



WP No.2554 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 01-11-2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.2554 of 2017

Prasanna Gunasundari

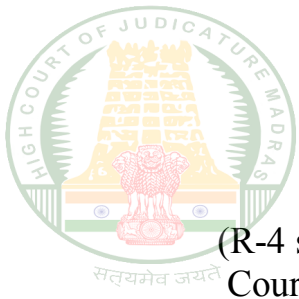
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Petitioner

VS.

- 1.The Deputy Inspector General of Police,
Madurai Range,
Madurai.
- 2.The Additional Director General of Police,
Law and Order,
Chennai-600 004.
- 3.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004.
- 4.The Principal Secretary to Government,
Home (Police) Department,
For St. George,
Secretariat,
Chennai-600 009.

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(R-4 suo motu impleaded vide order of
Court dated 15.09.2022 made in WP No.2554
of 2017) ..

Respondents

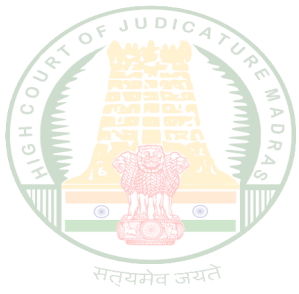
Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in connection with the impugned order passed by him in PR No.40/2012 dated 05.04.2013 (RC No.665/A2/9920/2011) and confirmed by the second respondent in RC No.76544/AP.2(3)/2013 dated 10.08.2014 and further confirmed by the third respondent in RC No.185801/APII(3)/2015 dated 20.12.2016 and quash the same and direct the respondents to reinstate the petitioner into service and grant her all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkataramani,
Senior Counsel for Mr.M.Muthappan.

For Respondents : Mr.B.Vijay,
Additional Government Pleader.

O R D E R

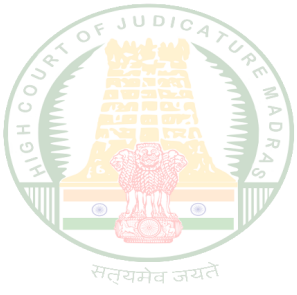
The lis on hand has been instituted questioning the validity of the penalty of compulsory retirement imposed on the petitioner.



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2. The petitioner was appointed as Grade-II Woman Police Constable on 14.04.1981. She was upgraded as Grade-I Police Constable and further promoted as Head Constable in June 1996 and as Sub-Inspector of Police on 19.01.2004. A charge memo was issued to the writ petitioner on 07.03.2012 under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 in PR No.40 of 2012. The charge against the writ petitioner was that while she was working as Station In-charge at Kallikudi Police Station, she was instructed to hand over the gold jewellerys to the Magistrate Court in Crime No.163 of 2011 registered under Sections 147, 148, 353, 307 IPC read with Section 25 Clause 1 of the Arms Act. The petitioner received the gold jewellerys with the approval under Form 91 from the Inspector of Police. She had not made entries in the Case Property Registers, General Notes and Para Book and committed an act of delay in handing over the jewellerys before the Magistrate Court, which resulted in missing of 107.094 grams of gold jewellerys.



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3. With reference to the charges, the petitioner submitted her

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Disciplinary Authority appointed an Enquiry Officer, who in turn conducted an enquiry by affording an opportunity to the writ petitioner. The Enquiry Officer submitted his report holding that the charges against the writ petitioner are held proved and the writ petitioner was held solely responsible for the case properties, gold jewellerys, which were entrusted to her.

4. The Disciplinary Authority accepted the findings of the Enquiry Officer and after providing an opportunity to the charged official to submit her further objections passed final orders imposing the penalty of compulsory retirement in order dated 05.04.2013. The petitioner preferred a Statutory Appeal to the Director General of Police, Chennai-4. But the said appeal was decided by the Additional Director General of Police (Law and Order), Chennai-4 and the appeal was rejected in proceedings dated 10.08.2014. Thereafter, the petitioner submitted a mercy petition/review petition to the Director General of Police on 19.11.2014 through proper channel and the said mercy petition was forwarded by the Superintendent of

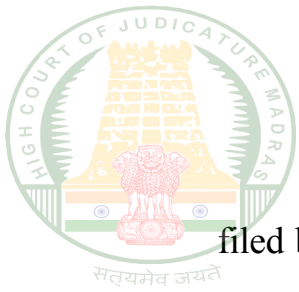


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Police, Madurai. However, the third respondent-Director General of Police rejected the mercy petition submitted by the writ petitioner on the ground that the Additional Director General of Police (Law and Order) who had decided the appeal filed by the petitioner became the Director General of Police on promotion and therefore, he cannot decide the issues. The order of rejection dated 20.12.2016 was passed by the Director General of Police, pursuant to the directions issued by this Court in WP No.36644 of 2016 dated 20.10.2016. Thus, the petitioner is constrained to move the present writ petition.

5. The learned Senior Counsel appearing on behalf of the petitioner mainly contended that the allegations are baseless and the petitioner, who was In-charge of the Station, handed over the gold jewelleryes to the Writer, who in turn kept the properties in the locker available in the Police Station. That apart, the right of the petitioner under the Rules for adjudication of issues on merits before the Revisional Authority was also denied. The third respondent, who is also an Authority empowered to review the order, rejected the mercy petition/review petition

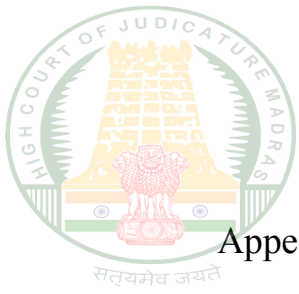


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filed by the petitioner merely on the ground that the appeal was decided by the Additional Director General of Police (Law and Order).

6. The learned Senior Counsel for the petitioner contended that the order imposing the punishment of compulsory retirement by the first respondent is a non-speaking order. The first respondent-Disciplinary Authority has not taken into consideration the averments made by the petitioner in her further representation/objections submitted on the findings of the enquiry report.

