



W.P.(MD).No.15173 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.15173 of 2018

and

W.M.P.(MD).Nos.13711 of 2018 1656 of 2019

T.Mohankumar

... Petitioner

Vs.

1.The Inspector General of Police,
Armed Police,
Trichy.
(i/c) Deputy Inspector General of Police,
Armed Police, Trichy.

2.The Commandant,
TSP VI Battalion,
Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the first respondent in his proceedings in C.No.A2/7131/2016 dated 12.06.2018 to quash the same as illegal and consequently direct the first respondent to pass an order to restore the petitioner's seniority promotion.



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For Petitioner : Mr.R.Venkatesan,
For M/s.Right Law Associates.

For Respondents : Mr.M.Lingadurai,
Special Government Pleader.

ORDER

This Writ Petition is filed to quash the order dated 12.06.2018 and consequently direct the first respondent to pass an order to restore the petitioner's seniority promotion.

2. The petitioner has rendered service as Sub Inspector of Police in TSP 6th Battalion, Madurai. He was selected as Police Constable and completed his training and promoted as Head Constable i.e. Naik with effect from 01.11.1994, a recipient of Chief Minister award for his meritorious service in the year 2005 and due to that, he was subsequently promoted as Sub Inspector of Police with effect from 31.01.2005. The petitioner had taken in-charge of the polish stores, Gas Godown, STD booth and Aavin milk of the 6th Battalion by the proceedings of the commandant to supply of provisional items, gas cylinders and milk to the residence of Police quarters.



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3. The contention of the petitioner is that he had maintained the account of private funds of the aforesaid stores as per the instruction and supervision of the second respondent, thereafter handed over all the accounts to the commandant alone. The accounts of each stores were audited by the team members of the auditing committee every month which consist of a Deputy Commandant or Assistant Commandant, Inspector of Police, Sub Inspector of Police, in the presence of funds and stores in-charge. The petitioner requested the second respondent to relive from the duty as in-charge of the said stores, since he was eligible for the post of Inspector of Police, but he was compelled to continue as store in-charge. Inspite of several request, the respondents did not consider the petitioner's request. The further contention of the petitioner was not able to bare the unaccounted expenses which were accrued by the act of the 6th Battalion Commandant. In such circumstances, the petitioner had started taking leave on several occasions and went on medical leave from 14.08.2009. When the petitioner was on leave the respondents had issued suspension order dated 15.12.2009 and the Village Administrative Officer of Paloor Revenue Village of Vilavancode



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Taluk in Kanyakumari District pasted the order of suspension on the door of the petitioner's house at Pootetti in Paloor Revenue Village. Thereafter, a charge memo dated 09.09.2010 was issued vide proceedings in Tha.Pa.No.24/2010 under Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, for grave charges of misappropriation of private funds of the gas godown of the 6th Battalion of Tamil Nadu Special Police. The petitioner submitted an application under RTI Act, requesting for certain documents from the Department, but had not received documents that is relevant to prove his innocence. The Department has sent replies for the said application stating that the departmental proceedings were dropped, since the criminal proceedings were initiated against the petitioner and also intimated that the relevant documents would be produced at the time of enquiry. But no documents were shown to the petitioner at the time of enquiry to defend the case. In the meanwhile, FIR was registered in Crime No.7 of 2011 on the file of City Crime Branch Madurai for offences under Sections 465, 471, 477(A), 406 IPC. Thereafter, C.C.No.101 of 2013 on file of the Judicial Magistrate Court IV, Madurai was taken on trial and the petitioner was acquitted vide judgment dated 22.03.2018 stating that the prosecution



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side failed to prove the charges leveled against the petitioner by not producing the concerned documents to prove the petitioner involved in the offence of misappropriation. In the meanwhile, the petitioner rejoined the duty as a Sub Inspector of Police and was continuing the service. Therefore, the respondents have passed the impugned order dated 12.06.2018, whereby, the petitioner was imposed with the punishment of stoppage of increment for two years without cumulative effect.

