



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2025

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THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P.No.24515 of 2018

and

WMP.No.28544 of 2018

PR. Thandavan,
Inspector of Police (Retd), M580,
New No. 12, 25th Cross Street,
Thiruvalluvar Nagar, Thiruvannamiyur,
Chennai-600 041

...

Petitioner

Vs.

(1) The State of Tamil Nadu
rep. by its Additional Chief Secretary to Government,
Home (POL-IV) Department,
Fort St. George, Chennai-9.

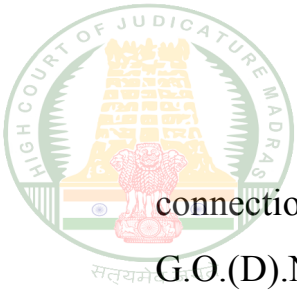
(2) The Director General of Police,
Kamarajar Salai, Mylapore,
Chennai-4.

(3) The Assistant Commissioner of Police,
Law and Order, Guindy Range,
Chennai-32.

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Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to
issue a Writ of Certiorarified Mandamus, calling for the Entire Records in



connection with the Impugned Order passed by the First Respondent in G.O.(D).No.371 Home (POL-IV) Department, dated 19.04.2018 and Quash the same with Consequential Direction, Directing the Respondents to confer Notional Promotion as Deputy Superintendent of Police to the Petitioner, with effect from the date of Promotion given to his juniors, with all monetary benefits with consequential Revision of Pension

For Petitioner : Mr.V.Ravikumar

For Respondents : Mr.T.Chezhiyan,
AGP for RR1 to 3

ORDER

This writ petition has been filed to call for the records pertaining to the impugned order of the 1st respondent dated 18.4.2018, the government order issued in G.O.[D] No.371 Home [police] 4 department dated 19.4.2018 and consequential direction to the respondent to confer notional promotion as Deputy Superintendent of Police with effect from the date of the promotion given to his juniors and all monetary benefits and consequential benefits of pension and pass orders.

2.Heard Mr.V.Ravikumar, learned counsel for the petitioner, Mr.T.Chezhiyan, learned Additional Government Pleader for respondents 1 to 3



and perused the materials available on record.

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3. The petitioner, who was serving as a police inspector, was given charges on 19.9.2000 on the allegation of custodial torture. An enquiry was conducted after providing an opportunity to the petitioner to furnish his explanation. At the conclusion of the inquiry, the enquiry officer has arrived at a finding that the charge is not proved. By accepting the above report, the Deputy Commissioner of Police, Chennai /South, has dropped further proceedings against the petitioner. However, the 1st respondent has taken the matter Suo moto on 1.8.2002 and issued a show cause notice. Thereafter, an order was issued on 12.6.2007 holding that the charges against the petitioner are deemed to be proved and by imposing a punishment of stoppage of increment for one year. The petitioner has challenged the said order by way of preferring a writ petition in WP.No.32226/2007, and in which an order has been passed on 12.10.2011 to the following effect:

"5. In view of the above infirmity, i.e., not communicating the basis for taking a differing view and getting remarks from the petitioner and proposing punishment and calling explanation, there is procedural violation. Hence, the impugned order is set aside and the matter is remitted to the first respondent to call for remarks and considering the remarks, take a decision and record the findings regarding the charge and pass fresh orders in



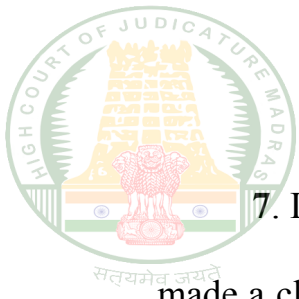
accordance with law, if it is required to be passed. "

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4. Even though the order was passed in the year 2011, further proceedings have been initiated pursuant to the order only on 26.9.2016 by calling upon the petitioner to offer his explanation. Thereafter, the 1st respondent has passed an order once again by holding that the charges have been proved by imposing the punishment of stoppage of one increment with cumulative effect.

5. The learned counsel for the petitioner submitted that the petitioner has attained the age of superannuation and has retired from service as early as on 31.3.2009. He further submitted that the order has not been viewed in the proper perspective but has simply been relied upon to take action in a mechanical fashion.

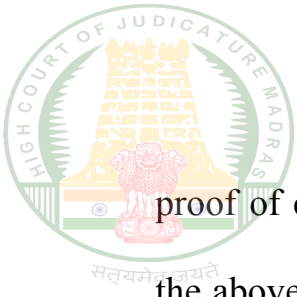
6. The learned additional government pleader for the respondent submitted that further action has been taken against the petitioner only in pursuant to the order of this Court passed in WP.No.32226/2007. After giving sufficient opportunity to the petitioner to make his submission, a speaking order has been passed in accordance with law.