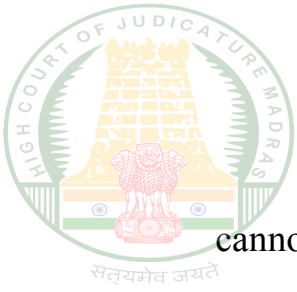
7. The Disciplinary Authority, while passing final orders, has bound to consider the further representation made by the charged official in the manner known to law and meet all the points raised therein. However, perusal of the order impugned reveals that none of the grounds raised by the petitioner has been considered by the Disciplinary Authority while imposing the major penalty of compulsory retirement. The Appellate Authority has also equally committed a mistake by passing a non-speaking order. As per Rule 6(1)(3) of the Tamil Nadu Police Subordinate Services (Discipline and



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Appeal) Rules, 1955, the Appellate Authority has to take into consideration whether the facts narrated in the charge memo has been established through evidence and whether the evidence can be accepted for the proof of the charges and also decide where the punishment imposed is adequate or inadequate and pass orders. However, none of the points raised in this regard by the petitioner in her appeal grounds were considered by the Appellate Authority. There is no discussion with reference to the adequacy or inadequacy of the punishment of compulsory retirement imposed on the petitioner. Thus, the appellate order passed by the second respondent is in violation of Rule 6 of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955.

8. The learned Senior Counsel for the petitioner drawing the attention of this Court with reference to the grounds raised by the petitioner before the Authorities that the petitioner entrusted the jewels to the Station Writer PW-2, who was directed to keep it safe in the Locker Box of the Police Station and when it was produced on 29.10.2011 before the Magistrate, it was found that some of the items were missing. The petitioner



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cannot be fixed with the responsibility of missing of the jewels except he failed to properly account the jewels. The petitioner cannot be held responsible for the reason that the jewels were kept only in the locker available in the Police Station and if at all anybody is to be found fault, it is only the police personnel, who was in-charge of the locker of the Police Station, namely, the Station Writer and Para Constables. Thus the Authorities have not properly appreciated the evidence and the documents available on record and therefore, the punishment of compulsory retirement is to be set aside.

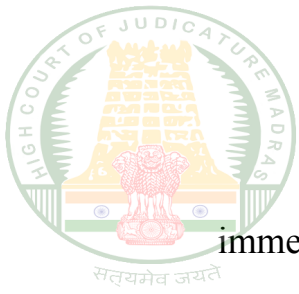
9. The learned Additional Government Pleader appearing on behalf of the respondents objected the contentions raised on behalf the learned counsel for the petitioner by stating that on 10.09.2011 at about 02.30 a.m., on the complaint given by one Inspector Rajendran, a case was registered in Kallikudi PS Crime No.163/11 under Sections 147, 148, 353, 307 and 25(1) Arms Act by WSI Kallikudi. Since it was a grave case, first investigation was taken up by Inspector of Police, Thirumangalam Town Police Station, Thiru.Venugopal and he visited the S.O.C., prepared sketch,



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observation mahazar and observed all legal formalities. After that, he recorded the confession of all the three accused. On the basis of the confession, he recovered 16 items of gold jewels, all weighing about 163.344 grams in total from various places under proper athatchi. After that, he returned to the Police Station along with the jewels, prepared five numbers of Form-95 papers as E2808302-2808306 and handed over to WSI Tmt.Prasanna Gunasundari for remanding to judicial custody. On 26.09.2011, the WSI went to the Court and produced all the Form 95 along with athatchi before the Judicial Magistrate Court, Thirumangalam. But, the learned Judicial Magistrate, Thirumangalam returned all the documents with an endorsement that “To submit the properties along with the appraiser”. Again on 29.11.2011, WSI Kallikudi went to the Judicial Magistrate Court, Thirumangalam for remanding the properties. Due to the non-availability of appraiser, the properties were not remanded. At that time, when she checked all the properties in the Court premises, she found that the 6 items weighing about 107.094 grams mentioned in the Form-95 E 2803802 were missing. The same was not informed properly to the Higher Officers i.e., missing of the gold jewels weighing about 107.094 grams



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immediately. On 30.11.2011, the petitioner sent the report to the Inspector of Police, Thirumangalam Town Police Station after the Deputy Superintendent of Police, Thirumangalam inspected the Station and verified all the documents including Case Property Register. The Deputy Superintendent of Police, Usilampatti conducted preliminary enquiry on the above allegations and fixed responsibility on the petitioner for the case property gold jewels because the property was entrusted to the petitioner by the Inspector of Police, Thirumangalam Town Police Station. Further, the Additional Superintendent of Police (Crime), Madurai District, who was nominated as Enquiry Officer, conducted a detailed enquiry by verifying all the connected documents of General Diary, Case Property Register, Sentry Relief Book etc., and marked as Exhibits 1 to 7. Also, he examined 4 witnesses, namely, Thiru.Ravichandran, Deputy Superintendent of Police, Thirumangalam as PW-1, Station Writer PC 238 Thiru.Vadivel as PW-2, Thiru.Venugopal Inspector of Police, Thirumangalam as PW-3, Thiru.Kumar, Deputy Superintendent of Police, Usilampatti as PW-4. All the witnesses clearly and categorically explained about the facts of the case and said that the petitioner was wholly responsible for the jewels, which

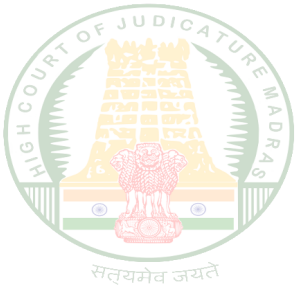


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were entrusted to her by the Inspector of Police, Thirumangalam.

