



WEB COPY



W.P. No.10558 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.10558 of 2017

C.Jeyamani

... Petitioner

Vs.

1.The Director General of Police,
Police Head Quarter,
Mylapore,
Chennai.

2.The Commissioner of Police,
Greater Chennai,
Egmore,
Chennai.

3.The Joint Commissioner of Police,
East Zone,
Egmore,
Chennai – 8.

4.The Superintendent of Police,
CB CID (Special Investigation Team),
Chennai.

5.The Superintendent of Police,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings in Rc.No.139941/AP IV(2)/2014 dated



W.P. No.10558 of 2017

22.10.2016 passed by the 1st respondent and the proceedings in Rc.No.PR./EZ.550/18512/2016, EZO. No.523/2016 dated 26.10.2016 passed by the 3rd respondent and the proceedings in Rc.No.PR./EZ.550/18512/2016, EZO.No.526/2016 dated 31.10.2016 passed by the 3rd respondent and quash the same as illegal and consequently direct the 3rd respondent to allow the petitioner to retire from service with all consequential monetary and pension benefits.

For Petitioner : Mr.A.Mohan
For Respondents : Mr.P.Kumaresan
Additional Advocate General for
Mr. P.Ganesan
Additional Government Pleader

ORDER

While the petitioner was working as Head Constable at Special Investigation team, Madurai Limit, he was placed under suspension on 11.08.2005 under Rule 3(e) (1) (i) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules and consequently, a charge memo was also issued in R.No.6/2005 dated 19.08.2005. While the said disciplinary proceedings were pending at the stage of enquiry, the petitioner approached this Court by filing W.P.No.443 of 2009, to keep the further proceedings and the oral enquiry in abeyance till the conclusion of the criminal proceedings, which were also simultaneously initiated against the petitioner by the Central



Bureau of Investigation before the Special Court for CBI, Chennai. The said writ petition was disposed of by a co-ordinate bench of this Court, by an order dated 08.10.2009, directing the 1st respondent therein to appoint another enquiry officer and also to appoint presenting officer to present the case of the department before the enquiry officer. The operative portion of the said order reads as under:

“5. As submitted by the learned counsel for the petitioner reading of the counter affidavit would show that the second respondent herein has acted both as an enquiry officer and as a presenting officer. The second respondent has also filed a counter dealing with the merits of the case. Therefore, this Court is of the opinion that the role of the enquiry officer being a quasi judicial in nature and he is expected to conduct an impartial enquiry by taking into consideration all the available materials produced by the department as well as delinquent officer, interest of the justice would require that the first respondent should be directed to appoint a fresh enquiry officer and the said enquiry officer will have conduct to enquiry afresh.

6. Hence the first respondent is hereby directed appoint another inquiry officer and thereafter proceeding with inquiry. It is well settled principle of that the enquiry officer cannot be presenting officer. Therefore the first respondent is also to appoint the presenting officer to present the case of the department before the enquire officer. The enquiry officer to be appointed is directed to proceed with enquiry and complete the enquiry within a period of three months from the date of receipt of the copy of this order.”



WEB COPY

2. It was pursuant to the said order, the respondent disciplinary authority appointed a new enquiry officer through proceedings RC.No:176922/AP IV(2)/2010, dated 23.07.2010. The said enquiry officer concluded the enquiry and accordingly, submitted a report dated 08.07.2013. Thereafter, after affording an opportunity to the petitioner to respond to the said report of the enquiry officer, a final order came to be passed against the petitioner through proceedings dated 13.03.2014, imposing the punishment of “postponement of increment for two years which shall not operate future his increments” on the petitioner. Aggrieved by the said proceedings dated 13.03.2014, the petitioner filed an appeal before the 1st respondent and the said appeal was rejected by the 1st respondent by passing the impugned order dated 22.10.2016 confirming the punishment noted above. While the said appeal was pending, the petitioner attained the age of superannuation on 31.10.2016. In view of the same and also considering the fact that the criminal proceedings that were initiated against the petitioner by the Central Bureau of Investigation was pending before the Special Court for CBI, Chennai, the 3rd respondent herein issued another proceedings bearing



