

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.729 of 2015
and
M.P.No.1 of 2015

1. Secretary to Government,
Home Department,
Fort St.George,
Chennai - 9
 2. The Director General of Police,
Kamaraj Salai, Chennai - 4
 3. The Inspector General of Police,
Kamaraj Salai, Chennai - 4
 4. The Deputy Inspector General of Police,
Armed Police, Kilpauk, Chennai - 10
 5. Commandant
Tamilnadu Special Police,
III Battalion Manimuthar
Tirunelveli District,
Now stationed at Veerapuram
Chennai - 55
- ...Appellants/Respondents
- Vs.
- V.Radhakrishnan
- ...Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent Appeal against the Order of this Court dated 21.04.2014 made in W.P. No. 21891 of 2005.

Petition presented under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the file of the third respondent herein in D.Dis.231233/P.R.I.(2) / 87 dated 25.4.1988 and all other proceedings pursuant to the impugned

order and quash the same.

For Appellants : Mr.P.S.Siva Shanmugasundaram
Special Government Pleader

JUDGMENT

[Judgment of the Court was Delivered By M.VENUGOPAL, J.]

The Appellants / Respondents have filed the present intra court Writ Appeal as against the order dated 21.04.2014 in W.P.No.21891 of 2005 passed by the Learned Single Judge.

2.The Learned Single Judge while passing the Impugned Order on 21.04.2014 in W.P.No.21891 of 2005 filed by the Respondent/Petitioner in Paragraph Nos.11 to 15 had observed the following and resultantly allowed the Writ Petition by quashing the Order of Removal from Service imposed upon the Respondent/Petitioner.

"11. As far as the punishment imposed on the Inspector/Krishnamurthy is concerned, the same is as like that of the petitioner herein confirmed by the appellate authority as well as by the revisional authority. The Inspector, Krishnamurthy also approached the Administrative Tribunal way of O.A.No.1133 of 1991. The Administrative Tribunal by order dated 13.05.1996, set aside the order imposing punishment on Krishnamurthy and directed to reinstate Krishnamurthy in service with continuity of service with monetary benefits and pensionary benefits. The Administrative Tribunal though it fit to allow the Original Application filed by Krishnamurthy and directed to reinstate him in service mainly on the ground that other four delinquents were let off and the applicant/Krishnamurthy alone was found differently and the same certainly amounted to discrimination. That being so, the petitioner who is charged along with Krishnamurthy, Inspector of Police for identical charges, is also entitled to enjoy the same benefit. Hence, the punishment of removal from service is liable to be set aside.

12. The other ground on which the punishment of removal from service challenged herein is that it is shockingly disproportionate to the charges proved against the petitioner. As already stated, Inspector/Krishnamurthy is admittedly higher officer of the petitioner herein. The specific stand throughout taken by the petitioner is that he collected the money without any authority to do so and he collected the amount as directed by his higher official and he had nothing to do with the amount collected as directed by his Inspector

Krishnamurthy. As a matter of fact, there is absolutely no evidence to show that Rs.4518.82 collected by the petitioner was retained by the petitioner and was misappropriated by him. As it is his stand that it was collected as directed by Inspector, Krishnamurthy, the question of his retaining the amount does not arise herein. In that event, the question of charging him for misappropriation of the same is not at all made out. The same reasoning is also applicable to the second charge, which according to the petitioner, was done as per the direction of the Inspector/Krishnamurthy.

13. In-so-far as the second charge is concerned, here again the petitioner's stand is that he collected the money as instructed by the Inspector, Krishnamurthy. If that is so, Krishnamurthy is responsible for such collection. However, Krishnamurthy was let off from minor punishment mainly on the ground that he has no jurisdiction to collect the money. The same reasoning is applicable to the petitioner who is placed in better footing than that of the Inspector Krishnamurthy. The amount is also already remitted back by the petitioner and there is no loss caused to the department.

14. Thus, considering the act of mis conduct committed and considering the nature and extent of the petitioner's participation in the same and considering the nature of the charges proved against him and also considering the fact that the amount was already remitted back, the punishment of removal of the petitioner from service is held to be too harsh and disproportionate to the charges proved against him and the same is hence liable to be quashed.

15. Since the petitioner already attained the age of superannuation in the year 2008, he shall be notionally reinstated with continuity of service, with other monetary and pensionary benefits, but without backwages."

3. Further, the Petitioner was directed to be notionally reinstated in service with continuity of service and other pensionary benefits, but without backwages etc.,

4. The Learned Special Government Pleader for the Appellants/Respondents contends that the Learned Single Judge ought not to have allowed the Writ Petition by quashing the Impugned Order on Removal from Service and further should not have directed the Appellants to notionally reinstate the Respondent/Petitioner into service with continuity of service and other pensionary benefits.

5. Advancing his arguments, the Learned Special Government Pleader appearing for the Appellants proceeds to submit that during

the enquiry, the Respondent/Petitioner had not submitted any valid documents in support of the charges framed against him. Moreover, the Learned Single Judge had failed to appreciate that the Appeal Petition filed by the Respondent/Petitioner before the 4th Appellant/4th Respondent was rejected.

6. Added further, it is the stand of the Appellants that the Review Petition and the Mercy Petition filed by the Respondent/Petitioner was also rejected by the Appellants 1 to 3. But these crucial facts were not taken into consideration by the Learned Single Judge at the time of allowing the Writ Petition.