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10. PW-1 Thiru.Ravichandran, Deputy Superintendent of Police, Thirumangalam has stated that “The lethargic and irresponsible attitude of the WSI Prasanna Gunasundari amounts to either misappropriation or theft”. PW-2 Thiru.Vadivelu PC 238 Kallikudi Police Station has stated that the petitioner has not given gold jewels to him and no entry was made in the Case Property Register. He was on medical leave from 11.11.2011 to 05.12.2011 due to his illness. PW-3 Thiru.Venugopal, Inspector of Police, Thirumangalam Town Police Station has stated that a criminal case may be registered against the petitioner either under Sections 409, 420 or 380 IPC. PW-4 Thiru.Kumar, Deputy Superintendent of Police, Usilampatti also stated that valuable properties should be kept only in the Police Station safety locker and the key should be with the Station House Officer. He stated that the Station House Officer is responsible for the jewels entrusted to her and it is clearly mentioned in the Police Standing Order under Section 196. In the instant case, petitioner Tmt.Prasanna Gunasundari is the Station House Officer of Kallikudi Police Station.



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11. Based on the above evidences, the Enquiry Officer has stated that the petitioner was solely responsible for the case property gold jewels, which were entrusted to her and drawn proved minutes. Based on this, the petitioner was awarded the punishment of 'Compulsory Retirement from Service' by the Deputy Inspector General of Police, Madurai Range, Madurai on 05.04.2013. On 08.04.2013 after receiving the order, the petitioner filed an appeal on 02.05.2013 before the Additional Director General of Police (Law and Order) and on 10.08.2014, the Additional Director General of Police passed orders rejecting the appeal.

12. Considering the arguments, the issues regarding the mercy petition/review petition filed by the petitioner before the third respondent and the further procedures as contemplated were followed or not is also to be considered.

13. The charges framed against the writ petitioner are grave in



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nature. The petitioner was afforded with an opportunity to defend her case before the Authorities Competent. An enquiry was conducted by the Enquiry Officer by providing sufficient opportunities to the writ petitioner, who in turn defended her case.

14. This Court do not find any infirmity in respect of the procedures followed by the Disciplinary Authority in conducting the departmental disciplinary proceedings against the writ petitioner. Thus the principles of natural justice has been complied with. Admittedly, the petitioner preferred an appeal before the Appellate Authority and the said appeal was decided by the Additional Director General of Police (Law and Order), who in turn rejected the appeal on 10.08.2014. Thereafter, the petitioner filed the mercy petition/review petition before the third respondent-Director General of Police. The question at this juncture arises whether such a mercy petition/review petition is entertainable under the Rules by the Director General of Police, more specifically when the Statutory Appeal was decided by the Additional Director General of Police. Thus the Rules in this regard are to be examined, since such mercy

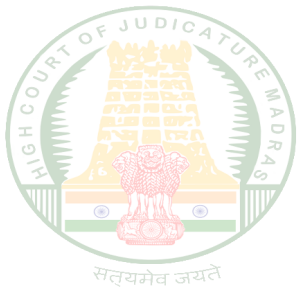


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petitions/review petitions are filed by the employees in violation of the Rules and on many circumstances such mercy petitions/review petitions are entertained by the Authorities having no jurisdiction to entertain such petitions under the Rules. An Incompetent Authority having no jurisdiction exercising the power of review or entertaining a review petition would result in an administrative indiscipline and would pave way for favouritism, nepotism, and corrupt practices or deciding the issues on extraneous considerations. It cannot be in dispute that an Authority, who has no jurisdiction to entertain a review petition or mercy petition can be allowed to decide such petitions in violation of the Statutory Rules and in the event of allowing such Authorities to exceed their jurisdiction, it will result in colourable exercise of power leading to unconstitutionality.

15. The learned Senior Counsel for the petitioner mainly contended that under Rule 15-A of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, the third respondent ought to have decided the review petition/mercy petition on merits and in accordance with law and thus the said order is to be set aside.



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16. The learned Additional Government Pleader appearing on behalf of the respondents objected the said contention raised on behalf of the petitioner by stating that in order to clarify the Rule position, this Court suo motu impleaded the fourth respondent-Principal Secretary to Government, Home (Police) Department and directed to file an affidavit, who in turn has filed an additional counter-affidavit on behalf of the fourth respondent, clarifying the Rule position.

17. It is not in dispute that against the Award of punishment of compulsory retirement by the Disciplinary Authority, the petitioner preferred an appeal and the said appeal was rejected by the Additional Director General of Police (Law and Order), Chennai-4 in proceedings dated 10.08.2014. On rejection of the appeal, the writ petitioner filed a mercy petition/review petition before the Director General of Police, Tamil Nadu, Chennai, challenging the penalty of compulsory retirement. However, the said petition was not entertained on the ground that the Additional Director General of Police, who decided the appeal, became the Director



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General of Police and therefore, the same Officer cannot decide the appeal and the mercy petition/review petition.

18. Thus the writ petitioner, without exhausting the chance of preferring revision petition before the Government as envisaged under Rule 15-A of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, had filed the writ petition before this Court for quashing the order of punishment.

19. With reference to the hierarchy of Authorities, namely, Punishing Authority, Appellate Authority / suo motu Review Authority under Rule (6), Revisional Authority under Rule 15-A and Review Authority under Rule 15-AA are concerned, the third respondent filed an additional counter-affidavit extracting the Rule position, which reads as under:-

<i>Sl. No.</i>	<i>Designation</i>	<i>Punishment</i>	<i>Punishing Authority</i>	<i>Appellate/ Suo-motu Review Authority u/r 6</i>	<i>Revision Authority u/r 15(A)</i>	<i>Review Authority u/r 15(AA)</i>
1	Inspector of	Reprimand	SP	DIG concerned or	DGP	Govt.,



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Sl. No.	Designation	Punishment	Punishing Authority	Appellate/ Suo-motu Review Authority u/r 6	Revision Authority u/r 15(A)	Review Authority u/r 15(AA)
	Police	Censure /BM Withholding of Inct./promotion Reduction in lower Rank Recover from pay of the whole or part of any pecuniary loss coursed to Govt. By negligence or breach of orders Suspension Compulsory retirement / Removal or dismissal	SP SP DIG SP DIG DIG	the COP, as the case may be, in respect of the orders passed by officers below them in gradation and the IGP in respect of the orders passed by the DIG or COP, as the case may be		
2.	Sub Inspector of Police	Reprimand Censure / BM Withholding of Inct./promotion Reduction in Rank Recover from pay of the whole or part of any pecuniary loss coursed to Govt. By negligence or breach of orders Suspension Compulsory retirement / Removal or dismissal	DSP DSP SP SP SP DIG	SP Concerned or an officer of corresponding rank in respect of orders passed by officers below them in gradation, the DIG of the COP, as the case may be, in respect of orders passed by the SP and DIG and the IGP in respect of orders passed by the DIG and the COP, as the case may be.	DGP	Govt.,