Rc.No.PR./EZ./550/18512/2016 dated 26.10.2016, placing the petitioner under suspension in exercise of power under Rule 3(e)(1)(ii) of Tamil Nadu Police Subordinate Service (Discipline and Appeal Rules), 1955 (hereinafter referred as 'Rules, 1955') and also issued yet another proceedings dated 31.10.2016, not permitting the petitioner to retire from service till the disposal of the criminal proceedings in terms of Rule 56 (1)(c) of the Tamil Nadu Fundamental Rules. It is aggrieved by the proceedings dated 22.10.2016 passed by the 1st respondent, and the proceedings dated 26.10.2016 and 31.10.2016 passed by the 3rd respondent, the petitioner approached this Court by filing the present writ petition. As already noted above, the punishment that was imposed against the petitioner is postponement of increment for two years without any cumulative effect, which is considered to be a minor punishment.

3. In the light of the above factual background, the only issue that needs to be addressed by this Court insofar as the said punishment is concerned, as to whether the disciplinary authority as well as the appellate authority/1st respondent have passed the said orders in accordance with law



W.P. No.10558 of 2017

and in compliance with the orders passed by this Court in W.P.No.443 of 2009 dated 08.10.2009 or not?

WEB COPY

4. As already noted above, this Court while disposing of W.P.No.443 of 2009, having taken note of the contentions raised by the petitioner to the effect that the enquiry officer himself is acting as a presenting officer and examined the witnesses and conducted an enquiry, this Court specifically directed the disciplinary authority to appoint afresh enquiry officer as well as the presenting officer for conducting an enquiry into the charges that are levelled against the petitioner.

5. From a perusal of the report of the enquiry officer which is placed on record, it is noticed that the new enquiry officer appointed pursuant to the order passed by this Court, through proceedings dated 23.07.2010 and he also acted in the similar fashion in which the previous enquiry officer have acted. This Court on an earlier occasion has specifically found fault with the manner in which the enquiry officer conducted himself while conducting the enquiry against the petitioner, and accordingly issued directions to appoint a



fresh enquiry officer and also to appoint a presenting officer to present the case of the department. But the respondent/disciplinary authority though appointed a new enquiry officer, the said enquiry officer also acted in the same fashion as that of the previous enquiry officer and the observations made in the enquiry officer's report clearly manifest the same. From a perusal of the report of the enquiry officer and the impugned order, there is nothing to indicate that the respondent/disciplinary authority have appointed any presenting officer as directed by this Court, by order dated 08.10.2009.

6. This Court, after having heard learned counsel for the petitioner and learned Additional Advocate General, noticed that there is no presenting officer appointed by the respondent/disciplinary authority inspite of specific directions issued by this Court in W.P.No.443 of 2009. Accordingly, it was on 13.12.2024, this Court required the learned Additional Advocate General to ascertain and inform this Court as to whether any presenting officer was appointed as directed by this Court or not. It was pursuant to the same, it is brought to the notice of this Court that no presenting officer was appointed as directed by this Court. Thus, it is evident that the enquiry officer conducted



the enquiry and also played dual role of enquiry officer as well as the presenting officer thereby, causing irreparable prejudice to the petitioner and submitted his report, which is the basis for imposing the impugned punishment. As the impugned order came to be passed in violation of the specific directions issued by this Court in W.P.No.443 of 2009, which is apparently not only in violation of the orders passed by this Court, but also in violation of the principles of natural justice causing severe prejudice to the petitioner, in the considered view of this Court, the impugned order dated 22.10.2016 passed by the 1st respondent confirming the punishment imposed by the disciplinary authority on the petitioner is liable to be quashed.

