

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2016

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

W.P. No. 6102 of 2016
&
W.M.P. No. 5431 of 2016

K. Palanisamy

..Petitioner

Vs.

1. The Additional Director General of Police,
Law & Order, Mylapore,
Chennai - 600 004.
 2. The Deputy Inspector General of Police,
Thanjavur Range,
Thanjavur District.
 3. The Superintendent of Police,
Thiruvarur District,
Thiruvarur.
- ..Respondents

Prayer: Petition under Article 226 of the Constitution of India to call for the records relating to the impugned order passed by the 1st respondent dated 27.03.2014 (date wrongly noted as on 27.03.2013) in R.C.No. 126235/AP.I(1)/2013 in confirming the order passed by the 2nd respondent in Na.Ka.No.P1/Sa.Aa/Tha.Pa.1/Thanjai/13 Range Order No. 219/13 dated 20.06.2013 and quash the same and consequently direct respondents 1 and 2 to promote the petitioner as Deputy Superintendent of Police/Assistant Commissioner on par with his batch mates, provide all service and monetary benefits.

For Petitioner :: Mr.M.R. Jothimanian

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

O R D E R

Mr.K. Dhananjayan, learned Special Government Pleader accepts notice on behalf of respondents 1 to 3.

2. By consent, the main writ petition itself is taken up for final disposal.

3. The petitioner, in the affidavit filed in support of the writ petition, would aver, among other things, that he was appointed as Sub-Inspector of Police on 28.09.1987 and got promotion as Inspector of Police on 01.05.2000 and posted at Thiruvadanai Police Station, Ramanathapuram District and subsequently, he was transferred to Thiruvaidaimarudur Police Station in Thanjavur District in the year 2005. Presently, he is working as Inspector of Police, Peraalam Police Station, Thiruvarur District and claims to have rendered hard, sincere and blemishless service to the satisfaction of his superiors. The petitioner would submit that he was working as Inspector of Police at Thiruvaidaimarudur Police Station Circle from 20.06.2003 to 27.11.2005. While so, on 23.05.2005, the Inspector of Nachiyar Koil Police Station was on leave and therefore, he was directed to take in-charge as Inspector of Police, Nachiyar Koil Police Station, Thanjavur District, for one day i.e, 23.05.2005 and on that day, an accident took place near Srirangarajapuram Pillaiyar Temple in the form of collision between a Tractor-Trailer and an Autorickshaw wherein one of the occupants of the Autorickshaw, namely, Sivanesan, died. In this regard, a case was registered in Crime No. 130 of 2005 against the driver of the Tractor for the commission of offences under Sections 279, 337, 304(A) IPC by the Head Constable Mr.Swaminathan and after the petitioner was informed about the registration of the case, preliminary investigation was done by him on that day and thereafter, the case was handed over to the regular incumbent of Nachiar Koil Police Station, namely, Mr. Rushia for continuing the investigation.

4. It is the specific case of the petitioner that subsequent investigation was done by the regular incumbent and he had no role to play in the said investigation. However, to the shock and surprise of the petitioner, the 2nd respondent issued a charge memo on 29.08.2011 on the ground that the CBCID had conducted investigation and found that the petitioner, to enable the claimants to claim compensation before the Motor Accidents Claims Tribunal, had cooked up a false case as if the Tractor-Trailer had caused the accident whereas the driver of the Autorickshaw, on his own, had dashed the Autorickshaw against the temple wall, resulting in the accident. The petitioner submitted his written statement of defence vehemently denying the allegations stating that the regular incumbent, during the course of investigation, had even arrested the driver of the Tractor-Trailer and also filed a charge sheet, but, it was not acted upon. However, not satisfied with the same, the Disciplinary Authority had appointed an Enquiry Officer and the Enquiry Officer, during the course of the Disciplinary

Proceedings, had examined the statement of witnesses, who were cited as witnesses in the criminal case and also marked Exs. 1 to 25 and found that the charges framed against the petitioner had been proved and submitted the Enquiry Report dated 24.01.2013 to the Disciplinary Authority. The petitioner was issued with a copy of the Enquiry Report and he was called upon to submit his further explanation. The petitioner also submitted his detailed explanation. However, the 2nd respondent/Disciplinary Authority, after considering the Enquiry Report as well as the explanation offered by the petitioner, passed the order on 20.06.2013 imposing the punishment of "postponement of increment for one year with cumulative effect". Aggrieved by the same, the petitioner filed an appeal before Appellate Authority, the 1st respondent herein, who, vide order dated 27.03.2014, confirmed the order of punishment imposed by the Disciplinary Authority. Challenging the illegality of the said orders, the petitioner has come forward with the present writ petition.