Sl. No.	Designation	Punishment	Punishing Authority	Appellate/ Suo-motu Review Authority u/r 6	Revision Authority u/r 15(A)	Review Authority u/r 15(AA)
3.	Head Constable	Reprimand Censure / BM Withholding of Inct./promotion Reduction in lower Rank Recover from pay of the whole or part of any pecuniary loss coursed to Govt. By negligence or breach of orders Suspension Compulsory retirement / Removal or dismissal	ADSP ADSP ADSP SP / ADSP ADSP SP SP	SP Concerned or an officer of corresponding rank in respect of orders passed by officers below them in gradation. DIG concerned or the COP in respect of orders passed by officers below them in gradation and the IGP in respect of orders passed by the DIG,Asst. IGP or the COP, as the case may be.	DGP	Govt.,
.	Police Constables	Reprimand Censure / BM Withholding of Inct./promotion Reduction in Rank Recover from pay of the whole or part of any pecuniary loss coursed to Govt. By negligence or breach of orders	--- ADSP/ AC /DSP ADSP/ AC /DSP ADSP AC /DSP ADSP/ AC /DSP	SP Concerned or an officer of corresponding rank in respect of orders passed by officers below them in gradation. DIG concerned or the COP in respect of orders passed by officers below them in gradation and the IGP in respect of orders passed by the DIG,Asst. IGP or the COP, as the case may be.	DGP	Govt.,



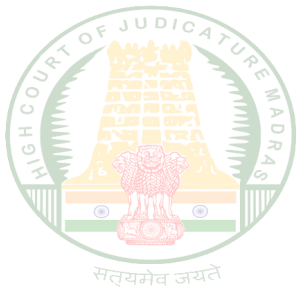
Sl. No.	Designation	Punishment	Punishing Authority	Appellate/ Suo-motu Review Authority u/r 6	Revision Authority u/r 15(A)	Review Authority u/r 15(AA)
		Suspension	SP			
		Compulsory retirement / Removal or dismissal	SP			

20. In respect of state level officer i.e DSP to SP, the Government are the Disciplinary Authority regarding major punishment. In the case of minor punishment, the Head of the Department i.e. the Director General of Police is the Punishing Authority and in such case, the Government are the Appellate Authority. In all cases, the Government are the Reviewing Authority.

21. Let us consider Rule 15-A of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 and relates to revisional power of the Authorities, which reads as under:-

“15-A. (1) Notwithstanding anything contained in these rules:

(i) the State Government; or



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(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

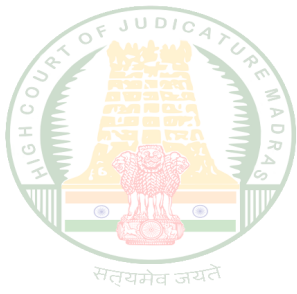
(iii) the Appellate Authority, other than the State Government, within six months of the date of the order proposed to be revised; or

(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 if 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



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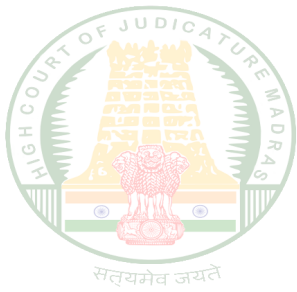


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(c) remit the case to the authority which made the order or to any other authority, directing such authority to make such further inquiry, as it may consider proper in the circumstances of the case; or

(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



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Public Service Commission, where such consultation is necessary.

Provided further that no power or revision shall be exercised by the Head of the 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.

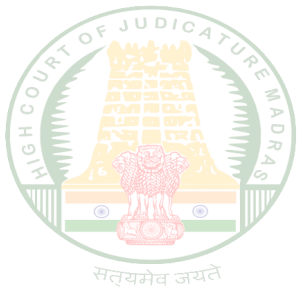
(2) (a) No proceeding for revision shall be commenced.

(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

(iii) an application for revision shall be dealt within the same manner as if it were an appeal under these rules.

Provided that members of the constabulary (Police Constables and Head Constables) shall be eligible to make one



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representation to the Government against orders of dismissal or removal from service after exhausting the right of appeal.

Provided further that no application for review shall be entertained if it has not been made within a period of six months from the date of receipt of the order on which such application for review is prescribed."

22. As per Rule 6, the Appellate Authority has to exercise his appellate power only if the delinquent has made any appeal as per the said Rule. Otherwise, if no such appeal has been made by the delinquent within the stipulated period of one month, the Appellate Authority, within six months, can suo motu exercise his revisional power under Rule 15-A of the said Rules against the order made by the Disciplinary Authority.

23. The power provided to the authorities under Rule 15-A of the said Rules is purely a revisional power only. Instead of the expression 'Revise', the expression 'Review' has been used in the said Rules. Whereas, in the provisos to sub-rule (1) and in sub-rule (2) of Rule 15-A, the

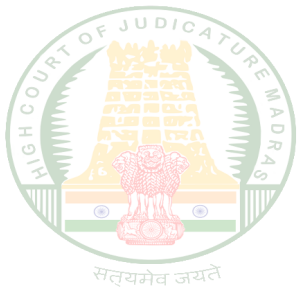


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expressions 'Revising Authority' and 'Revision' have been used. **Except the Government, no other Authority has any power to review its own order.**

24. Rule 15-AA of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 relates to review power of the Government, which is as follows:-

“The State Government may, at any time, either on their own motion or otherwise, review any order passed by them under these Rules, where any new material or evidence could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come or has been brought to their notice. Provided that no order imposing or enhancing any penalty shall be made by the State Government, unless the Government Servant concerned has been given a reasonable opportunity of making a representation against penalty proposed or where it is proposed to



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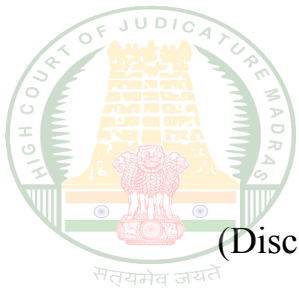


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impose any of the major penalties specified in Rule 2 or to enhance the minor penalty imposed by the order sought to be reviewed to any of the major penalties. If an inquiry under sub-rule (b) of Rule 3 has not already been held in the case, no such penalty shall be imposed except after and inquiry in the manner laid down in the said sub-rule (b) of Rule 3, which shall be subject to the provisions of sub-rule (c) thereof.”

