

(2016) 11 MAD CK 0069

In the Madras High Court

Case No : W.A.(MD) No. 1008 of 2016 and C.M.P.(MD).No. 6145 of 2016 (Writ Appeal filed under Clause 15 of Letter Patent against the order dated 17.04.2014 made in W.P. (MD).No.14300 of 2011)

Director General of Police Dr. Radha Krishnan Salai

APPELLANT

Vs

E. Jayakumar Formerly Inspector of Police

RESPONDENT

Date of Decision : 30-11-2016

Acts Referred:

Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 — Rule 15(A)

Citation : (2017) 3 MLJ 7

Hon'ble Judges : Mr. M.Sathyannarayanan and Mrs. J.Nisha Banu, JJ.

Bench : Division Bench

Advocate : Mr. AK. Baskarapandiyan, Advocate, for the Appellants; Mr. Veera Kathiravan, Senior Counsel, for the Respondent

Final Decision : Dismissed

Judgement

M. Sathyannarayanan, J.—By consent, this Writ Appeal is taken up for final disposal.

2. The petitioner made a challenge to the show cause notice by filing W.P(MD).No.14300 of 2011 and one of the grounds urged was that in respect of co-delinquent, namely, C.Vijaya Baskar, the then Sub-Inspector of Police, suo motu review was done by the Commissioner of Police, Chennai City and against whom also, show cause notice was issued and it was put to challenge in W.P(MD).No.13611 of 2011 and vide its order dated 12.07.2013, it came to be quashed and no appeal was filed and as such, the impugned show cause notice issued by the appellant herein is also liable to be quashed. The learned Judge after taking into account of the said submission found that the order dated 12.07.2013 in W.P(MD).No.13611 of 2011 is squarely applicable to the facts and circumstances of the case and quashed the impugned show cause notice and challenging the legality of the same, the official respondents in the said Writ

Petition has filed this Writ Appeal.

3. Mr. A.K. Baskara pandiyan, learned Special Government Pleader has drawn the attention of this Court to 15(A)(1)(ii) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 (in short "the Rule") and would submit that the Head of the Department means, the Director General of Police and admittedly, the review was done by another appellate authority, namely, the Commissioner of Police, Chennai city and as such, it cannot be construed as review and taking into consideration the nature of allegations levelled against the respondent/writ petitioner and the gravity of the delinquency has rightly issued the show cause notice calling upon him as to why one of the punishments culminated in 2 of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, should not be imposed and further contend that the impugned order allowing the Writ Petition came to be passed solely on the basis of the order dated 12.07.2013 made in W.P(MD).No.13611 of 2011 cited supra and challenging the legality of the said order, W.A.(MD).No.686 of 2015 has been filed by the official respondents and it was entertained by this Court also and it is pending disposal and therefore, prays for interference.

4. Per contra, Mr. Veera Kathiravan, learned Senior Counsel appearing on behalf of the respondent has drawn the attention of this Court to the judgment dated 29.09.2015 made in W.A.(MD).No.775 of 2014, wherein, the Director General of Police, Chennai-4 v. P.Selvaraju, dated 29.09.2015 and yet another judgment dated 16.09.2016 made in W.A.(MD).Nos.604 and 720 of 2016, the Secretary to Government, Chennai v. The Director General of Police, Chennai and would submit that in similar circumstances, the scope of review of 15A(1)(ii) as well as exercise of suo motu power was considered by this Court and held that once suo motu power was considered, another review is not possible and dismissed the Writ Appeals filed by the Government and since the respondent herein is also similarly placed person, prays for the dismissal of this Writ Appeal.

5. This Court has paid its best attention and also perused the materials available on record.

6. The petitioner while working as Sub-Inspector of Police, NIB, CID, Dindigul Unit, was issued with a charge memo and enquiry officer found that charges levelled against the petitioner had been proved and the Disciplinary Authority, namely, the Joint Commissioner of Police, (South Zone), Chennai has disagreed with the findings of the enquiry officer and deserved to be dropped and the head of the department, namely, Commissioner of Police in the service reviewed the same on 31.03.2011 and he did not disturb the order of the Joint Commissioner of Police, (South Zone), Chennai dated 04.02.2011, wherein, he has held that the respondent herein has been exonerated from all the charges. On perusal of the counter affidavit filed by the Additional Director General of Police, Mylapore, would also disclose that in paragraph No.5 to the effect that the Commissioner of Chennai has reviewed the order in question on 31.03.2011.

7. In the judgment dated 29.09.2015 made in W.A. (MD).No.775 of 2014 (cited supra) similar issue arose for consideration. It is relevant extract paragraph Nos. 14,16,17 and 18 of the judgement dated 29.09.2015.

"14. On a careful reading of the afore stated provision, it is clear that notwithstanding any contained in the rules, the State Government or the Head of the Department directly under the State Government, in the case of Government servant serving in a department or office under the control of such Head of Department or the appellate authority, other than the State Government or any other authority specified in this behalf by the State Government by general or special order, may exercise the power of review within six months of the date of the order proposed to be reviewed.

