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W.P.No.4228 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.4228 of 2020

V.Arumugam

... Petitioner

Vs.

1.The Director General of Police,
Mylapore,
Chennai – 600 004.

2.The Deputy Inspector General of Police,
Villupuram Range,
Villupuram – 605 602.

3.The Superintendent of Police,
Cuddalore District,
Cuddalore.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the second respondent in C.No.B3/Appeal21/2015 dated 14.07.2015 and the first respondent in Rc.No.193379/AP.I(2)/2015 dated 31.12.2016 and quash the same in so far as Punishment of “Postponement of Increment for three years which shall operate to postpone his future increments” and consequently give all monetary and other attendant benefits.



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For Petitioner : Mr.Kandhan Duraisami

For Respondents : Mr.D.Gopal,
Government Advocate

ORDER

The petitioner has filed this writ petition seeking to call for the records of the second respondent in C.No.B3/Appeal21/2015 dated 14.07.2015 and the first respondent in Rc.No.193379/AP.I(2)/2015 dated 31.12.2016 and quash the same in so far as Punishment of “Postponement of Increment for three years which shall operate to postpone his future increments” and consequently give all monetary and other attendant benefits.

2. The case of the petitioner is that the petitioner was appointed as Grade II Police Constable on 25.10.1984, thereafter, he was promoted as Grade-I Police constable on 22.07.1997 and Head Constable on 22.07.2002 and Special Sub-Inspector of Police on 01.07.2011. The third respondent issued a charge memo dated 22.12.2014 under Rule 3(b) of the Tamil Nadu Police Subordinate Service (D&A) Rules, 1955 and without considering



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any of the valid and bonafide defense raised by the petitioner vide his proceedings dated 04.05.2015, imposed a punishment of “Compulsory Retirement from Service”. Against the punishment of compulsory retirement from service, the petitioner preferred an appeal before the second respondent on 07.06.2015. Then, the second respondent modified the punishment into “Postponement of Increment for three years, which shall operate to postpone his future Increments” and directed the authority to reinstate the petitioner in service. Aggrieved over the order of the second respondent, the petitioner has preferred a revision petition before the first respondent on 22.09.2015 and the same was rejected on 31.12.2016. Hence, the petitioner has come forward with the present writ petition.

3. Learned counsel for the petitioner submitted that during the year 2007, while the petitioner was working as Head Constable in Arakandanallur Police Station, Villupuram District, he conducted an initial investigation in Crime No.55 of 2007 for offence u/s 294(b), 324, 326, 506(ii) IPC and thereafter, he handed over the said case file to the Sub-Inspector of Police, Arakandanallur for further investigation. After being promoted as Special Sub-Inspector of Police, the petitioner was transferred to Panruti Police



Station, Cuddalore District. This being so, on 25.11.2014, the petitioner was summoned by the Hon'ble Judicial Magistrate Court, Thirukovilur to give evidence in the aforesaid crime number and during the cross examination, the petitioner adduced his evidence and his cross examination was completed. However, immediately thereafter, the Judicial Magistrate made an allegation that the petitioner was under the influence of alcohol.

4. Learned counsel for the petitioner further submitted that at the recommendation of the learned Judicial Magistrate, his office assistant viz., Mr.M.Karthikaman took the petitioner to the Government Hospital, Thirukovilur for medical examination without any memo or order from the Judicial Magistrat, Thirukovilur. On learning the details, The Medical Officer, Government Hospital, Thirukovilur, issued a cyclostyled format certificate of drunkenness citing the same to be based on the breath smell, without conducting the prescribed methods of blood and urine test, which is mandatory to describe whether the person is in intoxication or not.