25. This Rule do not prohibit that the revisional power can only be used by any one of the Authorities. The revisional power exercised by any Revisional Authority can further be revised by Higher Revisional Authority. Such revisional power is subject to further revision by Higher Revisional Authority. As per the said Rule 15-A, any order made under the said Rules can be revised at any time by the Revisional Authorities. But, the Subordinate Revisional Authority cannot have power to revise the revisional order passed by the Higher Revisional Authorities.

26. Rule 15-B of the Tamil Nadu Police Subordinate Services

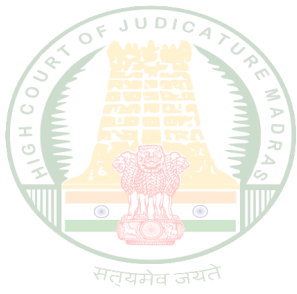


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(Discipline and Appeal) Rules, 1955, which contains a non-obstante clause, prescribes that nothing contained in these Rules shall be deemed to preclude the State Government from reviewing its own order previously passed. As per this Rule, the Government have power to review its own order passed under the said Rules, which includes the orders passed under Rules 15-A and 15-AA of the said Rules. A comparative analysis of Rule 15-AA and 15-B exemplify that the power of review can be exercised only by the Government on limited grounds to review its own order.

27. The Division Bench of this Court has considered the said Rule 15-A of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 in its order, dated 16.02.2005 in WP No.17263 of 2004 filed by Thiru.R.Krishnasamy, in paragraphs 8 and 9, this Court observed as under:-

“8. An analysis of the aforesaid provision makes it clear that the power of review has been given to the State Government under Rule 15(1)(i) or the Head of the Department or the Appellate Authority or any other authority

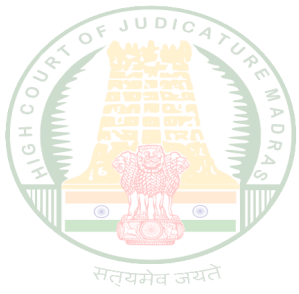


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specified in this behalf by the State Government. So far as the appellate authority is concerned, as contemplated under Rule 15-A(1)(iii) such power is to be exercised within six months from the date of order proposed to be reviewed. So far as any other specified authority contemplated under Rule 15-A(1)(iv) is concerned, such power is to be exercised within time as may be prescribed, and so far as the State Government or Head of the Department is concerned, such power can be exercised at any time. This power of review can be exercised by the concerned authority on its own motion, i.e., suo motu or otherwise. In other words, such power of review can also be exercised on the basis of an application, which is contemplated in Rule 15-A(3). If the power is exercised obviously suo motu, there is no filing of any application. Under Rule 15-A(4), no application for review shall be preferred more than once in respect of the same order. Review can be made in respect of any order made under these Rules. So far as the Head of the Department is concerned, it is



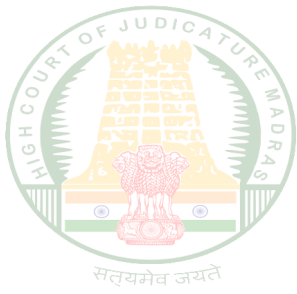
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contemplated that he shall not have the power of review unless the appellate authority is subordinate to him. A careful analysis makes it clear that so far as suo motu power is concerned, there is no prohibition for the higher authority to issue suo motu review proceedings. The only embargo is that if the review is based on any application, such applicant cannot have a further right of filing further application for review.

9. For clarification, we may refer to the provisions contained in Sections 397 and 401 Cr.P.C. giving the power of revision to the Sessions Judge as well as the High Court. There is a specific prohibition in Section 397 (3) indicating that if a power of revision is exercised by a particular revisional authority and the order is confirmed, no further revision would be maintainable. However, there is no such indication in the present Rule 15. On the other hand, a careful reading of Rule 15 indicates that if power of review is exercised by an authority, the higher authority is not



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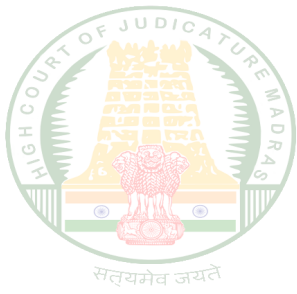


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precluded from exercising suo motu power of review. If the contention of the learned counsel for the petitioner would be accepted, the jurisdiction of the higher authorities would be unduly circumscribed and any inferior authority contemplated under Rule 15-A may foreclose the discretionary power of review of a higher authority by exercising such review power himself. We are therefore unable to accept such contention.”

