

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2016

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

Writ Petition No.5724 of 2016

C.Murugan

.. Petitioner

-Vs.-

1. Director General of Police,
Chennai-4.

2. Commissioner of Police,
Greater Chennai Police,
Chennai-7.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari, to call for the records relating to the impugned order passed by the 2nd respondent herein in his Proceedings Rc.No.69/37818/PR-II(1)/2013), P.R.No.91/Madurai/2012 dated 05.05.2014 and confirmed by the 1st respondent herein in his proceedings Rc.No.92893/AP2(3)/2015 dated 23.11.2015 and quash the same.

For Petitioner :M/s.G.Bala and Daisy

For Respondents :Mr.K.Dhananjayan,
Special Government Pleader

सत्यमेव जयते
O R D E R

By consent, the Writ Petition is taken up for final disposal.

2. The petitioner in this Writ Petition would aver among other things, he was a directly recruited Sub-Inspector of Police and joined on 18.01.2008 and has received very many awards for his efficient service. He has been maintaining a good records of service and many laurels from his superior officers. It is further stated by the petitioner that on 21.06.2012, one Superintendent of Police, Madurai Rural Police

Station, has framed a charge vide Charge Memo under Rule 3(b) of Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules, 1955 in PR.No.91/Madurai/2012 dated 05.05.2014 against the petitioner for the following delinquency:

''Highly reprehensible and unbecoming conduct of a Police Officer who has conducted vehicle check at 12.50 hrs on 27.01.2012 stopped one lorry Registration No.TN 47 W 7761 driven by Lorry Driver Subramani, age 44/12, S/o.Balaguru without uniform at Melur Vinayagapuram four way track and registered two M.V.Act cases. But, the delinquent failed to take legal action and demanded a sum of Rs.17,000/- to release the lorry under the pretext of fine amount from the sand lorry owner Thiru Kumar without permission of his superiors. This amounts to thereby failed to maintain absolute integrity and devotion to duty in public service.''

3. In support of the charge memo, the department has placed reliance on the statements given by the witnesses 1 to 9 recorded during Preliminary Enquiry and also furnished list of documents numbering 60. The petitioner in response to the same, submitted his defence as written statement denying all the charges. The Deputy Superintendent of Police, Thirumangalam, was appointed as an Enquiry Officer and the witnesses were examined and the documents were marked. The Enquiry Officer, on appreciation of oral and documentary evidences, found the charge framed against the petitioner has been proved and thereafter, the petitioner was furnished with a copy of the Enquiry Report and he was called upon to submit his explanation and he has also submitted his detailed explanation on 21.01.2013. However, the 2nd respondent-Disciplinary Authority has accepted the findings rendered by the Enquiry Officer and passed an order dated 05.05.2014 imposing punishment of postponement of increment for a period of two years with cumulative effect. The petitioner aggrieved by the order of punishment imposed by the Disciplinary Authority/2nd respondent herein filed a departmental appeal before the 1st respondent. The 1st respondent vide order dated 23.11.2015 has confirmed the order of punishment imposed by the 2nd respondent and challenging the legality of the same, the petitioner came forward to file this Writ Petition.

4. The learned Counsel for the petitioner has drawn the attention of this Court to the Enquiry Report as well as the evidence of P.Ws.1 and 2 from whom the petitioner is said to have demanded illegal gratification for the purpose of releasing a lorry. Admittedly, P.Ws.1 and 2 did not support the case of the department as well as the statements recorded during the time of preliminary enquiry and however, the Enquiry Officer, based on the statements of the witnesses recorded during

preliminary enquiry and the preliminary enquiry report, has arrived at a decision that the charge framed against the petitioner has been proved and the Disciplinary Authority, without due and proper application of mind, has chosen to impose the order of punishment and the Appellate Authority, without any independent application of mind, has confirmed the order of punishment. It is the further submission of the learned Counsel for the petitioner that once the witnesses recite the statements recorded during preliminary enquiry, the contents of their statements as well as the preliminary enquiry report cannot form a basis to arrive at a decision that the charge framed against the petitioner has been proved and in support of his submission also places reliance upon the decision of this Court in K.Ramalingam Vs. Superintendent of Police, Perambalur reported in (2009) 7 MLJ 578 and prays for interference.

5. Per contra, Mr.K.Dhananjayan, the learned Special Government Pleader appearing for the respondents has drawn the attention of this Court to the counter affidavit filed on behalf of the respondents and would submit that the Enquiry Officer, on correct appreciation of oral and documentary evidences, has reached the conclusion, found guilty on the part of the petitioner/delinquent and the Disciplinary Authority after carefully scanning the entire records imposed the order of punishment and on the appeal, the appellate authority on an independent application of mind has confirmed the order of punishment. Therefore, since the findings as to the delinquency on the part of the petitioner are concurrent in nature, this Court in exercise of its power under Article 226 of the Constitution of India cannot interfere with the same and prays for dismissal of the Writ Petition.