4. The further contention of the petitioner is that even though the charges were framed under 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 for the delinquencies in count 1 to 14, the charge of misappropriation was not proved, hence the punishment is unnecessary. Moreover, in the “slip order” the first count is that the petitioner was officer in-charge for the period from April 2009 to June 2009 has failed to get tender and quotation from the companies which supplied goods to the police stores and had voluntarily received the goods supplied from the company without considering the recommendations of the purchase committee which was formed by the proceedings of the second respondent. But the contention of the



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petitioner is that as per the proceedings dated 17.04.2009, the purchase committee should submit recommendations to the second respondent and in turn the petitioner an officer in-charge is directed to receive the copy approval from the purchase committee and purchase and the petitioner has not violated the said direction. The other 13 counts of charges leveled against the petitioner was already concluded in the criminal proceedings and hence the same ought to taken as not proved. Moreover, the respondents have not furnished the relevant documents and therefore, there is a clear violation of principles of natural justice. Hence, the petitioner prayed to quash the impugned order and allow the writ petition.

5. At the time of admission, this Court has granted interim order. The respondents have filed a counter along with the Vacate Stay Petition. In the counter, the respondents have stated that the discrepancies were noticed in the Polish Stores, Aavin Milk Booth and STD Booth Private Funds Accounts also. During handling over the Polish Store accounts to the new in-charge officer, the petitioner has not handed over the Government properties and not handed over the stock with shortages of



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stock worth Rs.2,44,167.60/- and shortage in cash balance of Rs. 21,479/-. Further Rs.1,78,810.20/- was shown as due from the Groups and Companies of TSP VI Battalion and break up details were also not furnished by the petitioner. Subsequently, letters have been received from certain suppliers that the amount to be settled from the Polish Store of TSP VI Battalion and details and records for those dues were also not furnished by the petitioner. Hence, the disciplinary proceedings were initiated. Thereafter, the petitioner was suspended and charge memo was issued counting 14 charges. The first count has been added as the purchases were made by the petitioner without getting the recommendation of the Purchase Committee and failed to obtain competitive quotations. The third count has been added as the petitioner has not handed over the records, registers and Accounts Books for the period from 29.11.2006 to 31.07.2008 to the new in-charge officer on his relief. The other 12 counts have been added for various shortages in the Private Fund Accounts which were misappropriated by the petitioner and the same were yet to be recovered from him. The petitioner has submitted his preliminary explanation on 20.09.2010. Thereafter, an enquiry officer was appointed to conduct oral enquiry. The enquiry officer has



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directed the petitioner to attend the enquiry and informed to peruse the prosecution documents on any working days before commencement of Oral enquiry. The petitioner has submitted his petition dated 26.10.2010 that certain Police personnel have to be included as witnesses for the enquiry. He has stated that he was not interested to peruse the prosecution documents. Further, he has not attended the oral enquiry also. The enquiry was conducted on several days. But the petitioner has not willfully appeared before the enquiry officer. Hence, ex-parte enquiry has been conducted. Thereafter, the prosecution witnesses were recorded and the said recording was served on the petitioner. The petitioner in his petition dated 09.12.2010 has alleged the then Commandant and stated that the action of the enquiry was one sided. The enquiry officer has drawn an exparte proved minute on 15.12.2010 and then criminal complaint was lodged. In the criminal proceedings, the petitioner was acquitted but the same cannot be taken into consideration for proceeding with the disciplinary proceedings. The petitioner has willfully avoided the enquiry proceedings. There were two charges framed against the petitioner viz., P.R.No.3 of 2010 and P.R.No.24 of 2010. The P.R.No.3 of 2010 was initiated for misappropriation of Gas



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Godown Private Fund Accounts, P.R.No.4 of 2010 was initiated for misappropriation of Polish Stores, Aavin Milk Booth and STD Booth funds. Both the charges were served on the petitioner. Even though the petitioner has submitted wrong information in the affidavit that P.R.No. 24 of 2010 was issued for misappropriation of funds. In the criminal case, the petitioner was acquitted on the ground of benefit of doubt and the same was not honorary acquittal. As per records, Rs.3,74,514.65/- is yet to be recovered from the petitioner and it has to be settled in the Private Fund Accounts as well as the suppliers. After enquiry, based on the records, the petitioner was imposed with the punishment of postponement of increment for two years without cumulative effect by the first respondent on 12.06.2018 and directed to recover the amount misappropriated by the delinquent. Therefore, the respondents prayed to dismiss this Writ Petition.