28. The Full Bench of this Court has also considered the validity of Rule 15-A of the said Rules in WA (MD) No.686 of 2015 in its order dated 14.02.2020 and in paragraphs 18 to 22, 36, 39 and 44, the Full Bench of this Court has observed as under:-

“18. When scope of Rule 15A of the Rules is not analogous to Order 47 Rule 1 CPC, the general expression of law by the Division Bench in P.Selvaraju’s case may not be appropriate. The power conferred on the Appellate Authority or Head of the Department or State

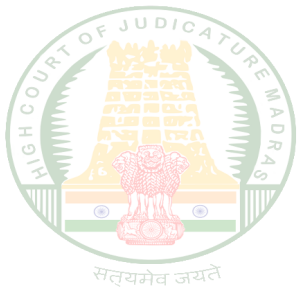


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Government to review any order passed by the Authority subordinate to it, is subject to the limitations within Rule 15A and no limitation can be inferred beyond the Rule. The power of review under Rule 15A of the Rules is also a power, which is different from the power of an appellate Authority. Rule 15A(2) of the Rules makes the position clear that the power of review is not available to any authority, till the expiry of period of limitation for an appeal or the disposal of the appeal, where an appeal has been preferred. Reading of the Rule 15A in its entirety, makes it explicit that the power of suo motu review is independent of the power as an appellate authority and that such power can be exercised by the State Government or Head of the Department or Appellate Authority either on their or its own motion or otherwise, to confirm or modify or set aside the order of punishment or remit the case to the authority, which made the



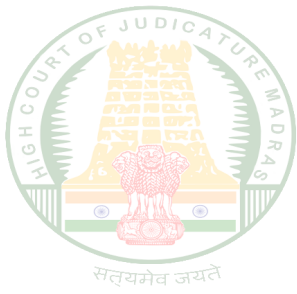
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order or to any other authority. Proviso to Rule 15A(1)(iv) of the Rules, though provides for a reasonable opportunity to the Government Servant against the penalty proposed, no corresponding requirement to provide opportunity or notice to disciplinary authority is contemplated, even when the power of review, either suo motu or on application is exercised and order is passed setting aside the order of Disciplinary Authority imposing penalty.

19. When Rule 15A of the Rules is incorporated, the object appears to be to give the power of suo motu review to the Appellate Authority or to the Head of the Department or to the State Government to review any order passed by any subordinate authority. The power of review under Rule 15A of the Rules is a special power and is not limited by any other rule. The non obstante clause indicates that Rule 15A of the Rules is not



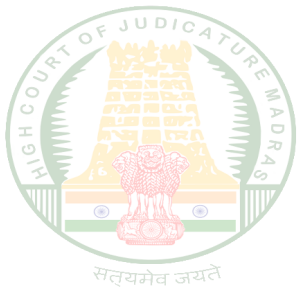
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controlled by any other Rule. As it is pointed out earlier, Rule 15A of the Rules empowers the State Government or Head of the Department or Appellate Authority to review any order made under the Rules. By express language, the power is wide enough to include every order that may be passed in exercise of the power conferred under Rules. It is well settled that the normal Rule of interpretation is to read the words of Statute as per language employed. In case of ambiguity, rational meaning has to be given. Only when there is apparent conflict, harmonious meaning to advance the object and intention of the legislature need be given.

20. In the present case, going by plain language, the power is given to the appellate authority or Head of the Department or the State Government to suo motu review the order of any subordinate authority subject to certain limitations prescribed in the Rule and this



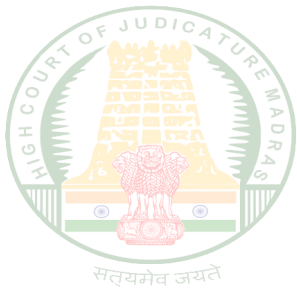
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power is not limited by any other Rule. The only limitation under Rule 15A(4) of the Rules is that an application for review cannot be maintained successively before different authorities against the same order. In other words, a second application for review is not maintainable once review application filed under Rule 15A of the Rules is considered and disposed of earlier. Sub Rule (4) of Rule 15A of the Rules cannot be interpreted to apply, when power is exercised suo motu to review the order of a subordinate authority.

21. The contention of the learned Senior Counsel for the respondent that the word 'or' used in Rule 15A(1) of the Rules instead of 'and' would suggest that suo motu power of review cannot be exercised by all the authorities under Rule 15A(1) of the Rules one after another cannot be countenanced in the context. First of all, Rule 15A of the Rules deals with the



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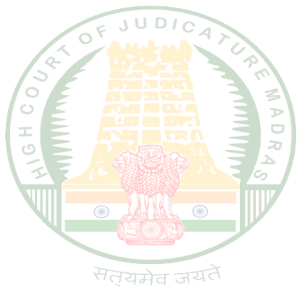
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independent power of different authorities specified. In the context, using of the word 'and' in Rule 15A(1) is ruled out. No one can imagine of using the word 'and' instead of 'or', while interpreting Rule 15A(1) of the Rules.

22. The contention of the learned Senior Counsel for the respondent that there cannot be a review of review, by relying upon the judgment of Division Bench in P.Selvaraju's case, cannot be applied, as we pointed out earlier that the expression of the Division Bench appears to be by borrowing the principles of law reiterated by Courts on the interpretation of Order 47 Rule 1 or Order 47 Rule 9 CPC.

... ..

36. By relying upon any of the precedents, Rule 15A of the Rules cannot be interpreted to conclude that under Rule 15A of the Rules, the Head of the Department has no authority to exercise



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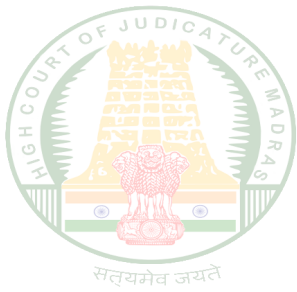


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his suo motu power of review, after an order has been passed by the authority subordinate to him in exercise of suo motu power of review.

... ..

39. In the light of discussions and conclusions reached above, we have no hesitation to answer both questions referred to us in the affirmative. In other words, the view taken in the case of R.Krishnaswamy vs. The Director General of Police and another, reported in 2005(2) MLJ 353, is in direct conflict with the subsequent judgment in the case of The Secretary to Government vs. N.Karunanithi, in W.A.Nos.604 and 720 of 2016, which has not noticed the earlier judgment. Further in the light of provisions of Rule 15A of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, the Head of the Department has the authority to exercise his suo motu power of review, after an



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order passed by the authority subordinate to it, exercising the power of suo motu review.

... ..

44.

We make it clear that the Head of Department or the State Government can either enhance or remit the punishment awarded by the Disciplinary Authority, while reviewing the order of the Appellate Authority or the Head of the Department, as the case may be, since the order of Disciplinary Authority merges with that of the Appellate Authority / Head of the Department.”