6. This Court bestowed its attention to the rival submissions and also perused the materials placed before him.

7. It is a well settled position of law that the punishment imposed by the Disciplinary Authority as confirmed by the Appellate Authority can be interfered with only on two grounds, namely, the findings based upon no evidence and perverse findings. This Court, keeping in mind the well settled position of law laid down by the Hon'ble Supreme Court of India in various decisions, has carefully scanned through the materials placed before him.

8. A perusal of the report submitted by the Enquiry Officer would disclose that P.Ws.1 and 2 were witnesses to the alleged demand and acceptance of Rs.17,000/- and thereafter, P.W.3 has interfered with the same and according to P.W.7, who is the Inspector of Police, he deposed that the delinquent released the lorry after collecting the original documents and

gave him advise to return the documents. However, P.Ws.1 and 2, who have given statements against the petitioner, during the preliminary enquiry, did not support their version and pleaded ignorance as to the alleged demand and acceptance of a sum of Rs.17,000/- on the part of the petitioner and subsequent refund of the part of the amount after payment of fine by the driver of the lorry before the court of Chief Judicial Magistrate. Thus, P.Ws.1 and 2 did not support the case of the department. The only evidence available is P.W.3, who admittedly not an eye-witness to the occurrence and according to him, being a Councilor belongs to a particular area, his assistance was sought by the Chief Judicial Magistrate and he interfered with the same and during the course of testimony, he deposed that he was not aware of the name of the person who demanded the alleged bribe.

9. The department, apart from the testimony of P.Ws.1, 2 and 3 also placed reliance on the testimony of P.W.7, Madasamy, the then Inspector of Police Traffic and he has deposed that he was assigned with the duty with regard to the visit of the Hon'ble Home Minister Mr.P.Chidambaram and the petitioner was also assigned with the said duty and as such, he ought not to have charged the vehicle on account of the overloading of the lorry.

10. A perusal of the testimony extracted in the Enquiry Report would also disclose that P.W.7 was not present at the time of the alleged demand and acceptance from P.W.1 by the petitioner. The Enquiry Officer though given a finding that P.Ws.1 and 2 eye-witnesses did not support the case of the department, he has placed reliance upon the preliminary enquiry as well as the Preliminary Enquiry Report of the Additional Superintendent of Police.

11. In (2009) 7 MLJ 578 cited supra, similar issue arose for consideration. It is relevant to extract paragraphs 10 to 14 :

'10. A Division Bench of this Court by Judgment dated 22.2.2005 in W.P.Nos.29862 & 32581 of 2002 (The Deputy Inspector General of Police, Villupuram and others v. V.Vanniaperumal and others) upheld the order of the Tribunal, which set aside the order of removal from service. Paragraphs 6 and 8 of the judgment can be usefully referred to, which read thus,

"6. We have carefully considered the relevant materials and the rival contentions. We have already referred to the charges levelled against the applicants. It is also relevant to note that apart from the applicants two more officers have also been implicated along with them. They are one Sattanathan,

Sub-Inspector of Police and Antony, Inspector of Police. It is brought to our notice that Sattanathan is no more and so far as the other officer Antony is concerned lesser punishment has been imposed. Now we are concerned with the charges levelled against both the applicants. In the light of the conclusion arrived at by the Tribunal, we perused the finding of the Enquiry Officer. It is not in dispute that all the prosecution witnesses except PW.3, who is none other than the Deputy Superintendent of Police, the other witnesses viz., P.Ws.1,2,4 and 5 turned hostile before the Enquiry Officer and not supported their earlier statement made at the preliminary enquiry. The Enquiry Officer having noted the above aspect curiously submitted a report holding that all the three charges levelled against them are proved based on the preliminary enquiry.

7.

8. In our case, we have already referred to the fact that the prosecution witnesses viz., P.Ws.1,2,4 and 5 turned hostile and not supported their preliminary version. However, the Enquiry Officer basing reliance on their earlier statement in the preliminary enquiry found that all the charges levelled against them are proved. In the light of the decision of the Supreme Court referred to above, after full-fledged enquiry was held the preliminary enquiry had lost its importance. Further, we find no substance or material to arrive at a conclusion that "since all the three counts were proved by the prosecution beyond reasonable doubts, convincingly, I agree with the findings of the Enquiry Officer, ...". We are satisfied that there is no material to arrive at such a conclusion by the Deputy Inspector General of Police, while passing an order removing the applicants from service. All these aspects have been considered by the Tribunal in a proper manner and there is no acceptable material or evidence to take different view as that of the Tribunal. We find no merits in both the writ petitions. Accordingly, they are dismissed. No costs. Consequently, the connected miscellaneous petitions are dismissed."