7. The next question that would arise for consideration is whether this Court, after having found that the impugned order dated 22.10.2016 was passed in violation of the principles of natural justice, should remand the matter back to the respondents for reconsideration or not? As already noted above, the punishment that was imposed on the petitioner is only a minor punishment of postponement of increment for a period of two years without cumulative effect.



8. As already noted above, the petitioner has already attained the age of superannuation on 31.10.2006 and he was not allowed to retire from service only on the ground of pendency of the criminal proceedings. In this connection, it is necessary to notice that the other co-accused of the petitioner, in the said criminal proceedings, have filed petitions for discharge from the charges, and the said petitions were allowed by this Court, by co-ordinate bench of this Court in CrI.RC.Nos.197 to 201 of 2014 by order dated 15.04.2016. Though a special leave petition stated to have been filed against the said order, the same is pending before the Hon'ble Apex Court and no interim orders are passed in the said SLP. A similar application filed by the petitioner in CrI.O.P.No.27277 of 2022, though dismissed by a co-ordinate bench of this Court, by an order dated 03.08.2023, has made a specific observations that, in the event of dismissal of SLP filed in the connected matter, the petitioner stands automatically discharged from the charges pending against the him. The said SLP is still stated to be pending before the Hon'ble Apex Court. Thus, the co-accused who are similarly placed like the petitioner were already discharged from the charges, though the SLP is stated to be pending before the Hon'ble Apex Court.



9. In the light of the said orders discharging the co-accused and the petitioner is also extended the same benefit on dismissal of the SLP filed by the State and also considering the fact that the petitioner has already attained the age of superannuation as early as on 31.10.2006, this Court deems it appropriate not to allow the respondents to continue the disciplinary proceedings once again at this length of time. Accordingly, the impugned order dated 22.10.2016 is hereby quashed.

10. Then, coming to the challenge made against the proceedings dated 26.10.2016 and 31.10.2016, keeping the petitioner under suspension in exercise of power under Rule 3(e)(1)(ii) of Rules, 1955, and not permitting the petitioner to retire from service are concerned, the said orders are passed in exercise of power under Rule 3(e)(1)(ii) of Rules, 1955 and in exercise of power under Rule 56 of the Tamil Nadu Fundamental Rules, admittedly, the criminal proceedings that were initiated against the petitioner by the CBI before the Special Court for CBI are still pending and appearance of the petitioner is only dispensed with in CrI.O.P.No.27277 of 2022 by an order dated 03.08.2023. So long, the said criminal proceedings are pending against



W.P. No.10558 of 2017

the petitioner, the action of the 3rd respondent in issuing the impugned proceedings dated 26.10.2016 and 31.10.2016 cannot be found fault.

11. In the light of the above, this Court is not inclined to interfere with the impugned proceedings dated 26.10.2016 and 31.10.2016. In case, if the petitioner is acquitted or stand discharged, the said proceedings dated 26.10.2016 and 31.10.2016 would automatically vanished and under no circumstances, the respondents are entitled to re-initiate the disciplinary proceedings against the petitioner for the same charges.

12. Accordingly, the writ petition is partly allowed quashing the proceedings dated 22.10.2016 and setting aside the punishment that was imposed on the petitioner. The connected miscellaneous petitions, if any, shall stand closed. No costs.

08.01.2025

dpa

Index : Yes/No

Speaking Order : Yes/No



WEB COPY



W.P. No.10558 of 2017

MUMMINENI SUDHEER KUMAR,J.

dpa

To:

- 1.The Director General of Police,
Police Head Quarter,
Mylapore,
Chennai.
- 2.The Commissioner of Police,
Greater Chennai,
Egmore,
Chennai.
- 3.The Joint Commissioner of Police,
East Zone,
Egmore,
Chennai – 8.
- 4.The Superintendent of Police,
CB CID (Special Investigation Team),
Chennai.
- 5.The Superintendent of Police,
Tirunelveli District.

W.P.No.10558 of 2017

08.01.2025