

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No. 23457 of 2010

T.Swamydoss, Ex.P.C 9998

...Petitioner

-Vs-

Principal Secretary to Government,
Home (Police-V) Department,
Secretariat, Chennai-600 002.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 2.11.2008 Ref.No. G.O.(2D) No.687 served on the petitioner on 2.2.2009 through their covering letter dated 22.1.2009 and quash the same and consequently direct the respondent authority to reinstate the petitioner in service and grant all consequential service benefits.

For Petitioner : Mr.S.Thanka Sivan
For Respondent : Mr.V.Jaya Prakash Narayan
Spl.G.P.

O R D E R

The prayer in the writ petition is for a Certiorarified Mandamus calling for the records relating to the impugned order dated 2.11.2008 in Ref.No. G.O.(2D) No.687 served on the petitioner on 2.2.2009 through their covering letter dated 22.1.2009 and quash the same and consequently direct the respondent authority to reinstate the petitioner in service and grant all consequential service benefits.

2. The case of the petitioner which gave raise to the filing of the writ petition is that the petitioner joined police service as Police Constable in the year 1986 all along his service was blemishless. On 19.7.1988, he was ordered to escort a prisoner by name Chukka Paul, son of Somaiah from Madras to the Additional Munsif Court at Bapatla in Andhra Pradesh, under the supervision of Head Constable one Mr.Abdul Ghafer and another Constable A.Christopher. The petitioner was junior most in the team and he was bound by the direction given by the Head Constable, who was heading the escort team. The accused was

produced before the Magistrate's Court at Bapatla and thereafter, when they were returning to Madras with the prisoner at Bapatla Railway Station on 20.7.1988 at about 19.30 hrs, the Head Constable directed the petitioner and other constable Mr. Christopher to have their meal in a restaurant nearby the railway station by keeping the accused with him. After that, when they returned with the meal, the petitioner and others took the meal for few minutes and the remand prisoner was found to be missing from the custody of the Head Constable.

3. It is the averment of the petitioner in the affidavit that the Head Constable Mr. Abdul Ghafer informed the petitioner that the prisoner had escaped. Since the petitioner did not know Telugu, he was not able to ascertain the real facts. However, the Head Constable on his own lodged a complaint with the police station as if the remand prisoner had escaped from the custody by washing hands in the restaurant after dinner.

4. Pursuant to the aforesaid occurrence, a charge memo dated 29.7.1988 was served on the petitioner. After conducting an oral enquiry, the petitioner was punished with major punishment of removal from service by the proceedings of the Deputy Commissioner of Police, Armed Reserve in his proceedings dated 29.12.1988.

5. Since the punishment given to the petitioner was excessive and not proportionate to the alleged lapse on his part, the petitioner preferred an appeal to the Commissioner of Police, Chennai City, who rejected the same on 29.11.1989. Thereafter a review petition was also filed to the Director General of Police. The said review was also dismissed on 14.10.1991. Thereafter, the petitioner filed O.A. No.3337 of 1992 before the Tamil Nadu State Administrative Tribunal and the same was dismissed on 28.10.1996.

6. Thereafter, the petitioner filed a Mercy Petition to the Government as per the provisions of Rule 15A on 06.7.1998. In the meantime, the petitioner came to know that the escaped remand prisoner Chukka Paul had surrendered before the First Class Judicial Magistrate, Bapatla on 06.4.1999. Enclosing the said surrender order, the petitioner had submitted a petition to the Government, i.e., the respondent herein to consider his case for reinstatement under the changed circumstances.

7. The petitioner had filed W.P.No.32166 of 2005 before this Court wherein after considering the rival submissions made by the parties, this Court had given the following directions: Paragraphs 6 and 7 of the order is as follows:

"6. I have considered the submissions made by both sides. I am of the view that when a petition has been filed and specific contention has been raised, it is the duty of the Authority, who is dealing with the mercy petition, to consider the contention raised in the petition and pass an order. Without even specifying the reason and rejecting the same mechanically would amount to rejecting the appeal in a routine course. Hence, I remand the matter to the Government with a direction to pass orders, keeping in view the order passed in the case of Duraibabu and also taking note of the fact that this is the only lapse committed by the petitioner in his career, within a period of eight weeks from the date of receipt of copy of this order.

