



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.08.2024

Pronounced on : 30.10.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.Nos.2751 and 9303 of 2020

W.P.No.2751 of 2020

K.Selvaraj

... Petitioner

Vs.

1. The Superintendent of Police,
Nagapattinam District, Nagapattinam.

2. The Deputy Inspector General of Police,
Thanjavur Range, Thanjavur.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Show Cause Notice issued by the 2nd respondent in Na.Ka.No.B2/AP.55/2019 dated 14/01/2020 and quash the same and direct the 2nd respondent to decide the Statutory appeal dated 08/11/2019 on merit within a reasonable time frame as deem fit by this Honourable court.

W.P.No.9303 of 2020

K.Selvaraj

... Petitioner



Vs.

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Nagapattinam District, Nagapattinam.

2. The Deputy Inspector General of Police,
Thanjavur Range, Thanjavur.

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In Both Writ Petitions

For Petitioners : Mr.S.R.Sankareshwaran

For Respondents : Ms.E.Ranganayaki,
Additional Government Pleader

COMMON ORDER

These two writ petitions have been filed by the same petitioner based on the same fact situation and as such, both the matters were heard together and are being disposed of by this common order.



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2. The petitioner herein was initially appointed as 'Grade-II, Police Constable' in TSP-I Battalion, Trichy and thereafter, the petitioner was transferred to District Armed Reserve Perambalur District and in the year 2004, he was transferred to District Armed Reserve Nagapattinam District and thereafter, he was transferred to Taluk Police Establishment in the year 2010 and then he was upgraded as 'Grade I, Police Constable' in the year 2006 and further upgraded as 'Head Constable' in the year 2011. The petitioner also claimed to have received 16 rewards for his performance and there were no adverse remarks against the petitioner through out his service.

3. While so, he availed causal leave on 24.06.2018 and thereafter, he was alleged to have involved in a Crime No.134 of 2018 under Section 379 of Indian Penal Code, Section 21(1) of the Mines and Mineral (Development and Regulation) Act, 1957 and under Section 23 of Juvenile Justice (Care and Protection of Children) Act, 2015 dated 24.06.2018 on the ground that the petitioner has engaged a minor boy, by name Sanjay for the purpose of transportation of sand from the backyard of the house of the petitioner to some other place, though, the said Mr.Sanjay was not having a driving licence and made him to drive the Tractor bearing Registration No. TN51 L0672,



standing in the name of the wife of the petitioner. The further allegation against the petitioner is that the petitioner has allowed the said minor, by name Mr.Sanjay to use the official mobile of the petitioner.

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4. In view of the registration of the above said crime against the petitioner, the petitioner was suspended from service on 25.06.2018 and thereafter, a charge-memo dated 25.09.2018 was issued containing two charges. The petitioner submitted his explanation denying the said charges. It was thereafter, an Enquiry Officer was appointed to enquire into the charges and the said Enquiry Officer, after having examined the four witnesses, came to the conclusion that the charges framed against the petitioner as proved and submitted his report dated 01.08.2019. It was thereafter, a copy of the enquiry report was furnished to the petitioner and the petitioner also submitted his further representation. It was thereupon, the Respondent No.1 herein passed an order, dated 25.10.2019, imposing the punishment of compulsory retirement against the petitioner. It was aggrieved by the said punishment of compulsory retirement, the petitioner preferred an appeal dated 08.11.2019 before the Respondent No.2.



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5. It is on considering the said appeal, the Respondent No.2 issued a show-cause notice, dated 14.01.2020, proposing to enhance the punishment of compulsory retirement and afforded an opportunity to the petitioner to submit his explanation. It was aggrieved by the said show-cause notice dated 14.01.2020, the petitioner approached this Court by filing W.P.No.2751 of 2020 and this Court, while entertaining the writ petition by an order dated 05.02.2020, granted interim stay of the show-cause notice, dated 14.01.2020 and subsequently, the said order was extended until further orders and the same is still in operation.