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7. In the order dated 12.10.2011 made in WP.No.32226/2007, the court has made a clear observation that the respondent has failed to communicate the basis on which a different view was taken and had not furnished his remarks. The above violation is considered as a procedural violation. Consequently, the impugned order was set aside, and the matter was remitted to the first respondent to obtain remarks and, after considering them, to record findings related to the charge and pass fresh orders in accordance with law. The subsequent notice has been given to the petitioner after a lapse of nearly five years i.e., on 26.9.2016, once again, without indicating the basis on which a view different from the enquiry officer's report has been taken. The show cause notice dated 26.9.2018 has simply stated that the order of the High Court and invited further representation from the petitioner. Nowhere in the letter dated 26.9.2016, the 1st respondent has mentioned the reason as to why there is a necessity to look at the matter differently and to take a different decision from that of the enquiry officer. In the absence of the same, it may not be possible for the petitioner to offer his remarks and effectively defend against the government's view.

8. In fact, in the impugned order, the 1st respondent has referred to certain documents which, according to him, are vital for taking a different view on the



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proof of charges. In that case, the petitioner ought to have been informed about the above piece of evidence in order to enable him to submit his remarks on that aspect as well. Without following the due process and without giving the opportunity to the petitioner in realistic terms, the 1st respondent had chosen to comply with the order of the Court in a mechanical fashion and had arrived at the same conclusion that the charges against the petitioner had been proved, and thereafter, the punishment was imposed. An opportunity given in the interest of justice and to ensure compliance with the principles of natural justice should enable the delinquent to present and pursue his defense effectively.

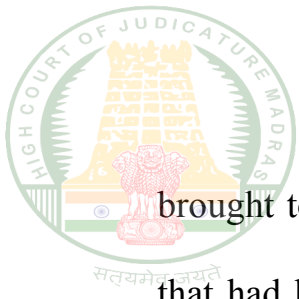
9. In the instant case, it is stated already that the 1st respondent has already given the show cause without stating any basis for arriving at a different conclusion and without furnishing the documents on the basis of which the 1st respondent had preferred to differ from the view of the enquiry officer. No doubt the allegations of custodial torture should not be viewed less seriously. It is right on the part of the government to relook into the matter, where the allegations of custodial torture are made against the officers. But such anxiety of the 1st respondent shall not compromise the due process in its true sense and deprive the delinquent for getting a reasonable opportunity to defend himself. Without much



discussion in the impugned order, the petitioner has been given the same punishment of a cut in one increment with cumulative effect.

10. It is to be noted that the petitioner has retired from service as early as on 31.3.2009. Any action initiated against the petitioner thereafter, at best, can be only under the Pension Rules and not under the Subordinate Rules. Had the petitioner been kept under suspension, and he had not been allowed to retire on his attaining the age of superannuation, the situation would have been different. But in the instant case, the petitioner was allowed to retire from service, and thereafter, the proceedings cannot be reviewed under the Subordinate Rules. Even the direction of the Court has been complied only after five years, and the petitioner was kept under the anxiety about the proceedings for 19 years, from the date of the alleged occurrence. After issuing the show cause notice, subsequent to the order passed in the writ petition, the impugned order has been passed by causing further delay of five years. Such an inordinate delay, coupled with a shortsighted appreciation of this Court's directions, would vitiate the entire proceedings.

11. No doubt the petitioner got retired even when the order of the court was passed. But it seems from the orders of the court that the said fact was not



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brought to the notice of the court at the time when the order was passed. And if that had been the case, the court would have ordered reconsideration of further action in accordance with the Pension Rules. But it was always within the knowledge of the respondents that the petitioner had retired from service as early as in the year 2009, and hence they could have switched over to the pension rules instead of following the subordinate rules while taking action against the petitioner by quoting the orders of this court. As the whole matter has been dealt in a shortsighted manner without giving due opportunity in its true sense and the petitioner has been punished after the delay of eight years from the date of the orders of this Court and he was made to wait almost 19 years to know the disposal of the action taken against him on the allegation that had occurred in the year 2000, I feel the impugned order is liable to be set aside.

12. It is seen from the impugned order that the petitioner's inclusion in the promotion panel to the next level post of Deputy Superintendent of Police cannot be done in view of this pending action. That would only show that in the absence of these proceedings, the petitioner's name would have been included in the promotion panel for the post of Deputy Superintendent of Police. In view of the same I feel that the petitioner should be given with notional promotion on par



with his juniors and monetary benefits by giving its impact on the pension and other terminal benefits.

13. In view of the same, this Writ Petition is **allowed**. The impugned order passed by the First Respondent in G.O.(D).No.371 Home (POL-IV) Department, dated 19.04.2018 is set aside and the 1st respondent is directed to give notional promotion to the post of Deputy Superintendent of Police to the petitioner on par with his juniors and send a revised proposal for refixing the pension and other terminal benefits of the petitioner alone, within a period of 4 weeks from the date of receipt of copy of this order. No costs. Consequently, the connected Miscellaneous Petition is also closed.

09.04.2025

Index : Yes
Internet : Yes/No
Speaking/Non- Speaking
Neutral: Yes/No
jrs



R.N.MANJULA, J.
jrs

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To

- (1) The Additional Chief Secretary to Government,
State of Tamil Nadu
Home (POL-IV) Department,
Fort St. George, Chennai-9.
- (2) The Director General of Police,
Kamarajar Salai, Mylapore,
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