29. It is once again reiterated that Rule 15-A confers revisional powers to the State Government or the Head of the Department or other Authorities mentioned therein. The power of revision adumbrated under the Rule is intended to decide all questions as to the correctness, legality or propriety of any finding, penalty or order, recorded by the Disciplinary Authority and Appellate Authority. Sub-rule (4) of Rule 15-A contemplates



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that no application for review shall be preferred more than once in respect of

the same order. The aforesaid Rule abundantly makes it clear that the

multiple revision petitions at the instance of the delinquent are not

maintainable under the Service Rules. The power of revision conferred to

various Authorities under the Rule shall not be overlapped under any

circumstances. Revisional powers conferred to different Authorities are to

be exercised only upon subject to fulfilment of requirements prescribed

thereunder. As a corollary a delinquent does not have any right to prefer

multiple revision petitions repeatedly to the Authorities concerned. Rule 15-

AA of the Rule confers extraordinary power of review to the State

Government at any time either on their own motion or otherwise to review

any order on the ground of new material or evidence, which could not be

produced or was not available at the time of passing of order. This provision

enables the Government to review its own order in any case of any error or

mistake made with regard to decision rendered to rectify the same. In other

words, the power of review conferred under the Rule to the Government to

rectify its error on the decision making on limited grounds. The Rule

explicitly makes it clear that the power of review can be exercised only in



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case of discovery of new and important matter or evidence, which after the exercise of due diligence was not within the knowledge or could not be produced by the delinquent at the time when order was made by the State Government. Therefore, the power of review is not akin to right of remedy of appeal provided to the delinquent. The power of review has to be exercised sparingly only upon fulfilment of material grounds envisaged thereunder. Moreover, the power of review cannot be exercised in a routine manner at the instance of delinquents' applications.

30. It is brought to the notice of this Court that the Office of the Director General of Police is entertaining mercy petitions/review petitions indiscriminately from many police personnel and the employees. Entertaining mercy petition is illegal and directly in violation of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 in force. Any of the Authority under the Rules has power to entertain mercy petition and grant the discretionary relief, which amounts to colourable and improper exercise of power resulting in unconstitutionality. The power of entertaining the mercy petition is conferred only on the Constitutional



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Authority, namely, the 'Governor of the State' under Article 161 of the Constitution of India. Accordingly, the Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. Such a power conferred to the Governor of a State under Article 161 of the Constitution of India, cannot be exercised by any other Executive Authority in the State. Therefore, entertaining a mercy petition by the Office of the Director General of Police is in violation of the Indian Constitution and no such power has been conferred on any of the Authority of the Police Department under the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 or under any other Rules in force. Neither the Office of the Director General of Police nor any other Authority subordinate to him are empowered to entertain any mercy petition for the purpose of exercise of their discretionary powers in any matters.

31. In the context of the above rule position, it is not in dispute that the Specified Authority under the Rule alone is empowered to exercise

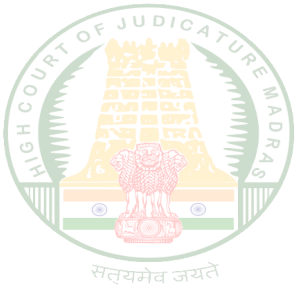


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the jurisdiction. The excess exercise or improper exercise of powers would lead to colourable exercise of power, resulting in unconstitutionality. No

Authority shall exercise excess powers or any power, which is otherwise not conferred under the Statute or the Rules in force. Such an exercise may cause anomalous situation in administrative affairs and further cause ill-effect to the administrative discipline, which is constitutional mandate. The administrative discipline in the matter of deciding the issues either as a Punishing Authority, Appellate Authority or Review Authority is to be maintained scrupulously by all the Authorities concerned in accordance with the Rules.

32. Public Administration exercises large volume of power to meet the citizens need in modern democratic welfare State. Due to this, there is number of chances of them becoming arbitrary. So it is necessary to control them. The underlying object of judicial control is to ensure that the Authority does not abuse (misuse) its power and the individual receives just and fair treatment.



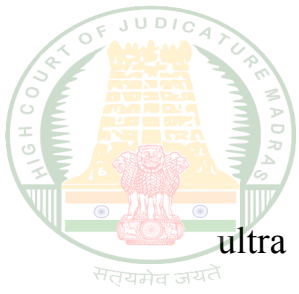
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33. The general principles laid down is that the power conferred on the Executives should not be left entirely to the discretion of any Authority to do anything it likes without any check or control by any Higher Authority.

34. In the context of irrelevant consideration if a Statute confers power for one purpose, its use for a different purpose is not regarded as a valid exercise of power and is likely to be quashed by the Courts. The discretionary power is required to be used for the purpose for which it has been given. If it is given for one purpose and used for another purpose, it will amount to abuse of power. Where the discretionary power is exercised by the Authority on which it has been conferred ostensibly for the purpose for which it has been given but in reality for some other purpose, it is taken as a colourable exercise of discretionary power and it is declared invalid.

35. Importantly, in the matter of exceeding jurisdictional Authority is required to exercise the power within the limits or the Statute. Consequently, if the Authority exceeds this limit, its action will be held to be



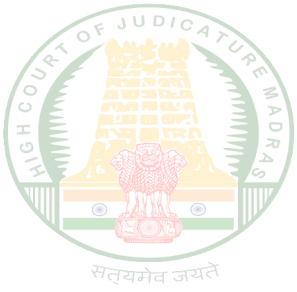
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ultra vires and therefore, void. Improper exercise of discretion is also impermissible. Where the discretionary power is exercised inconsistent with the spirit and the purpose of the Statute, then also it amounts to erroneous exercise.

36. The general rule is that the Courts will not interfere with the exercise of discretion by Administrative Authorities. However, they do interfere in public interest, if there is public abuse or lack of jurisdiction. According to the Courts, the 'discretion' should be fair, honest, based on reason and justice and should not be arbitrary, or unjust fanciful or exercised with mala fides or without jurisdiction. 'Judicial Review' is also the basic structure of the Constitution.