7. The writ petition is ordered in the above terms. No costs."

8. The further case of the petitioner is that inspite of the orders passed by this Court as referred to above, the respondent has passed once again a rejection order in G.O.2D 468, Home (Police-V) Department, Chennai-9, dated 02.08.2006. As against the said order, the petitioner had filed further writ petition before this Court in W.P.No.21819 of 2007. The said writ petition came to be disposed of on 10.07.2007 wherein the following order was passed :

"3. Even after direction from this Court in W.P.No.32166 of 2005 dated 30.1.2005, the respondent has not passed any considered order. Hence, the impugned order of the respondent dated 2.8.2006 is liable to be Setaside and accordingly, set aside. It is open to the petitioner, within six weeks from the date of receipt of copy of the order. The writ petition stands allowed. Consequently, M.P.No.1 of 2007 is closed. No costs."

9. Thereafter, the petitioner had submitted a detailed representation pursuant to the second order of this Court referred to above to the respondent on 12.01.2008. Since the said representation was pending consideration before the respondent, an inter departmental communication dated 02.09.2008 between the Commissioner of Police and Special Officer, Chief Minister's Special Cell was issued and a copy of the same was also forwarded to the petitioner. In the said communication dated 02.09.2008, the Police Commissioner, Chennai City, Chennai-08 have stated that based on the orders of this Court made in W.P.No.21819 of 2007 dated 10.07.2007, recommendatory note was sent on 17.8.2007 to the Government to reinstate the petitioner and based on which the appeal of the petitioner would be considered as the same is pending for orders from the Government.

10. Inspite of this communication from the Commissioner of Police stating that recommendatory note has already been sent to the Government, the Government is considering the request of the petitioner for reinstatement, no orders have been passed.

Therefore, the petitioner had filed yet another writ petition in W.P.No. 22469 of 2008 whereby the petitioner sought for a mandamus directing the respondent to consider his appeal dated 12.01.2008 on the basis of the recommendatory proposal of the Commissioner of Police dated 02.09.2008 and the same was accepted by this Court and an order to that effect was passed on 16.12.2008. The relevant portion of that order is as follows:

"4. In view of the same, the writ petition is disposed of with a direction to the respondent to pass final orders on the basis of the above said proposal of the Commissioner of Police dated 02.09.2008, such order shall be passed by the Government expeditiously, in any event, within a period of eight weeks from the date of receipt of a copy of this order. Consequently, the connected M.P is closed. No costs."

11. Thereafter, pursuant to the said direction of this Court made on 16.12.2008 and the earlier orders of this Court as referred to above, once again respondent has passed the impugned order in G.O.(2D) No.687, Home (Police V) Department dated 21.11.2008 whereby the request of the petitioner for a lesser punishment has once again been rejected. Aggrieved by the same, the petitioner has come out with the present writ petition.

12. Heard both sides.

13. The learned Additional Government Pleader appearing for the respondent would contend that pursuant to the orders of this Court as has been referred to above, the case of the petitioner through his representation was considered, especially in the light of the case of one Duraibabu, Armed Reserve, Chennai City. Since the case of Duraibabu, Armed Reserve, Chennai City, who connived with his guard Commander Raj, Police Constable 8708 and taken a detenu, to his house and both consumed liquor at his residence and also received an illegal gratification of Rs.300/- for letting out the detenu from the hospital illegally. Therefore, it is not an escape of the prisoner from the hospital. But, in the instant case, the petitioner has allowed a hard core criminal to escape from his custody which is a serious delinquency. Hence, the earlier case is entirely different from the petitioner and hence, the petitioner's request was rejected as devoid of merits.

14. I have heard the rival submissions made by the learned counsels appearing for the parties.

15. From the facts as narrated above, it is clear that the petitioner is a police constable, who does not know Telugu language, has been directed to be a part of an escort team of a criminal for production of accused in a Court in Andhra Pradesh and the said escort team was headed by a Head Constable and another Constable also was part of the team along with the

petitioner. The accused was produced before the Court at Andhra Pradesh safely and while returning to Chennai that too in the railway station at Andhra Pradesh, when the petitioner and other constable were directed to bring their meal for the Head Constable also, the accused was in the sole custody of the Head Constable and when the petitioner and other Constable came with meal, it was found that the accused was missing and the Head Constable said, he has just escaped.

16. Though these contentions were made by the petitioner in the affidavit, no contra version has been produced by the respondent as the other two persons, namely, the Head Constable and other Constable have not come up with any litigation, since one of them died and one of them reached superannuation.

17. It is also a fact that the escaped prisoner, surrendered himself before the concerned court and a proceedings issued in this regard by the Court concerned at Andhra Pradesh dated 06.04.1999 has also been produced by the petitioner in the typed set of papers.

