

(1979) 03 MAD CK 0031
In the Madras High Court

V. Velluswamy

APPELLANT

Vs

The Inspector-General of Police and Another

RESPONDENT

Date of Decision : 13-03-1979

Acts Referred:

Citation : (1979) 2 MLJ 266

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—The petitioner who was a Detective Inspector till March, 1976 was suspended from service pending enquiry on certain charges. On 15th March, 1976 a set of three charges had been framed against him. A disciplinary enquiry followed and ultimately the petitioner was compulsorily retired from service by the second respondent. Thereafter the petitioner filed an appeal against the said order of punishment to the Inspector-General of Police, the first respondent herein. The said appeal having failed, the petitioner has come before this Court with a prayer for the issue of a writ of certiorari to quash the said order of punishment passed by the original authority as affirmed by the appellate authority.

2. The learned Counsel for the petitioner has raised various grounds which according to him go to the root of the matter, and if the grounds urged by him are accepted, the order of punishment would stand vitiated. The learned Counsel generally points out the various defects at the various stages of the enquiry proceedings and states that those defects virtually vitiated the enquiry proceedings. But having regard to the nature of the order which we propose to make in this case, it is not necessary to go into the merits of the said contentions put forward by the learned Counsel for the petitioner.

3. The respondents have taken a preliminary objection to the maintainability of the writ petition apart from meeting the various contentions advanced by the petitioner as to the alleged defects at the stage of the enquiry. The preliminary objection is that as against the appellate order passed by the first respondent a

right of review before the Government is available to the petitioner under rule 15-A of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 and that in view of the said alternative remedy available to the petitioner, he cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution, especially after the amended provision in Article 226 (3) of the Constitution had come into force. Rule 15-A is as follows:

15-A. Nothing contained in these rules shall be deemed to preclude an authority higher than the appellate authority from reviewing any case either on its own initiative or on representation "from a member of the service against the order of the punishing authority or appellate authority or the order of an authority higher than the appellate authority but lower than itself and passing such orders as it thinks proper. For this purpose, it may call for the records at any stage notwithstanding that any representation already made to a subordinate authority for reviewing the case has not been gone into or disposed of:

Provided, however, that no application for review shall be preferred more than once in respect of the same order:

Provided further that members of the constabulary (Police Constables and Head Constables) shall be eligible to make one representation to the Government against orders of dismissal after exhausting the right of appeal.

As per the said rule any person aggrieved against an order of the punishing authority or the appellate authority can make representations to the Government which is higher than the appellate authority for reviewing the orders of the appellate authority and the Government may call for the records from the appellate authority and review the case. Admittedly the petitioner has not approached the Government with an application for review under the said rule 15-A. If rule 15-A is treated to be an alternative statutory remedy available to the petitioner, then Article 226 (3) will come in the way of the petitioner maintaining the writ petition before this Court. Article 226 (3) as amended specifically says that no writ petition shall be entertained by this Court in a case where there is an alternative remedy available to the party except in cases where enforcement of fundamental rights is involved. Taking note of this position, the learned Counsel for the petitioner contends that rule 15-A cannot be taken to be an alternative remedy at all as the said rule merely enables the Government to review the orders of the subordinate authorities on its own initiative and such an enabling power on the part of the Government cannot be construed as a right given to the persons like the petitioner in respect of whom an order of punishment has been made by the subordinate authorities .

4. The learned Counsel, in support of his submission, refers to the decision of the Karnataka High Court in *Shiraguppi v. Deputy Superintendent of Police* 1978 Lab. I.G. 60 : (1977) L.J. 255 : ILR (1977) Karn. 1131 : (1977) 2 serv. L.R. 836 In that case a somewhat similar provision in Section 25 (2) of the Karnataka Police Act, 1963 came up for consideration. The said section was follows:

The Government may suo motu or otherwise, after calling for the records of the case, revise any order u/s 23 or Sub-section (1) of this section passed by the Inspector-General or any other officer subordinate to him, and--

- (a) confirm, modify, set aside the order;
- (b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order;
- (c) remit the case to the authority which made the order or to any other authority directing such further action or enquiry as it considers proper in the circumstances of the case; or
- (d) pass such other orders as it deems fit.

