

W.A(MD)No.1018 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 07.11.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**W.A(MD)No.1018 of 2020
and
W.M.P(MD)No.3346 of 2021**

- 1.The Secretary,
Home (Police – IV A) Department,
Fort St.George,
Chennai – 600 009.
- 2.The Director General of Police,
Tamil Nadu,
Chennai.
- 3.The Commissioner,
The Office of the Commissioner for
Disciplinary Proceedings,
5/1B, Vinayaga Nagar,
Madurai – 20.
- 4.The Vigilance and Anti-Corruption Department,
Madurai District.
- 5.The Superintendent of Police,
The District Police Office,
Tiruppur District,
Tiruppur.

... Appellants /
Respondents



W.A(MD)No.1018 of 2020

WEB COPY

M.Kennedy

Vs.

... Respondent /
Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to allow the Writ Appeal and to set aside the order dated 28.02.2020 made in W.P(MD)No.2272 of 2018.

For Petitioners : Mr.M.Siddharthan
Additional Government Pleader

For Respondent : Mr.N.Dilip Kumar

ORDER

Heard both sides.

2.The writ petitioner was appointed as Grade II Police Constable on 25.05.1988. He was promoted as Sub Inspector of Police on 18.02.2005. One Madasamy gave a vigilance complaint against the writ petitioner that he demanded Rs.10,000/- as illegal gratification. Based on this complaint dated 18.08.2006, trap was organised but the trap failed. The matter was referred to the Tribunal for Disciplinary Proceedings and taken up as TDP No.3 of 2008. The proceedings were concluded and adverse findings were rendered against



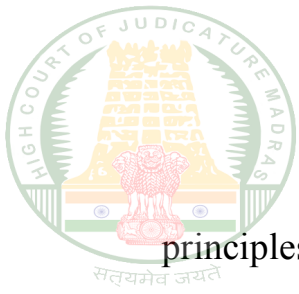
W.A(MD)No.1018 of 2020

the petitioner. After considering the enquiry findings of the Tribunal, the

Director General of Police vide order dated 11.08.2012 awarded the punishment of reduction of pay for two years in two stages without cumulative effect. The writ petitioner underwent the said punishment.

3.While so, the Government took the matter on revision under Rule 15A of Tamil Nadu Police (Discipline & Appeal) Conduct Rules and issued notice dated 06.01.2017 to the writ petitioner. The writ petitioner submitted his explanation on 13.04.2017. After considering the same, the Government vide order dated 12.01.2018 imposed the punishment of compulsory retirement. Challenging the same, the writ petitioner filed W.P(MD)No.2272 of 2018. The writ petition was allowed on 28.02.2020 and the punishment imposed on the writ petitioner was set aside. Challenging the same, the Government has filed this Intra-Court appeal.

4.The learned Additional Government Pleader submitted that for taking *suo motu* revision under Rule 15A(1)(i), there is no time limit. Therefore, according to the learned Additional Government Pleader, the learned Judge erred in holding that the Government could not have *suo motu* revised the matter after a lapse of five years. He also would point out that the



W.A(MD)No.1018 of 2020

principles of natural justice were fully complied with in this case. The writ petitioner was given show cause notice and only after considering his representation, the impugned order came to be passed. According to the learned Additional Government Pleader, the impugned G.O did not call for any interference.

5. We are not swayed by the said submissions. The learned counsel appearing for the respondent / writ petitioner drew our attention to the proviso to Rule 15A(1) of Tamil Nadu Police (Discipline & Appeal) Conduct Rules. The said proviso reads that if the revising authority proposed to enhance the penalty to one of compulsory retirement, the authority must once again conduct an inquiry under Rule 3B. The said proviso reads as follows:

*“15A.(1) Notwithstanding anything contained in these rules -
(i) the State Government or*

...

Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government Servant concerned has been given a reasonable opportunity of making representation. Where it is proposed to impose any of the penalties specified in clauses (d), (e), (f), (h), (i) and (j) of rule 2 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in



W.A(MD)No.1018 of 2020

WEB COPY

those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in sub-rule (b) of rule 3 and after giving a reasonable opportunity to the Government Servant concerned of showing cause proposed on the evidence adduced during the inquiry and except after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary.

Provided further that no power of revision shall be exercised by the head of the department, unless:

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

It is conceded that no second inquiry was conducted by the revising authority. This non-adherence to the procedure laid down in the above Rule vitiates the proceedings. We also concur with the reason given by the learned single Judge that taking *suo motu* revision after a gap of five years is not proper. It is true that limitation has not been prescribed. When limitation has not been specifically prescribed, the power of revision should be exercised within reasonable time. In this case, the *suo motu* revision power was invoked after the writ petitioner had already undergone the punishment. The learned Single Judge rightly allowed the writ petition and the order impugned in the Writ Appeal does not call for interference.



W.A(MD)No.1018 of 2020

WEB COPY 6.This Writ Appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[G.R.S., J.] [R.P., J.]
07.11.2024

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
MGA



WEB COPY



W.A(MD)No.1018 of 2020

G.R.SWAMINATHAN, J

and

R.POORNIMA, J.

MGA

W.A(MD)No.1018 of 2020

and

W.M.P(MD)No.3346 of 2021

07.11.2024