6. Heard Mr.R.Venkatesan, for M/s.Right Law Associates, learned counsel for the petitioner and Mr.M.Lingadurai, learned Special Government Pleader, for the respondents and perused the records.



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7. It is an admitted fact that the enquiry is ex-parte. The petitioner has submitted written explanation on 23.02.2010, 06.05.2010 and 17.05.2010, but the enquiry officer has recorded that the petitioner has not submitted any explanation at all. When the petitioner had submitted explanation, it is patently incorrect to record the petitioner has not submitted explanation. The petitioner has specifically alleged that he was forced to bear the unaccounted expenses which were accrued by the act of the 6th Battalion Commandant. He was suffocating for unaccounted expenses by the said accountant, for which he has requested to transfer from the said post, but the respondents had forcefully granted in-charge post. Hence, in order to avoid such embarrassment, the petitioner went on leave. When the respondents had initiated proceedings, the petitioner was under the impression that there will not be fairness in conducting the enquiry. In the criminal proceedings, the Magistrate has recorded that the respondents relied on the audit report, wherein it was recorded that the petitioner has misappropriated the funds, the Magistrate has also recorded that the said audit report was not submitted before the Magistrate Court. In fact, the petitioner has filed a petition to direct the respondents to produce the said report before the Magistrate Court. The



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Magistrate has allowed such petition. Inspite of allowing such petition, the respondents failed to produce the said audit report. Therefore, adverse reference was taken by the Magistrate and has held that the petitioner has not misappropriated Rs.2,24,173/-. This is evident from the relevant portion of the order, which is extracted hereunder:

28) இவ்வழக்கின் தணிக்கை உறுப்பினராக இருந்த அ.சா.7, 8, 11 ஆகியோர்கள் தணிக்கை நடத்தப்பட்டு உள்ளதை ஒப்புக்கொண்டு அதனடிப்படையில் எதிரி கையாடல் செய்தார் என தெரிய வந்ததாக ஒப்புக்கொள்ளும் நிலையில் அத்தணிக்கையறிக்கையானது இதுநாள் வரை இந்நீதிமன்றத்தில் தாக்கல் செய்யப்படாதது அரசு தரப்பு வழக்கின் மீது மிகுந்த ஐயத்தை ஏற்படுத்துகிறது.

29) இவ்வழக்கில் எதிரி தரப்பில் பல மனுக்கள் தகவல் அறியும் உரிமை சட்டத்தின் கீழ் மேற்படி தணிக்கை அறிக்கை குறித்து தொடர்புள்ள அதிகாரிகளிடம் கேட்கப்பட்ட போதிலும் அவை எதிரிக்கு வழங்கப்படவில்லை. தணிக்கை ஒன்றை குறித்தும் அவை இந்நீதிமன்றத்தில் தாக்கல் செய்யவேண்டும் என்றும் ஒரு மனுவானது எதிரியால் தாக்கல் செய்யப்பட்டு அதில் இந்நீதிமன்றம் உத்தரவு பிறப்பித்த போதிலும் மேற்படி தணிக்கையறிக்கையானது இந்நீதிமன்றத்தில் தீர்ப்பு வழங்கும் நாள் வரை தாக்கல் செய்யப்படவில்லை. மேற்படி மனுவிற்கு பதில் அளித்துள்ள த.சி.கா.6ம் அணி தளவாய் அலுவலர்கள் மேற்படி ஆவணங்கள் அலுவலகத்தில் இல்லை என கூறும் நிலையில் அரசு தரப்பால் சொல்லப்படும் ரூ.2,24,173 ஐ எதிரி கையாடல் செய்தார் என முடிவுக்கு வர இயலாது.

