

IN THE HIGH COURT JUDICATURE AT MADRAS

DATED : 30.11.2009

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THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.No.28388/2008

&

M.P.No.2/2008

Maria George

..Petitioner

Vs

The Principal Secretary
Government of Tamil Nadu
Home [Pol-IV] Department
Secretariat, Chennai-9.

..Respondent

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the respondent and quash the impugned show cause notice in Lr.No.37742/Pol.IV/2008-2 dated 25.08.2008 served on the petitioner on 21.11.2008.

For Petitioner : Mr.M.S.Soundararajan

For Respondent : Mr.T.Seenivasan, AGP

ORDER

The prayer in the writ petition is to quash the order of the respondent dated 25.08.2008.

2.The petitioner was recruited as Sub-Inspector of Police in the year 1976 and posted at Virudhunagar District and was promoted as Inspector of Police in the year 1989 and thereafter, became Assistant Commissioner of Police in the year 2005. while he was working at Virudhunagar District, a charge memo was framed against him under Rule 3[a] of the Tamil Nadu Police Subordinate Service [Discipline and Appeal] Rules on an allegation that he has forced one Uma to withdraw her complaint against a Head constable for his misbehaviour and the said incident was stated to have been taken place in the year 1994. In respect of that, a charge memo was issued in the year 2001 and after the petitioner submitted his explanation, the enquiry officer, viz., the Deputy Superintendent of Police, Sathur Sub Division, in his Minutes dated 12.05.2001 has recommended that the charge stood proved. Thereafter, accepting the Enquiry Officer's Report, the Disciplinary Authority has imposed a punishment of

postponement of increment for one year without cumulative effect on 15.05.2001.

3. On appeal against the said order, the Deputy Inspector General of Police, Madurai Range, has set aside the punishment by the order dated 06.04.2002. Thereafter, the Director General of Police has taken suo-motu power of review under Rule 15[A][i][ii] of the Tamil Nadu Police Subordinate Service [Discipline and Appeal] Rules and considered the case of the petitioner afresh and dropped all further proceedings by the order dated 27.06.2003 by accepting the findings of the Deputy Inspector General of Police, Madurai Range, the Appellate Authority in his order dated 06.04.2002. It is by the impugned show cause notice, the Government seeks to exercise its power of suo motu power to review through Rule 15[A] of the Tamilnadu Police Subordinate Service [D&A] Rules once again and it is challenged in this writ petition.

4. Though the learned counsel for the respondent got instructions to say that the Government's power of review is simultaneous to that of the Director General of Police, he would submit that there is no bar for the purpose of further suo motu power of the Government.

5. A reference to Rule 15[A] of the Tamilnadu Police Subordinate Service [D&A] Rules, which is as follows:-

"[1] Notwithstanding anything 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 in a department or office under the control of such Head of the Department; or

[iii] the appellate authority, within six months of the date of the order proposed to be reviewed; 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....."

shows that in respect of review either the State Government or Head of Department or the Appellate Authority can exercise the same. It is the common knowledge that the power of review is intended to rectify certain mistakes in order to render substantial justice. When once, the authority contemplated under the law, exercise the suo motu power of review, there is no question of some other authority to once again re-open the review order. In the present case, the Head of the Department, viz., the Director General of Police, as per the powers conferred under Rule 15[A][1][ii] has already exercised his jurisdiction by confirming the order of the Appellate Authority who set aside the punishment of the original authority. There is no question of further review by the Government once again. That was also the view of the Tamilnadu Administrative Tribunal in Transfer Application No.215/1992 dated 14.11.2002 and also in OA.No.2616/1994 etc., batch in the order dated 04.11.1998.

6.In such view of the matter, I am of the considered view that the respondent has no jurisdiction to exercise the power of review when once the same has been exercised by some other competent authority as per the rule and therefore, the impugned show cause notice dated 25.08.2008 stands set aside and the writ petition is allowed. No costs. Consequently connected miscellaneous petition is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

The Principal Secretary
Government of Tamil Nadu
Home [Pol-IV] Department
Secretariat, Chennai-9.

- + 1 c.c. to Mr. M.S. Soundararajan, Advocate. S.R.No.65109.
- + 1 c.c. to The Government Pleader. S.R.No.64994.

WP.No.28388/2008

GG (CO)
GSK 07.12.2009.