6. Considering the fact that there was stay of all further proceedings pursuant to the show-cause notice referred to above and the appeal filed by the petitioner could not be considered further by the Respondent No.2, the petitioner approached this Court by filing W.P.No.9303 of 2020, questioning the order of punishment dated 25.10.2019 passed by the Respondent No.1, imposing the punishment of compulsory retirement.

7. During the pendency of the writ petition, the criminal case that was registered against the petitioner in Crime No.134 of 2018 of Voimedu Police



Station was taken on record as Special Calendar Case No.131 of 2022 by the Special Court of Mines and Minerals (Development and Regulations) (Sessions Court), Nagapattinam and by an order dated 18.08.2023, the petitioner, sole accused, was acquitted by the said Court under Section 248(1) of the Civil Procedure Code.

8. Heard Mr.S.R.Sankareshwaran, learned counsel for the petitioners and Ms.E.Ranganayaki, learned Additional Government Pleader appearing for the respondents.

9. The learned counsel for the petitioner contended that the charge that was levelled against the petitioner in the criminal proceedings as well as the disciplinary proceedings are one and the same and the witnesses that are examined and other evidence that was relied upon in both the proceedings is one and the same and in view of the acquittal of the petitioner in criminal case, the order of punishment of compulsory retirement passed by the Respondent No.1 cannot be sustained. In support of his contention, he has placed reliance on a decision of the Hon'ble Apex Court in the case of “ **Ram Lal -vs- State of Rajasthan and others**” made in Civil Appeal No.7935 of



2023, dated 04.12.2023 ”

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10. He also further contended that he was falsely implicated in the criminal case and even assuming that the said allegations are true, the same are nothing to do with the discharge of duties of the petitioner as 'Head Constable' and as a matter of fact, the petitioner was never involved in any such criminal activity or committed any misconduct, warranting initiation of disciplinary proceedings against the petitioner. He also further contended that the very charges that are framed against the petitioner are wholly unsustainable and the punishment of compulsory retirement that was imposed against him itself is shockingly disproportionate to the charges levelled against the petitioner. He also further contended that the Respondent No.2/ Appellate Authority, instead of considering the appeal filed by the petitioner in proper perspective, adopted a perverse approach and proposed to enhance the punishment of compulsory retirement by issuing the impugned show-cause notice and as such, the same is also liable to be set aside.

11. On the other hand, Ms.E.Ranganayaki, learned Additional Government Pleader appearing for the respondents contended that, the



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petitioner, being a member of a disciplined service, is expected to maintain good conduct while discharging his duties and also in his behaviour throughout and he cannot abuse his official position to commit illegalities or resort to criminal activities. She also further submitted that the nature of proof that is required for establishing the criminal case is totally different from the nature of the evidence that is required to establish the charges in the disciplinary proceedings. According to her, it is the preponderance of probabilities is sufficient to conclude that the charges framed against the petitioner as proved.

12. This Court has carefully considered the submissions made on either side and also perused the entire material on record.

13 The charges that are framed against the petitioner are as under:-

“கடந்த 11.01.2018ம் தேதி முதல் நாகப்பட்டினம் மாவட்டம் வாய்மேடு காவல் நிலையத்தில் தலைமை காவலராக பணி புரிந்து வரும் நீர் 24.06.2018ம் தேதி ஒரு நாள் தற்செயல் விடுப்பில் சொந்த ஊருக்குச் சென்று உமது வீட்டின் பின்புறத்தில்