5. Learned counsel for the petitioner further submitted that on the basis



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of the recommendation from the office of the Judicial Magistrate, the Inspector of Police, Thirukovilur Police Station sent a report to the Deputy Superintendent of Police, Thirukovilur Division. The Deputy Superintendent of Police, Thirukovilur Division forwarded the said report to the Superintendent of Police, Villupuram District and the same was forwarded to the Superintendent of Police, Cuddalore District/the third respondent. On the basis of the said report, the third respondent issued a charge memo dated 22.12.2014 under Rule 3(b) of the Tamil Nadu Police Subordinate Service (D&A) Rules, 1955, without considering any of the valid and bonafide defense raised by the petitioner and imposed a punishment of “Compulsory retirement from service” on 04.05.2015. As against the said punishment, the petitioner has preferred an appeal before the second respondent on 07.06.2015 and the second respondent has modified the punishment into “Postponement of Increment for three years which shall operate to postpone his future increments” and directed the authorities to reinstate the petitioner into service. Aggrieved over the same, the petitioner has preferred a revision petition before the first respondent on 22.09.2015 and the same was rejected on 31.12.2016.



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6. Learned counsel for the petitioner contended that the statement of Mr.M.Kathirkaman, office assistant in Judicial Magistrate Court and Mr.V.Tamilvanan, Inspector of police, Thirukovilur are contradictory to each other and none of the said issues were considered by the Revisional Authority, before dismissing the revision petition filed by the petitioner. Moreover, the mandatory blood and urine tests were not conducted on the petitioner by the Medical Officer, even after being informed that the Judicial Magistrate, Thirukovilur has referred the said case is suffice to prove that the petitioner was not under the influence of alcohol and the test reports would also reveal the same, if the same would have been conducted.

7. Learned counsel for the petitioner further contended that the Judicial Magistrate along with M.Kathirkaman had came for a surprise inspection to the Thirupalapathal Police Station on 29.08.2013 in a private rental car and the petitioner was posted on OD, since the SSI of the concerned station was on leave. After completion of inspection, Office Assistant M.Kathirkaman demanded a sum of Rs.2000/- to be paid for the cab, which was put to use by



them and the petitioner refused to pay the same, citing that the same would set wrong precedent. This had upset the Judicial Magistrate, Thirukovilur and he had sworn to avenge the petitioner for his refusal to part with Rs.2000/-. And the present allegation against the petitioner is only to take revenge for his refusal to part with Rs.2000/-.

8. Learned Government Advocate appearing for the respondents has filed a counter affidavit dated 16.10.2020 and submitted that the petitioner has appeared before the Judicial Magistrate Court Thirukovilur to adduce evidence. When the evidence was recorded, the Judicial Magistrate had noted that the petitioner was in a drunken stage as some alcoholic smell was found on him. Immediately, the petitioner was directed to undergo medical examination with the assistance of Mr.M.Kathirkaman, Office Assistant and Mr.M.Gunabalan, Sub-Inspector of police, Thirukovilur Police Station to the Government Hospital, Thirukovilur. There, the Medical Officer examined the petitioner and concluded that his breath smells alcohol and issued a drunkenness certificate and no blood and urine test were conducted.



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9. Learned Government Advocate further submitted that the Judicial Magistrate, Thirukovilur has sent a letter dated 25.11.2014 to the Superintendent of Police, Cuddalore District through the Chief Judicial Magistrate, Villupuram, requesting to initiate necessary departmental action against the petitioner. Accordingly, a preliminary enquiry was conducted by the Deputy Superintendent of Police, Thirukovilur on the basis of the report, a charge memo was issued to the petitioner under Rule 3(b) of the Tamil Nadu police Sub-ordinate Service (Discipline & Appeal) Rules, 1955 in Cuddalore District PR58/2014 for the following delinquencies: -

“(1) 25.11.2014 அன்று அரகண்டநல்லூர் காவல் நிலைய குற்ற எண்.55/07 பிரிவு 294(பி), 324, 326, 506(2) இதச வழக்கில் அரசு தரப்பு சாட்சியம் அளிக்க திருக்கோவிலூர் நீதித்துறை நடுவர் நீதிமன்றத்திற்கு குடிபோதையில் சென்ற நீர் சுமார் 12.30 மணியளவில் கனம் குற்றவியல் நடுவர் முன்பு சாட்சியம் அளிக்க சாட்சி கூண்டில் ஏறி கனம் நடுவரின் வினாக்களுக்கு பதிலேதும் சரியாக கூறாமல் முன்னுக்கு பின் முரணாக பதில் அளித்த உமது செயல் மிகவும் கண்டிக்கத்தக்க ஒழுங்கீனமான குற்றமாகும்.

