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W.P. No.8615 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.8615 of 2015

M.K.Thinakaran

... Petitioner

v.

1.Director General of Police,
Tamil Nadu,
Chennai 600 004.

2.Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai 600 007.

... 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 pertaining to the impugned order passed by the first respondent herein in his proceedings Rc.No.138273/AP.III(2)/2014 dated 03.01.2015 and quash the same.

For petitioner

: M/s Daisy for M/s G.Bala and Daisy



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For Respondents : Mr. Abishek Murthy for R1 and R2,
Government Advocate.

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ORDER

The writ petition is filed challenging the proceeding of the Director General of Police dated 03.01.2015 who is the first respondent herein on the premise that the impugned order is a review made by the first respondent of the order of the Commissioner of Police dated 10.05.2014.

2. The short ground on which the impugned proceeding is challenged is on the premise that the power of review is without jurisdiction in terms of the restriction in Rule 15A(1) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955.

3. It is submitted by the learned counsel for the petitioner that the order dated 10.05.2014 was passed by the Commissioner of Police and against the said order, an appeal would lie only with the Director General of Police in terms of proviso to Rule 15A(1) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955. In view thereof, embargo / limitation under Rule 15A



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would get attracted. Rule 15A(1) reads as under:

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“Provided further that no power of review shall be exercised by the Head of Department, unless:

- i) the authority which made the order is in appeal or*
- ii) the authority to which an appeal would lie where no appeal has been preferred, is subordinate to him.”*

4. It is not in dispute that the original order was passed by the Commissioner of Police and an appeal against the said order would lie only with the Director General of Police. Rule 15A which confers the power of review imposes a restriction in terms of the proviso whereby power of review shall not be exercised by the head of department unless the appeal would lie to an authority subordinate to him. However, in the present case an appeal against the order of the Commissioner would lie only with the Director General of Police the 1st Respondent herein, thus the impugned order of review by the 1st respondent would be hit by the bar under Rule 15A(1) of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955. In this regard, it may be relevant to refer to the judgment of this Court in W.P.No.29034 of 2006 dated 26.08.2008 wherein reliance was placed on the judgment in the case of *P.Sabesan v. State of*



Tamil Nadu reported in 1984 W.L.R.557 wherein it was held as under:

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"But, the power of review given to the Head of the Department is however, subject to a restriction under the proviso to the rule. It was further contended that as per the proviso to the rule, no power of review shall be exercised by the Head of the Department unless the Appellate Authority, which had passed the appellate order or the authority to which an appeal would be preferred against the original order is subordinate to him. At the relevant point of time, the Inspector General of Police was the Head of the Department and he also happened to be the appellate authority. It was contended before the Division Bench that as the appellate authority was not subordinate to the Head of the Department and the former cannot exercise the power of review in view of the prohibition under the proviso to the rule. On careful consideration of the rule position, the Division Bench held as follows:

'The proviso is specific and it says that if the authority to which an appeal would lie is not subordinate to the Head of the Department, then the latter cannot exercise the power of review. Admittedly, any order passed by the D.I.G.(Food cell), is appealable to the second respondent, who happens to be the Head of the Department. Thus the appellate authority is not subordinate to the Head of the Department, both the powers, that is, the power of the Head of the Department and the appellate authority having vested in the same person. In such a case, the proviso prohibits the Head of the Department from exercising the power of suo motu review. Thus, proviso to R.15-A stands in the way of the



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second respondent exercising his suo motu review power under the Rule as he happens to be the appellate authority, in the case in which he proposes to exercise the power of suo motu review. Thus, the show cause notice issued by the second respondent proposing to exercise the power of review under Rule 15-A of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 should be taken to be without jurisdiction”

(emphasis supplied)

5. The learned counsel for the Respondents do not have any serious objection with regard to the above position. In view thereof, I am of the view that the impugned proceeding dated 03.01.2015 made by the first respondent would be hit by the bar under Rule 15A(1) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955.

6. Though there was a faint attempt by the learned counsel for the petitioner to submit on the merits of the matter, this Court is of the view that inasmuch as this Court has found that the impugned order is bad for want of jurisdiction it may not be necessary to examine the merits.



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7. In view thereof, the impugned order is set aside. However, it is open to the respondents to take appropriate action in accordance with law. The writ petition stands disposed of. No costs.

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Index: Yes/No

Internet: Yes/No

Speaking / Non speaking order

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To

- 1.The Director of General of Police,
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Chennai 600 004.
- 2.The Commissioner of Police,
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MOHAMMED SHAFFIQ,J.

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