



W.P. No.27639 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.27639 of 2015

and

M.P.No.3 of 2015

M.Raj Kumar

..Petitioner

Vs.

1. The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004.

2. The Commandant,
TSP VIII Battalion
Tihar Jail Complex,
New Delhi – 110 064.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the 2nd respondent herein in his proceedings A3/PR 06/2012 u/r 3(b) dated 28.03.2013 and the proceedings of the 1st Respondent herein in his Na.Ka.No.189580/Me.Mu.3(1)2013 dated 05.10.2014 and quash the same.



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For Petitioner : Mr.S.V.Karthikeyan
For Respondents : Mr.Abishek Murthy
Government Advocate.

ORDER

The present writ petition is filed challenging the order of the 2nd Respondent whereby the petitioner was dismissed from service which stood confirmed by the order of the 1st Respondent vide orders dated 28.03.2013 and 05.10.2014 respectively.

2. The petitioner joined the services as a Constable (PC 1238) RT Group of TSP VIII Battalion New Delhi on 16.10.2010. The petitioner was issued with an order of suspension on 13.02.2013 on the premise that he had consumed alcohol inside guard room / sentry post at around 22.10 hrs on 12.02.2013 under Rule 3 e (i) of TNPSS (D & A) Rules, 1955. Thereafter an enquiry was conducted and the explanation offered by the petitioner was not accepted and the charges were found proved and was awarded a punishment of dismissal from the service.

3. The petitioner ought to have preferred an appeal if aggrieved



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within a period of 1 month from the date of receipt of the copy of the order of the disciplinary authority in terms of Rule 9 of TNPSS (D & A) Rules, 1955. The proviso to Rule 9 of TNPSS (D & A) Rules, 1955, provides that if the appellant satisfies the appellate authority that there was sufficient cause for not preferring the appeal within a period of one month, the appeal may be admitted if it is preferred within a further period of one month, in other words any appeal ought to have been filed within a period of 2 months from the date of receipt of copy of the order of the appellate authority. If the petitioner had chosen to avail the remedy of appeal he ought to have filed an appeal before the Director General of Police. The petitioner has not preferred an appeal within the period stipulated under Rule 9 of TNPSS (D & A) Rules, 1955. It was submitted by both the learned counsel for the petitioner as well as for the respondent that the Deputy Inspector General had exercised the Suo Moto power of revision and vide order dated 20.06.2013 affirmed the order of dismissal.

4. The petitioner would submit that a petition was submitted before the 1st respondent treating it as one under Rule 15 A of TNPSS (D & A)



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Rules, 1955. The same was treated by 1st Respondent as a mercy petition and the same was rejected.

5. It is submitted by the learned counsel for the petitioner that the 1st Respondent does not have any authority to deal with mercy petitions which may lie with the government if any. It is only a review which could be examined by the 1st Respondent. To the contrary it is submitted by the learned counsel for the Respondent that the petitioner ought to be understood as having acquiesced in the assumption of jurisdiction by the 1st Respondent.

6. It is trite that jurisdiction cannot be conferred either by consent or by acquiescence. It was not brought to my notice, any provision that enables the 1st Respondent to deal with the mercy petition. Therefore the order of the 1st Respondent dated 05.10.2014 is lacking jurisdiction inasmuch as there is no provision which enables the 1st respondent to deal with mercy petition and thus liable to be set aside. Be that as it may the petitioner would request that he may be granted liberty to file an appeal as he has good case on merits, which was not seriously



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objected to by the learned counsel for the respondent.

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7. In view thereof I find that the ends of justice would be met if the petitioner is permitted to file an appeal within a period of 4 weeks from the date of receipt of the copy of this order. If any such appeal is filed the respondent appellate authority shall dispose of the same within a period of 4 weeks thereafter without reference to limitation. The writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

25.07.2024

Speaking (or) Non Speaking Order
Index: Yes/No
Neutral Citation: Yes/No
spp



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To:
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MOHAMMED SHAFFIQ, J.

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