The said conclusion was arrived at by the Division Bench based on the decision of the Honourable Supreme Court reported in 1997 1 SCC 299 (Narayana Dattatraya Ramteerthakhar v. State of Maharashtra).

11. The above referred decision of the Division Bench was followed by me in the order dated 15.2.2006 in W.P.No.27019 of 2005 (B.Bals Murugan v. The Inspector General of Police, Madurai-2 and Two others),

wherein the order of punishment was set aside.

12. I have also followed the above decisions and allowed similar writ petition and the same is reported in (2006) 2 MLJ 202 (T.Pitchai v. Deputy Inspector General of Police, Tirunelveli) by setting aside the order of dismissal with a direction to reinstate the petitioner therein with all service benefits.

13. In the decision reported in (2006) 3 MLJ 900 (H.C. Lenin v. Commissioner of Police), A.Kulasekaran, J., has taken a similar view following the decision of the Honourable Supreme Court reported in AIR 1999 SC 677 : (1999) 2 SCC 10 (Kuldeep Singh v. Commisisioner of Police and others), wherein the Honourable Supreme Court in paragraphs 32 and 33 held thus, "32. In State of Mysore v. Shivabasappa Shivappa Makapur, the witness was not examined in the presence of the delinquent so far as his examination-in-chief was concerned and it was his previous statement recorded at an earlier stage which was brought on record. That statement was put to the witness who acknowledged having made that statement. The witness was thereafter offered for cross-examination and it was held that although the statement (examination-in-chief) was not recorded in the presence of the delinquent, since the witness had been offered for cross-examination after he acknowledged having made the previous statement, the rules of natural justice were sufficiently complied with.

33. In Kesoram Cottton Mills Ltd. v. Gangadhar and State of U.P. v. Om Prakash Gupta the above principles were reiterated and it was laid down that if a previous staement of the witness was intended to be brought on record, it could be done provided the witness was offered for cross-examination by the delinquent."

Following the above decisions, similar writ petitions in W.P.No.14193 of 2006, W.P.No.23378 of 2007 and W.P.No.7257 of 2008 were allowed by me by orders dated 9.4.2007, 9.4.2008 and 23.7.2008 respectively. The Director General of Police, implemented the order dated 9.4.2007 made in W.P.No.14193 of 2006 by issuing circular in Na.Ka.No.79697/Con.3(1)/2007, dated 25.4.2007, and ordered that the charges cannot be held proved only on the basis of the statement given during preliminary enquiry, and whether charges are proved or not, is to be determined only on the basis of the statements made during the oral enquiry. The Disciplinary Authorities as well as Enquiry Officers were directed to keep the same in mind while conducting

enquiry and disposing of the disciplinary proceedings.

14. In view of the above cited settled position of law on this aspect and having regard to the fact that there is no controversy about the enquiry officer's finding of guilt on the part of the petitioner, relying upon the statements given by the witnesses during the preliminary enquiry and there was no occasion to cross examine the said witness during the preliminary enquiry, I am of the view that the charges framed against the petitioner cannot be said to be validly proved. Hence the petitioner is bound to succeed in this writ petition challenging the order of dismissal passed against him. ''

12. Admittedly, the eye-witnesses to the alleged demand and acceptance and subsequent refund on the part of P.Ws.1 and 2 did not support their version recorded during preliminary enquiry. Except their testimony, there is nothing incriminately connecting the petitioner with regard to the alleged delinquencies.

13. As rightly pointed out by the learned Counsel for the petitioner, the Disciplinary Authority, namely, the 2nd respondent did not take into account the said aspect and thereby imposed an order of punishment and that apart, the Appellate Authority did not independently consider the grounds raised by the petitioner in the grounds of appeal and as such, the impugned order of punishment imposed by the 2nd respondent as confirmed by the Appellate Authority warrants interference.

14. In the result, the Writ Petition is allowed and the impugned order passed by the 2nd respondent herein in his Proceedings Rc.No.69/37818/PR-II(1)/2013), P.R.No.91/Madurai/2012 dated 05.05.2014 and confirmed by the 1st respondent herein in his proceedings Rc.No.92893/AP2(3)/2015 dated 23.11.2015 are quashed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. Director General of Police,
Chennai-4.

2. Commissioner of Police,
Greater Chennai Police,
Chennai-7.

+1 cc to Government Pleader sr 73309

+1 cc to Mr.G.Bala & Daisy Advocate sr 72930

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