(2) கண்ணியமும், கட்டுப்பாடும் உள்ள காவல் துறையில் பணிபுரியும் நீர் பணி நேரத்தில் உமது கடமையை மறந்து குடிபோதையில் திருக்கோவிலூர் குற்றவியல் நடுவர் நீதிமன்றத்தில் சாட்சியம் அளித்து நீதிமன்றத்தை அவமதித்து காவல் துறையின் நன்மதிப்பிற்கு களங்கம்



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ஏற்படுத்தி அரசு அலுவலர் நடத்தை விதிகள் 1973 விதி 21ஐ மீறிய செயல்
மிகவும் ஒழுங்கீனமான கண்டிக்கத்தக்க குற்றமாகும்”

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10. Learned Government Advocate appearing for the respondents further submitted that the Deputy Superintendent of Police, Chidambaram Sub-Division, Cuddalore District had conducted oral enquiry in this matter and after a full fledged enquiry and after considering the explanation of the petitioner, the enquiry officer had drawn a proved minute. A copy of the enquiry officer report was supplied to the petitioner on 12.04.2015 and he had submitted his further representation dated 20.04.2015. After considering the evidence on record, prosecution documents and explanation of the delinquent, the Superintendent of Police, Cuddalore District, the third respondent had imposed him with a punishment of “Compulsory retirement from service” on 04.05.2015. As against the said order, the petitioner has preferred an appeal before the second respondent and the same was modified as “Postponement of Increment for three years which shall operate to postpone his future increments” and directed the authorities to reinstate the petitioner into service. Challenging the order of the second respondent, the petitioner preferred a revision petition before the first respondent and the same was dismissed on 31.12.2016.



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11. Learned Government Advocate appearing for the respondents further contended that the charge memo against the petitioner was based on the medical certificate for drunkenness issued by the Medical Officer, Government Hospital, Thirukovilur on 25.11.2014 for having adduced evidence in the drunken mood before the Judicial Magistrate, Thirukovilur in Arakandanallur Police Station in Crime No.55/2007, under section 294(b), 324, 326, 506(ii) IPC and gave reply loudly and in an incoherent way. During the oral enquiry, PW1 Tmt. Uma, WPC 2619 and PW2 Tr.K.Shanmugam, Gr.I PC 255, who were attending the Court on that day have precisely given evidence to the effect that when the petitioner adduced his evidence, the Judicial magistrate listened keenly and asked him that whether he was giving evidence after consuming liquor and even to that the petitioner gave contradictory replies and so he was asked to get down from the witness box. The evidence has been corroborated by Mr.M.Gunabalan, Sub-Inspector of Police, Thirukovilur Police Station and S.Veeran, Special Sub-Inspector of Police, Thirukovilur Police Station and M.Kathirkaman, Office Assistant, who were in the Court on that day.



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12. Heard the learned counsel on either side and perused the materials available on record.

13. The main allegation against the petitioner is that while adducing evidence, before the Judicial Magistrate Court in Crime No.55 of 2007 on the file of the Aragandanalur Police Station, Villupuram District, the petitioner was in intoxication and he has answered loudly to the question deposed by the Judicial Magistrate, Thirukovilur and giving contrary answers. Hence, he was asked to get down from the witness box and he was sent for the Medical examination to the Government Hospital, Thirukovilur. **The certificate of drunkenness dated 25.11.2014 was issued by the Medical Officer, Government Hospital, Thirukovilur, in which it is mentioned that symptoms at the time of examination as “breath smells alcohol” and the same is extracted hereunder:**



