

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.6103 of 2016

K.Palanisamy

.. Petitioner

vs.

1.The 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: 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 passed by the second respondent in Na.Ka.No.P1/Sa.Aa/Tha.Pa.3/Thanjai/13 Range Order No.220/13 dated 20.06.2013 and quash the same, consequently directing the respondents 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 Government Pleader

O R D E R

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

2. The petitioner, while working as Inspector of Police at Orathanadu Police Station from 01.12.2005 to 09.07.2007, has been visited with disciplinary proceedings under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955, alleging that the petitioner aided one Raju so as

to enable him to file a petition for compensation and claim compensation. It is further alleged that the petitioner also arrested the driver of the tractor bearing No. TN-49-L-3078 by implicating him falsely, as if the tractor hit the vehicle driven by Raju, resulting in fatal accident to the pillion driver.

3. The petitioner, in response to the charge memo, has submitted his written statement of defence and an Enquiry Officer was also appointed to find out the truth or otherwise of the allegations in the charge memo. The Enquiry Officer submitted his report stating that the charges framed against the petitioner has been proved and the petitioner was furnished with a copy of the Enquiry Report and he was called upon to give further explanation and the petitioner submitted his explanation stating that most of the witnesses examined by the department did not support its case and further the F.I.R was registered by Ms.Muthulakshmi, Woman Sub-Inspector of Police and the petitioner, being the Station House Office at that time, took up the investigation and therefore, he cannot be faulted with and prayed for exoneration of the charges. The Disciplinary Authority, agreeing with the findings of the Enquiry Officer, has passed the impugned order, imposing a punishment of postponement of increment for a period of one year with cumulative effect. Challenging the legality of the same, the petitioner has come forward with this writ petition.

4. Mr.M.R.Jothimanian, learned counsel appearing for the petitioner would submit that this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, may not re-appreciate the evidence adduced before the Enquiry Officer and would submit that the findings recorded by the Enquiry Officer are based upon no evidence and it can also be termed as perverse one and also drawn the attention of this Court to the Enquiry Officer's report and would submit that though most of the departmental witnesses did not support the case of the department, the Enquiry Officer, on conjectures and surmises, has recorded a finding that the charges are proved and the Disciplinary Authority, by merely relying upon the report of the Enquiry Officer which is based on no evidence and perverse in nature, concurred with the findings of the Enquiry Officer and imposed the punishment of postponement of increment for a period of one year with cumulative effects and hence, prays for interference.

5. Per contra, Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents has drawn the attention of this Court to the counter affidavit and would contend that the charges levelled against the petitioner are very serious in nature, as he foisted a false case on the driver of the Tractor

as if the Tractor has caused accident and whereas the vehicle involved in the accident was sent for inspection very belatedly and the insurance company also lodged a complaint alleging bogus claim, based on which the Inspector of Police, CBCID, Thanjavur took up the investigation and on investigation, it was found that the petitioner was responsible for the same so as to enable the pillion rider of the two wheeler to claim compensation. The learned Special Government Pleader appearing for the respondents would further contend that the Enquiry Officer, on a thorough consideration of the oral and documentary evidence, has rightly reached the conclusion that the charges are proved and the Disciplinary Authority, on an independent application of mind to the entire materials, thought fit to impose the punishment of stoppage of increment for a period of one year with cumulative effect and this Court, in exercise of it's jurisdiction under Article 226 of the Constitution of India, cannot interfere over the well considered findings rendered by the Enquiry Officer, as accepted by the Disciplinary Authority and prays for dismissal of this writ petition.

6. This Court has considered the rival submissions and also perused the entire materials available on record.

7. It is a well settled position of law that normally, this Court, in exercise of it's jurisdiction under Article 226 of the Constitution of India, will not interfere over the findings rendered by the Enquiry Officer and the Disciplinary Authority, unless the said findings came to be rendered on no evidence or perverse in nature. Since the learned counsel appearing for the petitioner submitted that the findings rendered by the Enquiry Officer are per se unsustainable, this Court has gone through the report of the Enquiry Officer.

8. The Department, in order to, sustain their case, had examined PWs.1 and 2 and the petitioner, being the delinquent, had examined 8 witnesses. A perusal of the Enquiry Officer Report would indicate that most of the witnesses did not support the case of the department. Admittedly, the criminal case in Crime No.74/2006 was registered by Ms.Muthulakshmi, Woman Sub-Inspector of Police for the offences under Sections 279, 337 and 304(A) IPC and the petitioner, being the Inspector of Police at the relevant point of time, took up the investigation and arrested the driver of the tractor and sent for judicial custody on 18.05.2006. The legal representatives of the deceased/pillion rider also filed M.C.O.P.No.218/2007, claiming compensation and the Insurance Company, suspecting foul play, had lodged a complaint on the file of the District Crime Branch, Thanjavur and a case was registered in Crime No.34 of 2007 for the offence under Section 420 IPC and the Inspector of Police,

CBCID, on investigation, found that it is a false claim and therefore, the petitioner was issued with a charge memo.

9. A perusal of the testimonies of the witnesses examined by the department as well as the petitioner, being the delinquent, would disclose that the eyewitness to the accident, namely Thiru.R.Minor, Son of Thiru.Rasu, has deposed that the tractor bearing Reg.No.TN 49L 3078 dashed against a two wheeler and as a consequence, the driver as well as the pillion rider got injured and taken to hospital and information was also passed on to their relatives. DWs.3 and 4 also corroborated the testimony of DW2. DW7 is the brother of the deceased and he would also depose that the cause of action was made known to the petitioner and he immediately rushed to the hospital and came to know that his brother died on account of dashing of the tractor on the two wheeler. The Enquiry Officer, after extracting the testimonies of the witnesses, has recorded a finding stating that the driver of the vehicle was none other than the son of the deceased sister and the fact remains that the tractor was seized three months from the date of the occurrence and therefore, held that the charges are proved. The petitioner was furnished with a copy of the Enquiry Report and he submitted his explanation stating that since the vehicle belongs to a powerful person in the locality, it took some time to seize the vehicle and send it for inspection.