கொட்டி வைக்கப்பட்டிருந்த மணலை உமது மனைவி மாலதி பெயரில் பதிவு செய்யப்பட்டுள்ள TN 51 L 0672 பதிவு எண்ணுள்ள டிராக்டருடன் கூடிய டிப்பரில் ஓட்டுநர் உரிமம் பெறப்படாத 18 வயது பூர்த்தியடையாதச் செல்வன் சஞ்சய் 18/18, த/ பெ.பன்னீர்செல்வம், பட்டவெளி தெரு திருவெண்காடு என்பவர் உதவியுடன் இரண்டு யூனிட் மணலை ஏற்றி டிரைவரிடம் உமது செல்போன் CUG 9498165373 கொடுத்து திருவெண்காடு பட்டவெளி என்ற இடத்தில் வாகன தனிக்கை செய்து கொண்டிருந்த திருவெண்காடு உதவி ஆய்வாளர் டிராக்டரை பிடித்து விசாரணை செய்து உமது பெயரிலும், ஓட்டுநர் பெயரிலும் திருவெண்காடு காவல் நிலைய குற்ற எண் 134/18 u/s 379 IPC r/w 21(1) Mines and Mineral Development and Regulation Act, 1957 படி வழக்கு பதிவு செய்ய காரணமாக இருந்து ஒழங்கீனமான கண்டிக்கத்தக்க குற்றம்.

2. நீர் உமது வாகன ஓட்டுநர் சஞ்சய், த/ பெ.பன்னீர்செல்வம், பட்டவெளி தெரு திருவெண்காடு என்பவரை ஓட்டுநர் உரிமம் இல்லை என்று நன்கு



தெரிந்திருந்தும் ட்ரக்கை ஓட்டி செல்லவும் 18 வயது
பூர்த்தி அடையாத ஒரு சிறுவரை டிராக்டரை ஓட்ட
அனுமதித்த உமது செயலானது சிறுவரை பணியில்
ஈடுபடுத்தி தொழிலாளர் நல சட்ட விதிகளையும் மீறி
நடந்து கொண்ட ஒழுங்கீனமான கண்டிக்கத்தக்க
இரண்டாவது குற்றச்சாட்டாகும்.”

From the perusal of the above charge, it is evident that the entire basis for the charges is only the crime that was registered against the petitioner in Crime No.134 of 2018 of the Thiruvengadu Police Station. The contents of the charges are also nothing but the contents of the First Information Report. The said charges are nothing to do with the discharge of duties of the petitioner as 'Head Constable' of the Voimedu Police Station, Nagapattinam District. Admittedly, the petitioner was on casual leave on 24.06.2018 i.e., the date on which the said crime was registered against the petitioner.

14. It is not in dispute that the said Crime No.134 of 2018, which was taken on record as a Special Calender Case No.131 of 2022 by the Special Court concerned had ended in acquittal by a judgment dated 18.08.2023.



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15. From the perusal of the said judgement in Special Calendar Case No.131 dated 2022 and the report of the Enquiry Officer dated 01.08.2019, holding the two charges against the petitioner as proved would disclose that the witnesses that are examined in both the proceedings are almost identical. P.W.1 to P.W.3 examined in the disciplinary proceedings are the prosecution witnesses examined in the criminal proceedings vide P.W.1, P.W.5 and P.W.14. Two other witnesses that were examined in the disciplinary proceedings as P.W.4 and P.W.5 are the Deputy Superintendent of Police of the area, where the crime was registered and the place where the petitioner was working at the relevant point of time. Their evidence is nothing to do with the proof of alleged involvement of the petitioner in the said crime in the commission in the misconduct as alleged against the petitioner.

16. Whatever the charge that was framed against the petitioner in the criminal proceedings is the very same charge that is alleged against the petitioner in the departmental proceedings as well. When both the charges are identical in nature and the evidence that was adduced is also identical in nature, especially in the context of the fact that the alleged misconduct of the



petitioner is nothing to do with the discharge of his duties as 'Head Constable', the issue as to whether the findings recorded in the disciplinary proceedings can be allowed to stand in the light of the findings recorded by the judicial forum in the criminal proceedings is the only question that would arise for consideration in the present case.