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14. Even in the enquiry report dated 10.04.2015, it is mentioned that

Med: 1-76

CERTIFICATE OF DRUNKNESS

ORIGINAL No. 193 024899

This is to certify that I, Dr. P. Sankaraj Abraham,
Asst. Surgeon Government Hospital Tiruchottur, have
Examined a person by name Thiru. M. V. Venukumar,
nee S/o Vahadapay native of Tiruchottur,
residing at do.
who was sent with letter from J.M. Court, Tiruchottur,
and accompanied by Mr. Kathiraman (O.A. - J.M. Court, TRR) for
Drunkness: He/She was seen by me at 3.10 pm on 25/11/14.
Identification mark - (1) A scar on forehead
(2) A scar on forehead
Symptoms at the time of examination :
Bad smell
alcohol

Pin: 639391

P. Sankaraj
Asst. Surgeon
Government Hospital
Tiruchottur
District - 639391

1. Copy filed
M. Kathiraman
25.11.14

the petitioner in a loud voice stated that you please ask the question pertaining to my part and not others and due to this, the Judicial Magistrate had a doubt, whether he has consumed liquor and asked the same to the petitioner and the petitioner did not reply and second time, the petitioner was



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asked and the petitioner replied “no”. **Thereafter, he was asked to get down from the witness box and these statement was given by prosecution witness Tmt.Uma WPC 2619, Aragandanallur Police Station, Villupuram District. In this case, even the prosecution witness, who have adduced the evidence during the enquiry are not aware, whether the petitioner was drunken or not and not even a single witness has deposed stating that the petitioner was in intoxication.**

15. It is pertinent to note that there is a delay of 5 years in preferring this writ petition, challenging the order dated 31.12.2016 passed by the Appellate Authority/first respondent, for which, the petitioner has stated in paragraph 14 of the affidavit that the Medical Officer, Government Hospital, Thirukovilur was evasive in giving particular relating to the issuance of drunkenness certificate. Therefore, the petitioner has made an application under Right to Information Act dated 04.06.2015 and the Medical Officer furnished an incomplete certificate vide dated 26.06.2015. Therefore, the petitioner has challenged the same by way of appeal before the Tamil Nadu State Information Commission on 28.07.2015 and on 31.01.2018, the Tamil



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Nadu State Information Commission directed the Medical Officer, Government Hospital, Thirukovilur to give all the information sought by the petitioner and based on the direction, the Medical Officer has furnished all the relevant particulars on 02.02.2018 and the petitioner retired from service on 31.08.2019 and this caused the delay in filing this writ petition.

16. In this case, the main issue on hand is whether the petitioner was under the influence of alcohol, while deposing evidence before the Judicial Magistrate, Thirukovilur. **In regard to the same, the petitioner was sent to a medical examination and the Medical Officer, Government Hospital, Thirukovilur has issued a drunkenness certificate citing the same to be based on the breath smell, without conducting the prescribed method of blood and urine test. From this, it is crystal clear and evident that they are not taken any test, which is mandatory to prove the drunkenness of the petitioner and they are miserably failed to do so, which went in favour of the petitioner.**

17. In view of the above said reasons, this Court is of the considered



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view that the order passed by the second respondent in C.No.B3/Appeal 21/2015 dated 14.07.2015 and the first respondent in Rc.No.193379/AP.1 (2)/2015 dated 31.12.2016 are liable to be quashed and the same are hereby quashed.

18. In the result, this writ petition stands allowed and the respondents are directed to give all monetary and other attendant benefits to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.
No costs.

20.09.2023 (vm)

Index : Yes/No
Speaking Order : Yes/No

To:

- 1.The Director General of Police,
Mylapore,
Chennai – 600 004.
- 2.The Deputy Inspector General of Police,
Villupuram Range,
Villupuram – 605 602.



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3.The Superintendent of Police,
Cuddalore District,
Cuddalore.

J.SATHYA NARAYANA PRASAD,J.

vm

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