5. Mr.M.R. Jothimanian, learned counsel for the petitioner has drawn the attention of this Court to the report of the Enquiry Officer and would submit that except Witness No.5, all other witnesses have supported the version, as in the First Information Report when the statements of the injured were recorded by P.W.6, M. Swaminathan and even in the course of his testimony, he admits that the statements recorded by him are true. It is the further submission of the learned counsel for the petitioner that most of the witnesses, during the course of cross-examination, had specifically stated that CBCID exerted pressure on them to depose in a particular manner and that is the reason, they have deposed so. However, they have all stuck to the original version that on account of the Tractor-Trailer only, the accident had occurred, which resulted in the death of one of the occupants, namely, Sivanesan. In sum and substance, it is the submission of the learned counsel for the petitioner that since, except one witness, almost, all the witnesses had supported the version in the First Information report and further that the regular incumbent, namely, Mr.Rushia, during the course of investigation had arrested the driver of the Tractor-Trailer and also filed charge sheet, which was not taken on file, on account of limitation, the finding of the Enquiry Officer as well as the impugned orders, passed by the Disciplinary Authority as confirmed by the Appellate Authority, imposing the punishment of "postponement of increment for one year with cumulative effect" warrants interference. It is also pointed out by the learned counsel for the petitioner that on account of the order of punishment, the petitioner has remained as an Inspector of Police and therefore, prays for quashment of the impugned orders.

6. Per contra, learned Special Government Pleader for the respondents has drawn the attention of this Court to the counter affidavit filed by the 3rd respondent and would contend that the Enquiry Officer, on proper appreciation of oral and documentary evidence, has rightly reached the conclusion that the charges framed against the petitioner are proved and the Disciplinary Authority, on appraisal of the entire materials, had arrived at the conclusion and accordingly imposed the punishment. On appeal, the Appellate Authority, on an independent application of mind, has confirmed the punishment awarded by the Disciplinary Authority and in the light of the concurrent finding, this Court, in exercise of Writ Jurisdiction under Article 226 of the Constitution of India, cannot interfere with the same and prays for dismissal of the writ petition.

7. This Court has paid its best attention to the rival submissions and also perused the materials placed before it.

8. A perusal of the Enquiry Report would disclose that except P.W.5, P.W.s 1 to 4 and P.W.6 had supported the version in the First Information Report. P.W.6 is a crucial witness for the reason that on receipt of information as to the accident, he went to the Government Hospital, Kumbakonam and recorded the statement of one Karunakaran, one of the occupants of the Autorickshaw, who was treated as an in-patient. Based on this, he has charged the driver of the Tractor-Trailer. The witnesses were also subjected to cross-examination by the petitioner and almost, all the witnesses have given a go-by to their version in the chief-examination. P.W.6 was also cross-examined and he was categorical that on account of the Tractor dashing against the Autorickshaw, the accident had occurred and that all the witnesses had also stated before the Casualty Medical Officer that only on account of the Tractor-Trailer dashing against the Autorickshaw, the accident had taken place.

9. P.W.7, the Inspector of CBCID, who conducted investigation, has also admitted, in his cross-examination, that the regular incumbent, namely, Mr. Rushia, Inspector of Police, Nachiarkoil Police Station, after examining the witnesses, arrested the driver of Tractor-Trailer and sent him to judicial custody. He would further admit that the driver of Tractor-Trailer, at the time of his remand, did not state that he was falsely implicated. It is also admitted by P.W.7, during cross-examination, that the injured, namely, Karunakaran, his wife, Kalyani, Sivanesan and Suresh had given statements before the Casualty Medical Officer that they sustained injuries on account of the Tractor-Trailer dashing against the Autorickshaw.