37. It is essential that the Authority should exercise its powers within the limits of the Statute or the Rules, otherwise it would be ultra vires on the ground of abuse or excess of jurisdiction. When the power is exercised under 'colour' or guise of legality, but, in reality the purpose of Statute is different, it amounts to 'colourable' exercise of power.



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38. In the context of the above principles and with reference to the Rules elaborately considered in the aforementioned paragraphs, this Court is of the humble opinion that the Authorities in the Police Department are not empowered to exercise excessive jurisdiction or pass orders without jurisdiction under the Statute or the Rules and if at all such exercise is made then further scrutiny regarding the other aspects are to be enquired into.

39. The excess exercise of jurisdiction are happening either intentionally or unintentionally. The Authorities are erroneously exercising the powers either fancifully or with some motivation. On many occasions, the Authorities assume powers erroneously and decide the issues on various considerations. The motive behind such assumption of powers are to be enquired into as such exercise if permitted, it would result in not only administrative indiscipline, but would pave way for illegality, irregularity, favouritism, nepotism, corrupt practices and exercise of power on extraneous considerations. Therefore, all these important factors are to be taken note of, when an Authority is exercising excessive jurisdiction in



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violation of the Statutes or under the Rules in force.

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40. During the course of arguments, the learned Senior Counsel for the petitioner and the learned Additional Government Pleader appearing on behalf of the respondents, brought several instances to the notice of this Court that the Higher Officials in the Police Department are exercising excess jurisdiction by entertaining mercy petitions/review petitions and setting aside, modifying or reviewing the punishments imposed by the Competent Authorities and such an exercise is not only colourable exercise, but undermining the importance of the Statute and the Rules in force. The exercise of power, which is not made available under the Statute or the Rules, amounts to lapses, negligence, which all are misconducts under the Government Servants Conduct Rules, including the All India Service Officials Conduct Rules. The powers, which all are not contemplated, if allowed to be exercised, it will lead to maladministration and the discipline of the Force will be derailed. The discipline in Police Force, being an important factor, regulating the administrative affairs regarding exercise of powers are one of the important criteria for the purpose of maintaining high



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discipline in Police Forces. The trust and confidence amongst the members of the Force would be of vital factor, which would guide the Department in falling with line in the matter of maintenance of high discipline in Uniformed Services. Thus the Higher Authorities, while exercising the powers of the Punishing Authority, Appellate Authority, Revisional Authority or the Reviewing Authority are expected to verify the Rules in force and accordingly exercise the powers in a judicious manner and by applying the mind. In the event of any such abuse or excessive exercise, the Government is bound to exercise its powers of judicial review not only to correct the order, but also to initiate appropriate actions against the Authorities, who had excessively or improperly exercised the powers or otherwise.

41. The Government-fourth respondent is not expected to stop with the correction of erroneous orders passed in exercise of excessive powers or otherwise. The Government-fourth respondent hereinafter shall issue notices to the Authorities, who have excessively or improperly exercised the powers or in violation of the Statute or the Rules and initiate



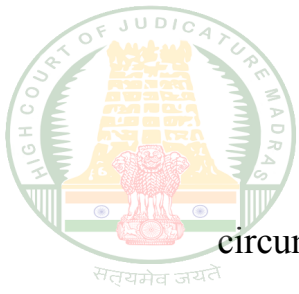
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all appropriate actions if any such Authority exercised the powers without any jurisdiction. The nature of improper or excessive exercise of powers by the Authorities must be enquired into and accordingly appropriate actions are to be initiated against them.

42. In respect of the present writ petition on hand, the petitioner lost her opportunity to avail the remedy of revision under the Rules. The remedy of revision is an important remedy and an aggrieved employee need not be denied the benefit of revision under the Rules.

43. The fourth respondent-Government is directed to issue appropriate Circular to all the Competent Authorities to exercise the powers in accordance with the Act and the Rules in force. In the event of excess exercise of powers, such Authorities must be liable for prosecution under the Discipline and Appeal Rules and such excessive exercise is to be construed as an administrative indiscipline or lapses or negligence as the case may be. The fourth respondent shall ensure that the Authorities exercise their powers within the ambit of Statues and Rules in force at all



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circumstances, for efficient public administration, which is the mandate under the Constitution of India.

44. The petitioner had already exhausted the appellate remedy and therefore, she is entitled to exhaust the revisional remedy, which is contemplated under Rule 15-A of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955. Thus, the petitioner is at liberty to approach the Revisional Authority in the prescribed format in accordance with the Rules in force. In the event of submitting any such revision, the Authority Competent shall decide the same on merits and in accordance with law independently.

45. With the abovesaid liberty, the writ petition stands disposed of. However, there shall be no order as to costs.

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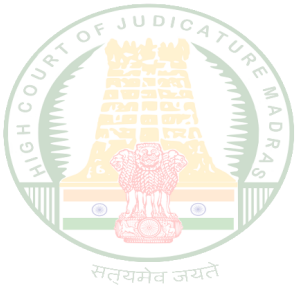
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Internet : Yes/No.

Speaking Order/Non-Speaking Order.

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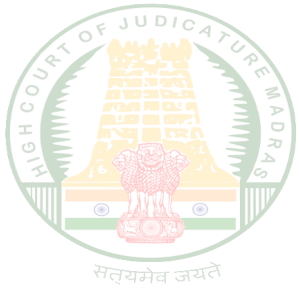
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To

- 1.The Deputy Inspector General of Police,
Madurai Range,
Madurai.
- 2.The Additional Director General of Police,
Law and Order,
Chennai-600 004.
- 3.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004.
- 4.The Principal Secretary to Government,
Home (Police) Department,
For St. George,
Secretariat, Chennai-600 009.

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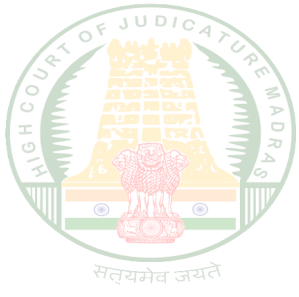


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S.M.SUBRAMANIAM, J.

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