



W.A.No.2285 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

CORAM :

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

AND

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

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The Director General of Police/
Director General of Prisons & Correctional Services,
Tamil Nadu,
Chennai-600 008.

.. Appellant

Vs

P.Muralidharan

.. Respondent

Prayer: Appeal under Clause 15 of the Letters Patent to set aside the order dated 2.12.2021 passed by the learned Single Judge in W.P.No.18324 of 2021.

For the Appellant : Mr.V.Manoharan
Additional Government Pleader

For the Respondent : Mr.R.Prem Narayan



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JUDGMENT

(Delivered by *D.KRISHNAKUMAR,J.*)

Heard Mr.V.Manoharan, learned Additional Government Pleader for the appellant and Mr.R.Prem Narayan, learned counsel for the respondent.

2. Calling into question the order of the learned Single Judge dated 2.12.2021 in W.P.No.18324 of 2021, the respondent in the writ petition has filed the present writ appeal.

3. The respondent herein had filed the writ petition challenging the order of punishment of pay reduction by one stage for a period of one year with cumulative effect. The learned Single Judge, upon considering the relevant facts, set aside the punishment and directed the appellant herein to treat the claim of the respondent as if he was not imposed with any penalty and grant him the promotional benefits to the post of Accountant as well as Office Superintendent/Office Manager, if there is no impediment,



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and pass appropriate orders in this regard within a period of eight weeks from the date of receipt of the copy of the order.

4. Assailing the impugned order of the learned Single Judge, learned Additional Government Pleader submitted that the show cause notice issued by the appellant is valid and that the learned Single Judge, by misconstruing the provisions of Rule 36(1)(ii) of the TNCS (D&A) Rules, passed the impugned order on wrong interpretation of law. He would submit that the learned Single Judge has failed to see that the appellant is the head of department coming under the State Government and not the appellate authority.

5. Learned Additional Government Pleader further submitted that the learned Single Judge failed to note that the respondent was awarded punishment for suppression of fact of obtaining one year degree course so as to secure the post of Probation Officer for which three years degree course is mandatory. The respondent also managed to make false entries in his Service Register as if he has



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obtained degree by manipulating the facts.

6. Learned Additional Government Pleader then submitted that the learned Single Judge failed to see that the respondent has committed grave mistake by misguiding the department with regard to his educational qualification so as to include his name in the panel to the post of Probation Officer without possessing three years degree course.

7. According to learned Additional Government Pleader, the respondent himself admitted the charges in his defence statement and requested to drop the same. Only based on the proven charges, the respondent was awarded the punishment of pay reduction by one stage for a period of one year without cumulative effect by the Superintendent of Prisons, Central Prison, Vellore, vide order dated 13.9.2019.

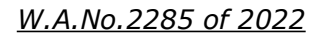
8. Learned Additional Government Pleader submitted that the respondent, while working in the office of the Range Deputy



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Inspector General of Prisons, Vellore, misguided the said authority and managed to get his punishment cancelled in order to get promotion to the higher post. The learned Single Judge failed to see that the order passed by the Deputy Inspector General of Prisons, Vellore Range on appeal is in violation of the Rules and, hence, suo-motu revision was taken up by the appellant under Rule 36(1)(ii). After giving opportunity to the respondent calling for explanation and upon considering the explanation submitted by the respondent and relevant records, the order of punishment was issued. While so, the learned Single Judge erroneously set aside the order of punishment on a vague ground. Thus, a prayer is made to allow the writ appeal and restore the order of punishment.

9. Supporting the order of the learned Single Judge, learned counsel for the respondent submitted that the show cause notice issued under Rule 36 is illegal and cannot be maintained as the same has been issued after a period of six months. The exercise of suo-motu power by the appellant and issuance of show cause notice after a period of six months cannot be countenanced. Considering





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12. On 13.9.2019, the Superintendent of Central Prison, Vellore has imposed a penalty of stoppage of increment for a period one year without cumulative effect on the respondent. Aggrieved by the said order, the respondent preferred a statutory appeal to the Deputy Inspector General of Prisons, Vellore Range and the Deputy Inspector General of Prisons, Vellore Range, vide order dated 26.2.2020, cancelled the punishment imposed by the Superintendent of Central Prison and exonerated the respondent from the charges. Thereafter, the respondent submitted a representation to the respondent requesting to grant promotion as Accountant for the year 2019-2020 with effect from the date of promotion to his immediate junior. Subsequently, a list of panel of Accountants fit for promotion to the post of Office Superintendent/Office Manager for the year 2020-2021 was published, wherein the respondent's immediate junior was included.

13. The respondent claimed that he was entitled to be promoted as Office Superintendent/Office Manager for the year



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2020-2021 with effect from 14.5.2020 when the list of panel of Accountants was published. Pursuant to the exercise of suo-motu revisional power by the appellant, on 26.9.2020, the respondent issued a show cause notice calling for the explanation from the respondent as to why the punishment should not be imposed on him. The respondent submitted his explanation on 10.10.2020 and upon considering the explanation, the appellant passed an order on 23.6.2021 inflicting the punishment of reduction by one stage from 1.7.2021 to 30.6.2022 for a period of one year with cumulative effect.

14. According to learned Additional Government Pleader, the appellant, as the head of department, is empowered to exercise his revision power at any time either on their or its own motion or otherwise call for records of any inquiry and revive any order as per Rule 36(1)(iv) of the TNCS (D&A) Rules. Therefore, the revision power of the head of department does not restrict to six months as misconstrued by the learned Single Judge and the six months period is applicable to appellate authority and not for the head of



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department.
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15. On a reading of the order of the learned Single Judge, we find that the learned Single Judge, after elaborately discussing the power exercised by the respondent under Rule 36 of the TNCS (D&A) Rules and upon quoting the decisions of this Court, held that the exercise of power by the appellant and issuance of notice after a period of six months is clearly barred by limitation under the said provision.

16. The power of the head of department to exercise the suo-motu review is circumscribed under the second proviso to Rule 36 and exercise of the same, beyond the restrictions imposed therein, should be taken to be without jurisdiction. It is trite law that the power conferred on the authority can be exercised in the manner provided under the statute and not otherwise.

17. The learned Single Judge held that the authority who exercised the power is not the Government and therefore the



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limitation that is prescribed in the relevant Rules is very much applicable to the appellant and, in those circumstances, the issuance of show cause notice dated 26.9.2020 is to be held as not maintainable in law. We are of the firm view that the said finding arrived at by the learned Single Judge is perfectly correct and as per law and the same cannot be interfered with.

18. Admittedly, the learned Single Judge has not gone into the merits of the charges and, only on the legal ground, the learned Single Judge held that the show cause notice dated 26.9.2020 is not maintainable in law. The learned Single Judge also observed that once the show cause notice itself is held to be unsustainable and outside the frame work of the limitation prescribed in the relevant Rules, the further action by the appellant in passing the impugned order of punishment dated 23.6.2021 has to go lock, stock and barrel. The said finding arrived at by the learned Single Judge, in our opinion, cannot be faulted with.

19. As far as the consequential direction of the learned Single



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Judge to treat the respondent as if he was not imposed with any penalty and grant him the promotional benefits, if he is otherwise entitled to, in terms of his turn of his promotion to the post of Accountant as well as Office Superintendent/Office Manager is concerned, the same is legally sustainable in law and no interference is called for.

20. In the result, the writ appeal is dismissed. There shall be no order as to costs. Consequently, C.M.P.No.17447 of 2022 is closed.

(D.K.K., J.) (K.B., J.)
19.06.2024

Index : Yes/No
NC : Yes/No
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