18. When the petitioner made Mercy Petition to the Government along with the order of the Magistrate Court at Andhra Pradesh recording the surrender of the prisoner and also the documents to show that in similar circumstances, one Duraibabu from the Armed Reserve of the police department, who have been instrumental for the escape of the criminal that too after getting bribe and also consumed liquor along with the accused has been shown sympathy and awarded lesser punishment. When that being so, the petitioner had requested the respondent to consider his case sympathetically as his entire career is unblemished without any demerit except this one incident even for which the petitioner is not solely responsible.

19. When the petitioner approached this Court at the first instance in W.P.No.32166 of 2005, this Court by order dated 30.01.2006, especially at paragraph 6 of the order as extracted above, has given a specific direction that the Government was directed to pass orders keeping in view the order passed in the case of Duraibabu and also taking note of the fact that this was the only lapse committed by the petitioner in his career.

20. Thereafter, since the respondent has passed rejection order in G.O.2D 468, Home (Police-V) Department, Chennai-9, dated 02.08.2006 and the same was testified before this Court in W.P.No.21819 of 2007, this Court by order dated 10.07.2007 has passed an order observing that even after the direction from this Court in W.P.No.32166 of 2005 dated 30.01.2006, the respondent has not passed any considered order and hence, the impugned order therein dated 02.08.2006 was set aside and the petitioner was directed to give a copy of the said order as well

as further application to the authorities within a time frame.

21. Only pursuant to the second order of this Court, further Mercy Petition dated 12.1.2008 was submitted by the petitioner for consideration of the respondent and during the pendency of the same, by an inter departmental proceedings dated 02.09.2008, the City Police Commissioner has stated that recommendatory note was forwarded to the Government for consideration regarding reinstatement of the petitioner and orders of the Government are awaited.

22. Thereafter, this Court again intervened by orders of this Court dated 16.12.2008 in W.P.No.22469 of 2008 filed by the petitioner, where also a direction was issued to the respondent to consider the request of the petitioner and to pass suitable orders based on the recommendatory note of the City Commissioner of Police dated 02.09.2008 within a time frame.

23. After all these orders of this Court, the present impugned order in G.O.(2D) No.687, Home (Police V) Department dated 21.11.2008 was passed. After tracing the case history, the respondent has given reasons at paragraph 8 of the order which reads thus:

"8. The Government have carefully and independently examined the request of the individual with relevant records. It is the case of Tr.Duraibabu, Armed Reserve, Chennai City he has connived with his guard commander Police Constable 8708 Raj and taken a detenu to his house and on reaching the house of the detenu they had consumed liquor and also received an illegal gratification of Rs.300/- for letting out the detenu from the hospital illegally. Therefore, it is not actually an escape of prisoner, from the hospital. But, in the instant case, namely, former Police Constable 9998, Thiru T.Swamidoss, Armed Reserve of Chennai Police, he has allowed a hard core criminal to escape from his custody which is a serious delinquency. Hence, the case of Tr. Duraibabu, Police Constable 9999, Armed Reserve, Chennai City is different from that of Thiru, Swamydoss, formerly Police Constable 9998, Armed Reserve of Chennai Police and cannot be clubbed together. The individual has therefore not put forth any fresh points for consideration in his further representation. Hence, the Government have decided to reject his request. Accordingly, in compliance of the orders of the High Court sixth read above, the Government order that the G.O. 2nd read above is set aside and the further representation ninth read above submitted by Thiru T.Swamydoss, formerly Police Constable 9998, Armed Reserve, Chennai City is examined on the above lines and rejected as devoid of merits."

24. The reasons cited by the respondent in the impugned

order especially at paragraph 8 as referred to above is that the case of Duraibabu, Armed Reserve, Chennai City, who has connived with a guard Commander Raj, Police Constable and taken the detenu to his house and on reaching the house, both consumed liquor and also received an illegal gratification of Rs.300/- for letting out the detenu from the hospital illegally. Therefore, it is not actually an escape of the prisoner from the hospital. But, in the instant case, i.e., the case of petitioner he has allowed a hard core criminal to escape from his custody which is a serious delinquency. Therefore the first respondent has stated in the said paragraph 8 of the impugned order that the case of Duraibabu is different from that of the petitioner and accordingly, he rejected the Mercy Petition of the petitioner by the impugned order.

25. This Court is afraid of noting the reasons given by the respondent for justifying the gesture shown to Duraibabu, who was the Armed Reserve Police Constable, as according to the respondent, getting illegal gratification from the detenu and consuming liquor with the detenu can be forgiven and the same can be accepted for showing leniency to the member of the uniformed services whereas the case in the nature of the petitioner where the prisoner escaped while he was in the custody of the Head Constable, who was heading the escort team and for which the petitioner was punished with a maximum punishment of removal of service.