10. This Court, on going through the report of the Enquiry Officer, is of the view that the findings recorded by the Enquiry Officer holding that the petitioner/delinquent is guilty of the charges is wholly unfounded and the Enquiry Officer merely went by the fact that the vehicle was sent for inspection only after 3 ½ months from the date of the accident and therefore, held that the charges held against the petitioner are proved. In the considered opinion of this Court, such a finding of the Enquiry Officer is not supported by any other material evidence. The petitioner was furnished with a copy of the Enquiry Report and he was called upon to submit his explanation and he submitted his explanation. However, the second respondent/Disciplinary Authority merely went by the report of the Enquiry Officer and reached the conclusion of imposing a punishment of postponement of increment for a period of one year with cumulative effect. In all fairness, the second respondent ought to have gone through the Enquiry Officer's report and recorded its findings, but unfortunately, he failed to do so.

11. It is the submission of the learned Special Government Pleader appearing for the respondents that since the petitioner is having an effective alternative remedy in the form of appeal, this Writ Petition is not maintainable. However, this Court, taking into consideration the report of the Enquiry Officer and

the impugned order passed by the Disciplinary Authority, is of the view that since the findings recorded by the Enquiry Officer are based on 'no evidence' and are perverse, it is unnecessary on the part of the petitioner to invoke the jurisdiction of the Appellate Authority. At this juncture, the learned counsel appearing for the petitioner would submit that batch mates of the petitioner have been given promotion as Deputy Superintendent of Police and Additional Superintendent of Police, but the petitioner alone is languishing as Inspector of Police for quite long time and prays for appropriate orders.

12. This Court, on an independent application of mind to the entire materials, is of the view that the findings recorded by the Enquiry Officer are perverse and there is no tenable evidence to support the version of the department and as such, the impugned order warrants interference.

13. In the result, this Writ Petition is allowed and the impugned order passed by the second respondent in Na.Ka.No.P1/Sa.Aa/Tha.Pa.3/Thanjai/13 Range Order No.220/13 dated 20.06.2013 is set aside and the respondents are directed to consider the claim of the petitioner to the post of Deputy Superintendent of Police, if he is otherwise eligible and pass appropriate orders within a period of three months from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm

To

1.The Director General of Police,
Law & Order,
Mylapore, Chennai-600 004.

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

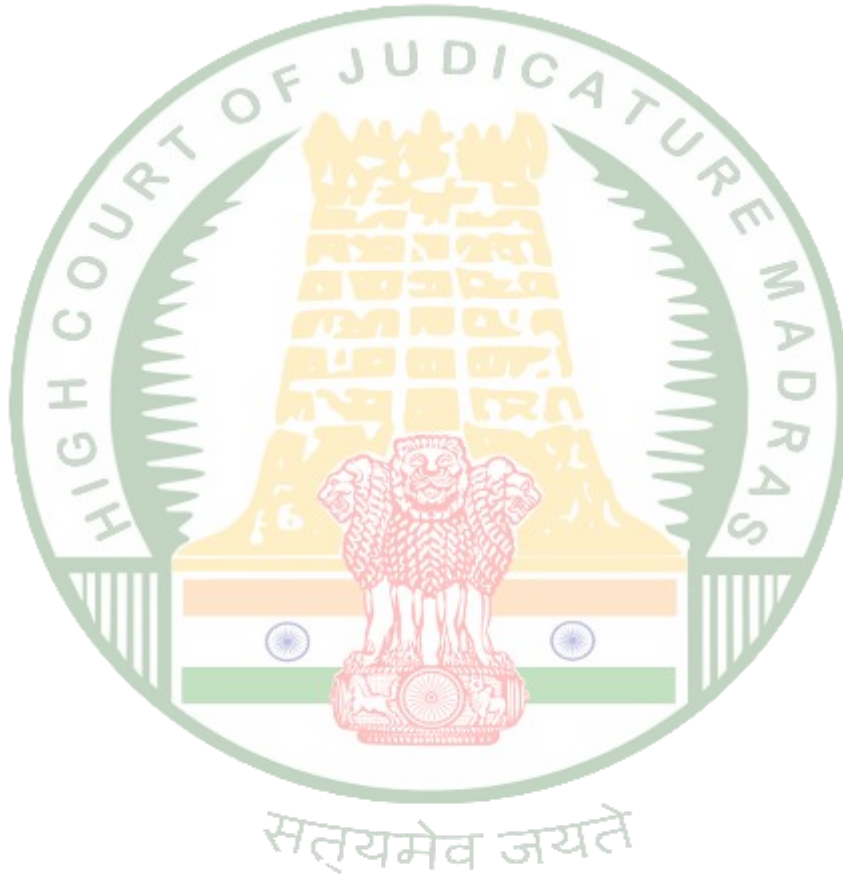
3.The Superintendent of Police,
Thiruvarur District,
Thiruvarur.

+1cc to Mr.M.R. Jothimanian, Advocate, S.R.No.74273

+1cc to the Government Pleader, S.R.No.74479

nri(CO)
md(05/01/2017)

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