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16. The power of review, as prescribed under Rule 15.A(1) of the Rules, is in respect of the date of the order proposed to be reviewed. In the case on hand, the first order passed by the D.I.G, dated 7th February, 2013 was taken under suo motu review by the Additional Director General of Police (Crime), who has confirmed the said order on 16th April, 2013. Thus, the subsequent review purported to have been taken by the D.G.P./ appellant herein cannot be a review of review.

17. In the case on hand, as the facts are not in dispute, the power of review was exercised by the Additional Director General of Police (Crime) under Rule 15.A(1) of the Rules, confirming the order dated 7th February, 2013 passed by the D.I.G. Thus, the subsequent review by any other authority is not permissible. It is luculent that the suo motu power of review can be exercised by either one authority, not all authorities one after another. In respect of clause (iv) of Rule 15.A(1) of the Rules, we are informed that the State Government has not issued any general or special order specifying the authority under Rule 15.A(1)(iv) of the Rules and as such, no power under Clause (iv) is available to be exercised by any other authority.

18. It is trite law that the power of review is exercisable for correction of mistake on facts as well as in law, within the limit of statute, dealing with their exercise of power. A review of review cannot lie [See : Sow Chandra Kante and another v. Sheikh Habib LNIND 1975 SC 839 and Kamlesh Verma v. Mayawati and others LNIND 2013 SC 1208]."

7.1. Similarly, paragraph No.10 of the judgment dated 16.09.2016 made in W.A. (MD).Nos.604 and 720 of 2016 is also relevant to the present context, which is usefully extracted below:-

"10. In view of the above order passed by this Court, if we see the present case, the power of review was exercised by the Inspector General of Police, confirming the order passed by the Deputy Inspector General of Police, CID (Intelligence) and subsequent review by any other authority is not permissible. It is well settled

that the suo motu power of review can be exercised by any one authority, but not all authorities one after another. Therefore, we do not find any irregularity or irrationality in the impugned order passed by the learned single Judge, thereby warranting interference by this Court."

8. The judgment made in the above said Writ Appeals have not been put to challenge so far.

9. It is also relevant to extract 15 A(1) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955:-

"15.A.(1) Notwithstanding any contained in these rules:

(i) the State Government or

(ii) the Head of the Department directly under the State Government, in the case of Government servant serving in a department or office under the control of such Head of Department; or

(iii) The appellate authority, other than the State Government, within six months of the date of the order proposed to be revised or

(iv) any other authority specified in this behalf by the State Government by general or special order, and within such time as may be prescribed in such general or special order; may at any time either on their or its own motion or otherwise call for the records of any inquiry and review any order made under these rules, after consultation with the Tamil Nadu Public Service Commission where such consultation is necessary and may

(a) confirm, modify or set aside the order; or

(b) confirm reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry, as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit.

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), (h), (i) and (j) of rule 2(i) or to enhance the penalty imposed by the order sought to be [revised] to any of the penalties specified in 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 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 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.

2(a)No proceeding for revision shall be commenced

(i)where no appeal has been preferred before the expiry of the period of limitation for an appeal or

(ii)where an appeal has been preferred before the disposal of such appeal."

10. In case of Government servant serving in a department or office under the control of such Head of Department, in the considered opinion of the Court, the respondent / Writ Petitioner as Inspector of Police, NB CID was under the control of the Head of the Department, namely, Commissioner of Police, Chennai at the relevant point of time, though enquiry officer has found that the charges levelled against the petitioner have been proved, the disciplinary authority, namely, the Joint Commissioner of Police, (South Zone), Chennai has disagreed with the said findings and held that the respondent has to be exonerated from the charges and the same was reviewed by the Commissioner of Police, Chennai City, on 31.03.2011 and he has also concurred with the findings of the disciplinary authority. Once the power of review has been exercised by the reviewing authority, namely, the Commissioner of Police, Chennai city, the appellant/respondent in the Writ Petition cannot exercise the power of review once again and as rightly pointed out in the above cited judgments in paragraph No.18 of the judgment in W.A.(MD).No.775 of 2014 (cited supra) a review of review cannot lie and for that proposition relevance was also placed upon Sow Chandra Kante and another v. Sheikh Habib, (1975) 1 SCC 674 and Kamlesh Verma v. Mayawati and others, (2013) 8 SCC 320 and in the considered opinion of the Court, the above cited judgments which has also reached the finality are squarely applicable to the facts of the case and therefore, the learned Judge had relied upon the order dated 12.07.2013 made in W.P(MD).No.13611 of 2011 to quash the impugned notice without going into the merits of the matter and this Court after going through the entire materials is of the view that the show cause notice is to be quashed.

11. In the result, the Writ Appeal is dismissed and as a consequence, the impugned show cause notice dated 25.10.2011 issued by the appellant herein is quashed and the order made in W.P(MD).No.14300 of 2011, dated 17.04.2014 is confirmed. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.