10. In the considered opinion of this Court, despite such evidence available on record, curiously, the Enquiry

Officer, had reached the conclusion that the charges framed against the petitioner have been proved. The petitioner was given a copy of the Enquiry Report and his response was elicited and he has submitted his detailed explanation pointing out the infirmities in the Enquiry Report. However, the Disciplinary Authority, namely, the 2nd respondent, by a cryptic order, without discussing the contents of the Enquiry Report, has passed the order imposing the punishment of "postponement of increment for one year with cumulative effect. Aggrieved by the same, the petitioner had also filed a departmental appeal before the Appellate Authority, the 1st respondent herein, by raising all the grounds. A perusal of the order passed by the Appellate Authority would also disclose that no reasons have been given by the 1st respondent for rejection of the grounds raised by the petitioner and the 1st respondent has merely confirmed by the order of punishment imposed by the Disciplinary Authority.

11. The order of punishment had visited the petitioner with grave civil consequences and therefore, the Disciplinary Authority ought to have applied his mind to the contents of the Enquiry Report as well as the explanation offered by the petitioner before arriving at an inference and the Appellate Authority is also expected to go through the Grounds of Appeal and apply his mind independently to reach a conclusion, either to confirm the order passed by the Disciplinary Authority or to differ from the same. But, unfortunately, the Appellate Authority has failed to do so. In the considered opinion of this Court, the findings reached by the Enquiry Officer are perverse and in the absence of application of mind on the part of the Disciplinary Authority as well as the Appellate Authority, this Court is of the view that the impugned order of punishment warrants interference.

12. In the result, the writ petition is partly allowed and the impugned orders dated 27.03.2014 and 20.06.2013 of the 1st and 2nd respondents respectively are set aside. It is open to respondents 1 and 2 to pass appropriate consequential orders conferring service and monetary benefits to the petitioner, if his record is otherwise found to be in order. The said exercise is to be carried out within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Connected M.P. is closed.

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Assistant Registrar(VII)

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Sub Assistant Registrar

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To

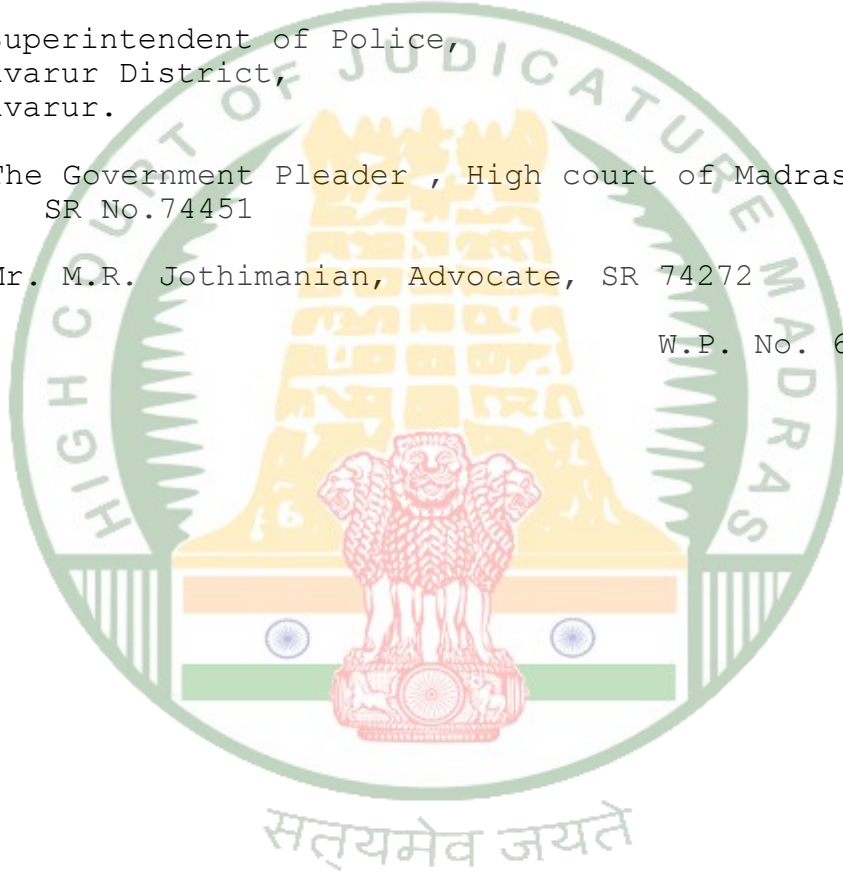
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Thiruvarur District,
Thiruvarur.

+1 CC to The Government Pleader , High court of Madras
SR No.74451

+1 CC to Mr. M.R. Jothimanian, Advocate, SR 74272

W.P. No. 6102 of 2016

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