7. While winding up, it is the contention of the Learned Special Government Pleader for the Appellants that the Learned Single Judge should have been seen that 'Discipline' is very important to the Police Personnels and further more, if the Order passed in the Writ Petition is implemented, then, it will open the flood gate to the similarly placed individuals, which would cause hardship to the State Exchequer.

8. It is not in dispute that the Respondent/Petitioner was originally appointed as Constable in the year 1971 and promoted as Naik during the year 1982. While serving as Naik, he was issued charge memo dated 26.07.1984 consisting of two charges to the effect that,

1. He connived with one Krishnamurthy, Inspector Adj. and misappropriated a sum of Rs.4,518.82 between 29.02.1984 and 06.04.1984.

2. He in connivance with the said Krishnamurthy extorted a sum of Rs.1,000/- from a widow.

9. It comes to be known that the Respondent/Petitioner furnished his explanation to the charge memo narrating the circumstances under which he was forced to follow the direction of his superior officer viz., Krishnamurthy - Inspector, Adj. and feigned ignorance. The said explanation of the Respondent/Petitioner was not accepted and an 'Enquiry' was held and in reality an exparte enquiry was drawn on 10.07.1985 by coming to the conclusion that the two charges levelled against the Respondent/Petitioner were proved.

10. Based on the Exparte Enquiry Report, the 5th Appellant/Respondent / (Disciplinary Authority) awarded punishment of removal from service by means of his proceedings dated 25.10.1985. As a matter of fact, the Respondent/Petitioner filed an Appeal before the 4th Appellant/D.I.G of Armed Police and that the Appellate Authority also confirmed the order of punishment of Removal from service. Even the Revision filed before the 3rd Appellant/ I.G of Police, affirmed the order of the Original Authority as confirmed by the Appellate Authority, necessitated the

Petitioner to file O.A.No.762 of 2001 before the Tamil Nadu Administrative Tribunal which came to be numbered as W.P.No.21891 of 2005 before this Court.

11.It transpires that one Krishnamurthy was serving as Inspector of Police. Infact, the Respondent/Petitioner together with the said Krishnamurthy and other similarly placed constables were charged in respect of embezzlement concerning twelve cases. Indeed, the Respondent/Petitioner was involved in two cases and other police constables were involved in ten cases. No doubt, an enquiry was held against the said Krishnamurthy-Inspector of Police and other concerned police constables. As regards six persons, an enquiry was completed and punishment was awarded to the Respondent/Petitioner and the said Krishnamurthy. However, four individuals were let off without any punishment. The said four persons were identically charged and placed similar to that of the Respondent/Petitioner and the said Krishnamurthy.

12.Insofar as the Inspector of Police was concerned, he stood in the same pedestal like that of the Respondent/Petitioner and the punishment imposed on the said Krishnamurthy was affirmed by the Appellate Authority and also by the Revisional Authority. At this juncture it is to be borne in mind that the said Krishnamurthy filed O.A.No.1133 of 1991 before the Tamil Nadu State Administrative Tribunal and that the tribunal set aside the punishment imposed upon him by directing his reinstatement into service with continuity of service together with monetary and pensionary benefits. The reason that weighed the tribunal to order reinstatement of Krishnamurthy (Inspector of Police) into service was mainly based on the reason that four other co-delinquents were let off and the said Krishnamurthy alone was singled out and this amounted to discrimination. When the said Krishnamurthy, Inspector of Police is similarly placed like that of the Respondent/Petitioner, then, this Court is of the considered view that the Respondent/Petitioner is also entitled to reap the same benefits showered on the said Krishnamurthy, because of the specific reason that both Krishnamurthy and the Respondent/Petitioner were levelled with similar charges.

13.At this stage, it is to be noted that Article 14 of the Constitution of India is a genus and that the 'Guarantee Of Equality' before Law is a positive concept. It cannot be enforced in a negative fashion. Really speaking, the concept of equal treatment presupposes an existence of similar foothold. In reality, in appropriate cases Article 14, 15 and 16 of the Constitution are to be read together as per decision of Hon'ble Supreme Court Saurabh Chaudhari and Others V. Union of India and Others reported in 2003 11 Supreme Court Cases at Page 146.

14.Be that as it may, on a careful consideration of respective contentions and also this Court taking note of the attendant facts and circumstances of the present case in an encircling manner comes to an inevitable and inescapable conclusion that the Learned Single Judge had rightly come to the conclusion in quashing the order of removal from service imposed upon the Respondent/Petitioner and infact, the further order of the Learned Single Judge in allowing the Writ Petition by directing the Respondent/Petitioner to be notionally reinstated in service with continuity of service and other pensionary benefits but without backwages does not bristle with any material infirmities or patent illegalities in the Eye of Law. Consequently, the Writ Appeal fails.

In the result, the Writ Appeal is dismissed leaving the parties to bear their own costs. Resultantly, the order of the Learned Single Judge dated 21.04.2014 passed in W.P. is hereby confirmed by this Court for the reasons assigned in the present Writ Appeal. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Ssd

To

1. Secretary to Government,
Home Department,
Fort St.George,
Chennai - 9
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Armed Police, Kilpauk, Chennai - 10

5. Commandant
Tamilnadu Special Police,
III Battalion Manimuthar
Tirunelveli District,
Now stationed at Veerapuram
Chennai - 55

1 CC to the Government Pleader, SR.No. 26412

W.A.No.729 of 2015
and M.P.No.1 of 2015

TEJ (CO)
PSI (16.06.2015)



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