Construing that provision the Karnataka High Court held that the said Section 25 (2) is not a bar to the maintainability of the writ petition as the requirements of Article 226 (3) of the Constitution are not adequately and effectively met by the revisionary powers provided in that section. With due respect, we are not inclined to accept the view taken in that case. The Section 25 (2) specifically enabled the Government to revise any order of punishment passed u/s 23 of the Karnataka Police Act either suo motu or otherwise, and the Government was given the power to confirm, modify or set aside the order of punishment imposed or impose any penalty or set aside the order of punishment imposed or impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the lower authorities or remit the case to the lower authorities for further consideration. When such a specific power has been given to the Government to give suitable relief to the persons aggrieved against the order of punishment imposed by the Inspector-General of Police or any other officer subordinate to him we do not see why that power of the Government cannot be invoked by the party. Whatever relief the Court under Article 226 can give, the Government can also give u/s 25 (2) of the said Act. In the face of the wide language used in Section 25 (2) of the Karnataka Police Act, we are of the view that no other conclusion is possible except to say that the remedy u/s 25 (2) is an alternative and adequate remedy available to the aggrieved party. We are not, therefore, inclined to accept the principle laid down in that decision as correct.

5. On the other hand we have got the decision of a Full Bench, of this Court in *Munuswami Reddiar v. Commissioner, Hindu Religious and Charitable Endowments* W.P. No. 2195 of 1972 wherein Section 115 (1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, was considered. The Full Bench in that case held that though Section 114 (1) does not say specifically that a party can invoke the revisional power of the Government, still the Government has to exercise the power under that section if a party moves the Government by filing an application for revising the order of the Commissioner, Hindu Religious and Charitable Endowments. The Full Bench has observed that Section 114 (1) used practically the same language as Section 115 of the CPC and that revision petitions are normally entertained by the High Court u/s 115, Civil Procedure

Code, even though it does not specifically say that the revisional power of the High Court could be invoked by the party. The following observations of the Full Bench appear to be pertinent:

Section 114 gives very wide powers to the Government to deal with any orders passed by the Commissioner, Deputy Commissioner or Assistant Commissioner at any time. Normally, when such a power is granted to the Government, it would be possible for a party aggrieved by the orders of the authorities mentioned in Section 114 (1) to invoke the exercise of such power by an application before that authority. This is so even if there is no specific provision in the section stating specifically that a party may apply to the Government. A glance at Section 115, Civil Procedure Code, shows that the section as such does not contemplate any application. Exercise of power u/s 115, Civil Procedure Code, by the High Court has been mainly on applications made by the parties. We see no justification whatever in understanding Section 114 (1) which is worded in very similar terms to Section 115, Civil Procedure Code, in a different way. So subsection (1) of Section 114 of the Act has to be understood as conferring a power in the Government either suo motu to call for the records and examine the propriety, legality etc., of the orders or proceedings, or by application by the aggrieved party.

6. Rule 15-A with which we are concerned in this case specifically says that the power of the Government to review an order passed by the subordinate authority can be invoked by the party. Therefore, even the controversy that arose before the Full Bench cannot arise here. We are not prepared to agree with the contention of the learned Counsel for the petitioner that the remedy available to the party under rule 15-A cannot be taken to be an alternative remedy which will bar the presentation of the writ petition before this Court. In view of our finding that rule 15-A gives an alternative remedy to the petitioner to agitate against the order of punishment imposed by the original authority as affirmed by the appellate authority, we cannot entertain this writ petition in view of the specific provision contained in Article 226 (3) as amended.

7. Therefore, without expressing any opinion on the merits of the petitioner's contentions, this writ petition is dismissed, with liberty to approach the Government under rule 15-A. The petitioner is given a months time from today for filing an application for review under the said rule. Having regard to the fact that the appeal before the first respondent has been kept pending for more than a year, we direct the Government to dispose of the review application, if any, filed by the petitioner under rule 15-A, as expeditiously as possible. There will, however, be no order as to costs.