8. The learned counsel appearing for the petitioner relied on findings of the Magistrate, where it has been specifically recorded that the Commandant has paid Rs.1,28,000/- towards the Police stores and Rs.10,000/- towards Aavin parlour. The relevant portion is extracted



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hereunder:

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40) இவ்வழக்கில் மேற்படி தணிக்கை அறிக்கை அல்லாது கணக்கு புத்தகங்களுக்கு அரசு தரப்பால் ஒப்படைக்கப்படவில்லை. அவற்றை ஒப்படைக்க அரசு தரப்பு முயற்சி செய்யவும் இல்லை. இவ்வழக்கின் புலன் விசாரணை அதிகாரிகளான அ.சா.12,13 மற்றும் 14 ஆகியோர்கள் தான் பலமுறை மேற்படி ஆவணங்களை கேட்டு த.சீ.கா.6ம் அணிக்கு கடிதங்கள் அனுப்பிய போதும் அவ்வாவணங்கள் தங்களுக்கு தரப்படவில்லை என்பதை தங்கள் குறக்கு விசாரணையில் மிக தெளிவாக ஒப்புக்கொண்டுள்ளனர். மேற்படி ஆவணங்கள் ஏன் கைப்பற்றப்படவில்லை என்பதும் இந்த விசாரணை அதிகாரிகளால் எந்தவித விளக்கமும் தரவும் இல்லை. குற்றம் நடந்ததாக சொல்லப்பட்டு அவற்றை வெளிப்படுத்தும் ஆவணங்கள் தங்களுக்கு தரப்படாத நிலையில் அவற்றை கைப்பற்றுவதற்கு விசாரணை அதிகாரியின் எவ்வித நடவடிக்கையும் எடுக்கவில்லை இது ஏற்கத்தக்கது அல்ல. இது மிகுந்த சந்தேகத்தை ஏற்படுத்துகிறது. குறிப்பாக சொல்லவேண்டுமாயின் இந்த எதிரியின் மேல் அதிகாரியாக ஈஸ்வரன் என்ற அ.சா.6 இருந்து வந்துள்ள நிலையிலும் எதிரியிடம் இவ்வழக்கிலுள்ள பிரச்சனைகளுக்கு பின்பு அ.சா.6 தானாக முன் வந்து ரூ.1,28,000ஐ மெருகு அங்காடியிலும் ரூ.10,000ஐ ஆவின் பாலகத்திலும் செலுத்தி வந்துள்ள நிலையிலும் புலன் விசாரணையில் கண்டுள்ள மேற்படி குறைப்பாடு என்பது மிகுந்த சந்தேகத்தை ஏற்படுத்துவதாக அமைகிறது.

9. It is pertinent to record at the cost of repetition that the petitioner levelled allegation against the Commandant wherein the petitioner alleged “that the petitioner was forced to bear the unaccounted expenses which were accrued by the act of the 6th Battalion Commandant”. By the act of repayment by the said Commandant the petitioner’s contention ought to be accepted. The petitioner has stated in



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the affidavit that there are unaccounted transactions by the Commandant.

In the Criminal Court, there is a finding rendered by the Magistrate that the Commandant has paid Rs.1,28,000/- and Rs.10,000/- and the amount of misappropriation would almost tally. If the respondents had conducted the enquiry by considering this contention of the petitioner, then it would be evident that there is no misappropriation by the petitioner.

10. Therefore, this Court is of the considered opinion that the petitioner was suffocating because of the unaccounted expenses. Moreover, the allegations of misappropriation against the petitioner, but the punishment of stoppage of increment for two years without cumulative effect, which would indicate that the respondents had intention to spoil the petitioner's promotional prospects.

11. Therefore, this Court is of the considered opinion that the impugned order is liable to be quashed and hence, the impugned order is quashed. The respondents shall pay the consequential benefits to the petitioner. The respondents shall consider the petitioner's name for granting notional promotion also. The learned counsel appearing for the



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petitioner submitted that the petitioner is on the verge of retirement, hence the respondents shall grant the terminal benefits and other benefits without any delay The entire exercise shall be completed within a period of four (4) weeks from the date of receipt of a copy of this order.

12. For the reasons stated above, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr



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- 1.The District Collector,
Tirunelveli District,
Tirunelveli.
- 2.The Block Development Officer,
Block Development Office,
Vasudevanallur,
Sivagiri Taluk,
Tirunelveli District.



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