26. This Court does not agree with the reasoning given by the respondent even in respect of Duraibabu, as it is apparently awkward to state that a person from uniformed service can receive illegal gratification from a criminal and after consuming liquor with him he can be permitted to escape, is a justifiable action. If this kind of justification is accepted, the morale of the principled and right thinking persons in the uniformed service and the image of the public about uniformed service would be at stake.

27. Be that as it may, insofar as the present case is concerned, the rejection of the petitioner's Mercy Petition either for reinstatement or for lesser punishment has absolutely no justification if this Court taking into consideration of the reason given by the respondent in the very impugned order itself, especially comparing with the said case of Duraibabu.

28. The learned counsel appearing for the petitioner has also produced yet another order passed by the Director General of Police, TamilNadu by order dated 19.11.2010 wherein also a police constable belonging to Armed Reserve, Chennai was instrumental for the escape of a hard core criminal by name Subbu alias Subburaj and inspite of the warnings given to the said Constable, he was careless in dealing with the hard core

accused and ultimately, the accused escaped. Even in that case, the Director General of Police has taken a lenient view and ultimately, reduced the punishment given to the said Constable and he was reinstated. The said proceedings of the DGP, dated 19.11.2010 in Rc.No. 55928/AP.3(3)/2010 also is taken on record. When these instances were pointed out, the learned Additional Government Pleader appearing for the respondent would contend that each case will have its own facts and considering the facts and circumstances of each case, decision was taken by the authorities either for lesser punishment or major punishment and one case cannot be equated or compared with another case and therefore, based on which no leniency could be shown to the petitioner.

29. The learned counsel appearing for the petitioner relying upon the Judgments of the Hon'ble Apex Court in Director General of Police and others Vs. G. Dasayan reported in (1998) 2 SCC 407 and Rajendra Yadav Vs. State of Madhya Pradesh and others reported in (2013) 3 SCC 73 argued that the principle in those cases are squarely applicable to the present case also and by heavily relying upon the Judgment of the Apex Court in (2013) 3 SCC 73, the learned counsel for the petitioner pray that the petitioner should be reinstated in service as has been done in the said case.

30. In this case also, though there were three persons including the petitioner to escort, there is no direct evidence to show that only because of the carelessness of the petitioner alone, the prisoner was escaped and the version of the petitioner is that when the petitioner and other constable were away at the instruction of the Head Constable, who headed the team for getting the meal, the prisoner escaped and therefore, for the same, the petitioner cannot be alone held responsible and therefore, the maximum punishment awarded to the petitioner cannot be sustainable. Applying the principles of the aforementioned cases of the Apex Court as well as the direction issued by this Court in the earlier order dated 30.1.2006 made in W.P.No.32166 of 2005 filed by the petitioner, the present impugned order passed by the respondent mechanically without taking into consideration of the relevant merits of the petitioner's case is unsustainable and therefore, is liable to be set aside. The very reasoning given by the respondent in the impugned order at paragraph 8 is not agreeable and this Court though has not expressed any opinion of the wisdom of the State Government especially, the respondent in justifying the attitude towards the case of one Duraibabu which was taken up for comparison, the attitude of the Government showing leniency towards good people should not be lost sight of. If the reasons cited by the respondent for taking a lenient view in respect of Duraibabu is acceptable to the respondent, certainly, the petitioner, who is far better than the said individual would

also be eligible and entitled to get a lenient treatment from the employer i.e. the State Government and in that view of the matter also, this Court feels that the impugned order does not stand under the legal scrutiny and therefore, it is liable to be quashed.

31. In the result, the writ petition is allowed and the impugned order is quashed. Insofar as the further action on the part of the respondent, for taking back the petitioner by way of reinstatement, though this Court is not inclined to give any positive direction, but direct the respondent to take a pragmatic view taking into account of all the aforementioned instances, earlier orders passed by the Government as well the Director General of Police of course, the principles as enunciated by the Hon'ble Apex Court in the Judgments referred to above. Since the petitioner has completed long years of service without any blemish and that is the only incident in his career even for which also, he is not responsible according to him from the records shown before this Court, this Court expects that certainly a lenient view would be taken by the respondent by passing order for the purpose of reinstatement.

32. With these observations and directions, the writ petition is allowed to the extent indicated above. No costs. The needful shall be done by the respondent within a period of twelve weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

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To

Principal Secretary to Government,
Home (Police-V) Department,
Secretariat, Chennai-600 002.

+ 1 cc to Mr.S. Thankasivam, Advocate Sr.61086

W.P.No. 23457 of 2010

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