondent has also accepted the punishment and started to receive the pension. Thereafter, all of a sudden, that too, after a period of six years, he has chosen to challenge the said order by way of Writ Petition. It is pertinent to be pointed out that for the delay of six years in approaching this Court, the first respondent has not assigned any valid reason.

9. In our considered opinion, when the first respondent started to get benefits, by accepting the order of compulsory retirement, he cannot challenge the said order, that too, with a delay of six years. As rightly contended by the learned counsel for the appellants, since there was a delay of six years, the Writ Petition is liable to be dismissed on the ground of delay and laches and more particularly, when no proper explanation was forthcoming from the first respondent for the inordinate delay.

10. At this juncture, it would be appropriate to refer to the judgment relied upon by the learned counsel for the appellants in State of Punjab v. Dhanjit Singh Sandhu [AIR 2014 SC 3004], wherein, at paragraph Nos.24 and 25, the Hon'ble Supreme Court has observed thus:



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"24. The Supreme Court in The Rajasthan State Industrial Development and Investment Corporation and Another v. Diamond and Gem Development Corporation Ltd., and Another AIR 2013 SC 1241, made an observation that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approve and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.

25. It is evident that the doctrine of election is based on the rule of estoppel the principle that one cannot approve and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had."

11. In the case on hand, the first respondent, by accepting the order of compulsory retirement and by receiving the pension for six years, is precluded from questioning the order of punishment. However, without considering the aspect of delay and laches, the Writ Petition was allowed by the learned Single Judge only on the ground that the dismissal from service is disproportionate. As observed earlier, when the first respondent has accepted the compulsory retirement and received the pension, he cannot question the same, that too, after a period of six years. Though several judgments were relied upon by the learned counsel for the first respondent to substantiate his contention, those judgments cannot be made applicable to the facts and circumstances of the present case.

12. Having regard to the reasons stated above, the order of the learned Single Judge dated 31.01.2014 is set aside and the Writ Appeal is allowed. No costs. Consequently, the connected miscellaneous petition is



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closed.”

In the aforesaid case, the employee had preferred petition after delay of 6 years and he was compulsorily retired from service. Therefore, it will have serious consequence to the respondent, hence it is held as belated claim.

4. In this present writ petition, the petitioner is in service and stoppage of increment affects his future increments. Moreover, the petitioner has filed this writ petition after acquittal from the criminal case, which was initiated by his wife for the allegation of cruelty. Therefore, this writ petition is entertained and the following orders are passed:

- i. The punishment is modified as stoppage of increment for one year without cumulative effect and the impugned order is quashed to the extent
- ii. The respondents shall implement the modified punishment within



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a period of eight weeks from the date of receipt of a copy of this order.

5. With the above said observation, the writ petition is partly allowed. No costs.

Index : Yes / No

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Internet : Yes

NCC : Yes / No

Tmg

To

- 1.The Director General of Police,
Chennai-4.
- 2.The Deputy Inspector General of Police,
Trichy Region, Trichy.
- 3.The Superintendent of Police,
Pudukottai District.



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S.SRIMATHY, J

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