17. As rightly pointed out by learned counsel for the petitioner, the Hon'ble Apex Court, recently in the case of “ **Ram Lal -vs- State of Rajasthan and others**” made in Civil Appeal No.7935 of 2023, dated 04.12.2023 has been pleased to consider the very same question and held as under:-

“23. With this above background, if we examine the criminal proceedings the following factual position emerges. The very same witnesses, who were examined in the departmental enquiry were examined in the criminal trial. Jagdish Chandra, Bhawani Singh, Shravan Lal, Raj Singh and Karan Sharma were examined as PW2, PW3, PW6, PW9 and PW13 respectively at the criminal trial. Apart from them, eight other witnesses were also examined. The gravamen of the charge in the criminal



case was that the appellant had submitted an application for recruitment along with his marksheet and he, by making alteration in his date of birth to reflect the same as 24.04.1972 in place of 21.04.1974, and obtained recruitment to the post of Constable. Though the Trial Court convicted the appellant under Section 420 of IPC, the Appellate Court recorded the following crucial findings while acquitting the appellant:

“....Mainly the present case was based on the documents to this effect whether the date of birth of accused is 21.04.1972 or 21.04.1974. Exh. P-3 is original Marksheet, in which, the date of birth of accused has been shown as 21.04.1972 and same has also been proved by the witnesses examined on behalf of the prosecution. Whatever the documents have been produced before the Court regarding the date of birth of 21.04.1974 are either the letters of Principal or are Duplicate T.C. Or Marksheets. Neither the prosecution has produced any such original documents in the Subordinate Court to this effect that when the admission form of accused was filled, what date of birth was mentioned by



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the accused in it, what was the date of birth in Roll Register of School, what date of birth was mentioned by accused in the Examination Form of Secondary, and nor after bringing the original records from the concerned witnesses, same were got proved in the evidence. In these circumstances, this fact becomes doubtful that date of birth of accused was 21.04.1974, and accused is entitled to receive it's benefit. In the considered opinion of this Court, the conviction made by the Ld. Subordinate Court merely on the basis of oral evidences and letters or duplicate documents, is not just and proper. It is justifiable to acquit the accused.

Resultantly, on the basis of aforesaid consideration, the present appeal filed by the Appellant/Accused is liable to be allowed.” [Emphasis supplied]

24. What is important to notice is that the Appellate Judge has clearly recorded that in the document Exh. P-3 – original marksheet of the 8th standard, the date of birth was clearly shown as 21.04.1972 and the other documents produced by the



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*prosecution were either letters or a duplicate marksheet. No doubt, the Appellate Judge says that it becomes doubtful whether the date of birth was 21.04.1974 and that the accused was entitled to receive its benefit. However, what we are supposed to see is the substance of the judgment. A reading of the entire judgment clearly indicates that the appellant was acquitted after full consideration of the prosecution evidence and after noticing that the prosecution has miserably failed to prove the charge [See **S. Samuthiram (Supra).**]*”

The above conclusions were arrived by the Hon'ble Apex Court, after having reviewed the entire legal position in Paragraph Nos.11 to 13 of the said decision, which reads as under:-

*11. We have examined both the questions independently. We are conscious of the fact that a writ court's power to review the order of the Disciplinary Authority is very limited. The scope of enquiry is only to examine whether the decision-making process is legitimate. [See **State Bank of India vs. A.G.D. Reddy, 2023:INSC:766 = 2023 (11) Scale 530**]. As part of that exercise, the courts exercising power of judicial review are entitled to consider whether the findings of the Disciplinary Authority have ignored material evidence*



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and if it so finds, courts are not powerless to interfere.
*[See **United Bank of India vs. Biswanath Bhattacharjee**,
2022:INSC:117 = (2022) 13 SCC 329]*

*12. We are also conscious of the fact that mere acquittal by a criminal court will not confer on the employee a right to claim any benefit, including reinstatement. (See **Deputy Inspector General of Police and Another v. S. Samuthiram**, (2013) 1 SCC 598).*

*13. However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension. If the court in judicial review concludes that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge, the Court in judicial review can grant redress in certain circumstances. The court will be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand will be unjust, unfair and oppressive. Each case will turn on its own facts. [See **G.M. Tank vs. State of Gujarat & Others**, (2006) 5 SCC 446, **State Bank of Hyderabad vs.***



*P. Kata Rao, (2008) 15 SCC 657 and S. Samuthiram
(supra)]*

In the light of the decision of the Hon'ble Apex Court, applied to the case on hand, the twin charges that are framed against the petitioner and the consequential punishment imposed on the petitioner cannot be allowed to stand in the light of the findings already recorded herein above on the similarity of the of the charges and evidence adduced in both the proceedings.

18. Then, coming to the impugned show-cause notice dated 14.01.2020 issued by the Respondent No.2, proposing to enhance the punishment of compulsory retirement, is perverse on the face of it. This Court has rightly stayed the operation of the said show-cause notice by passing an interim order in the year 2020. The very charges that are framed against the petitioner are subject to proof before the competent criminal court and even before the same was examined by the competent criminal court, the respondents have chosen to initiate disciplinary proceedings by framing the charges, basing upon the very same crime and contents of the crime, have chosen to conclude the same by imposing the major punishment of compulsory retirement against a person, who had rendered 23 years of unblemished service coupled with the



rewards on 16 occasions. The punishment of compulsory retirement itself was harsh, but the Respondent No.2, instead of considering the appeal filed by the petitioner in proper perspective, without assigning any sufficient reasons, has resorted to invoke his power to enhance the punishment in an arbitrary manner.

19. In all fairness, the Respondent No.1, being the disciplinary authority, ought to have considered the matter in proper perspective and taking into consideration the fact that the petitioner has given a scope for registration of a crime and the vehicle that was involved in the said crime was admittedly standing in the name of his wife and the said vehicle as well as his mobile phone were stated to be missing at the relevant point of time and the mobile phone was not in possession of the petitioner, which is an official mobile, the Respondent No.1 ought to have imposed a lesser punishment, which would have enabled the petitioner to mend himself and behave appropriately in future. But, unfortunately the Respondent No.1 failed to exercise the discretion, conferred upon him as a disciplinary authority. But, the petitioner, who was aged about 45 years by the date of imposition of punishment of compulsory retirement at the crucial stage of his life and his



children would be at the college-going age, he was compulsorily retired from service and he is out of employment for the past about 5 years. The same would itself operated as a punishment against the petitioner for having given scope for registration of a crime against him.

20. In the light of the conclusions arrived at by this Court on the charges that are framed against the petitioner and also the punishment of compulsory retirement that was imposed on the petitioner, the impugned order and the show-cause notice cannot be sustained.

21. In the light of the above, the impugned order bearing K1/ த.ப.எண்.25/2018, dated 25.10.2019 in W.P.No.9303 of 2020 and the impugned show cause notice, dated ந.க.எண்.பி2/மேல்முறையீடு.55/2019, dated 14.01.2020 in W.P.No.2751 of 2020 are hereby quashed and consequently, the Respondent No.1 is directed to forthwith reinstate the petitioner as 'Constable' with continuity of service, however with limited backwages. The petitioner shall be entitled to count the entire period he was kept out of service for all purposes. The pension amount, if any paid from the date of punishment i.e., 25.10.2019 till the date of reinstatement shall stand



adjusted as backwages and over and above the said amount, the petitioner shall not be entitled for any backwages. The terminal benefits, if any drawn by the petitioner pursuant to the order of compulsory retirement other than monthly pension shall be remitted by the petitioner within a period of three months from the date of reinstatement into service.

22. Accordingly, both the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions, if any, shall stand closed.

30.10.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1. The Superintendent of Police,
Nagapattinam District, Nagapattinam.
2. The Deputy Inspector General of Police,
Thanjavur Range, Thanjavur.



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W.P.Nos.2751 and 9303 of



MUMMINENI SUDHEER KUMAR, J.

skr

Pre-Delivery Order made in
W.P.Nos.2751 and 9303 of 2020

30.10.2024