



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2016

CORAM:

THE HONOURABLE Mr. JUSTICE R.SUBBIAH

and

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.A. (MD) No.384 of 2014

R.Subramanian

... Appellant / Petitioner

Vs.

1.The Additional Director General of Police,
(Law and Order),
Mylapore, Chennai - 4.

2.The Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli.

3.The Commissioner of Police,
Tirunelveli City,
(i/c) D.I.G. of Police,
Tirunelveli Range,
Tirunelveli.

4.The Superintendent of Police,
Kanyakumari District.
Nagercoil.

... Respondents / Respondents

PRAYER: The Writ Appeal is filed under Clause 15 of Letters Patent Appeal, as against the order passed by this Court in W.P. (MD) No.20564 of 2013 dated 18.12.2013.

Prayer in WP(MD). 20564/ 2013 :

Writ Petition is filed under Article 227 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 2nd respondent herein in C.No. C1/2362/2013 dated 30.05.2013 and quash the same and consequently direct the respondents herein to upgrade the petitioner with effect from 01.12.2013 with seniority and other consequential monetary and service benefits and pass such further or other orders.

For Appellant

: Mr.M.Padmaraj for Mr.K.Vmenan

For Respondents

: Mr.V.R.Shanmuganathan,

Special Government Pleader

**JUDGMENT**

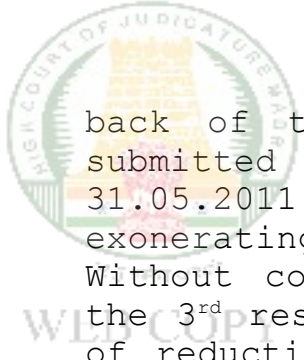
(Judgment of this Court was delivered by R.SUBBIAH,J.)

This Writ Appeal has been filed as against the order passed by the learned Single Judge in W.P.(MD)No.20564 of 2013 dated 18.12.2013.

2.It is the case of the appellant in the Writ petition that the petitioner, who was working as Head Constable, was charged for receiving bribe from the video shop owners, who are alleged to have been selling pirated obscenic VCDs/DVDs. Hence, the petitioner was imposed with the punishment of reduction in time scale of pay by one stage for one year, which shall operate to postpone his future increments by the Commissioner of Police, Tirunelveli by order, dated 02.08.2011. The said order was appealed before the Additional Director General of Police (Law and Order), Chennai, who by order, dated 31.1.2013 remanded the matter back to the Commissioner of Police, Tirunelveli City. After the said remand, the Deputy Inspector General of Police imposed punishments of postponement of increment for a period of two years, which shall not operate to postpone the future increments of the petitioner.

3.The contention of the Writ petitioner before the Writ Court is that the charge memo itself is vague and it does not contain the details regarding when and where the Writ petitioner has received bribe. It is further contended that none of the witnesses had deposed in respect of the allegation levelled against the petitioner and the statements of the witnesses, which were recorded behind the back of the delinquent, are illegal and hence, the order impugned in the Writ petition is liable to be set aside. The further contention of the petitioner is that based on the charges levelled against the petitioner in P.R.No.146 of 2009 under Rule 3(b) of the Tamil Nadu Police Subordinate Service Rules, an enquiry was conducted in P.R.Nos.144, 145 and 146 of 2009 by the Additional Superintendent of Police (Crime), Kanyakumari District. During enquiry, P.Ws.1 to 4 were examined and cross examined before the delinquents, who inturn turned hostile and denied the charges levelled against the petitioner stating that they have not given any bribe, however, they were forced to make their signatures during preliminary enquiry, which was conducted on 30.03.2009. After receiving explanation from the petitioner on 24.09.2009, the enquiry officer held that the charges were not proved.

4.The grievance of the petitioner is that without satisfying with the report of the Enquiry Officer, the 2nd respondent by proceedings dated 04.02.2010 by adding two documents appointed a new Enquiry Officer for conducting re-enquiry. Accordingly, on 08.05.2010, two witnesses were examined behind the



back of the petitioner and on 14.06.2010 the Enquiry Officer submitted his report stating that charges were not proved. On 31.05.2011 the petitioner submitted his explanation for exonerating him from the charges levelled against the petitioner. Without considering any of the findings of the Enquiry Officer, the 3rd respondent by order dated 02.08.2011 imposed a punishment of reduction of time scale of pay by one stage for one year and the period of deduction shall operate to postpone the future increments.

5. Aggrieved over the same, the Writ petitioner preferred an appeals before the 1st respondent on 12.09.2011 and 26.11.2012. The further grievance of the petitioner is that during the pendency of the punishment, the juniors of the petitioner were promoted as Special Sub Inspector of Police (Local). As there is no evidence as against the petitioner, the Appellate Authority ought to have dropped the charges. Against the order dated 30.05.2013 passed by the 2nd respondent, the petitioner has preferred the Writ petition in W.P.(MD)No.20564 of 2013 and this Court by order dated 18.12.2013 dismissed the Writ petition by observing as follows:

"4. There is no order is passed by the first respondent on 31.1.2013 in the appeal filed by the petitioner against the order of punishment passed by the third respondent. A perusal of the order, dated 31.1.2013 would go to show that the appellate authority only set aside the reduction in time scale of pay, as reduction in time scale of pay, cannot be imposed after introduction of Tamil Nadu Revised Scales of Pay Rules 2009 and therefore, the order was set aside. Nowhere, in the order, it is stated that awarding of punishment itself is wrong and punishment has been set aside for non compliance of the Rule or the procedure or for want of evidence. The only ground that is quoted is that after introduction of Tamil Nadu Revised Scales of Pay Rules 2009, punishment of reduction in time scale of pay is not possible as it is not in existence. It only means that the charges against the Petitioner have already been proved and that have been accepted by the first respondent and only after modification of the punishment only the order has been set aside. If really, the appellate authority intended to set aside the entire proceedings there would have been a discussion and finding with regard to setting aside of the entire proceedings and in the absence of that, it has to be held that only the punishment alone is directed to be modified. Accordingly, by the impugned order the second respondent has rightly imposed the lesser punishment of postponement of increment for two years which shall not operate in future increments. Therefore, the



impugned order is sustainable. The Writ Petition fails and the same stands dismissed.

6. Before parting with the judgement, this Court has to appreciate the second respondent who gave a very good reasoning as to why he imposed punishment giving the following reasons:

'4.....The delinquent had collected the monthly mamool from the video shop owners and gave it to the Inspector of Police, Vadasery Police Station for selling pirated and obscene DVDs/VCDs. If obscene VCDs/DVDs are allowed to sell, that will destroy the peaceful life of the entire society, particularly, the youth in all walks of their life. His explanation is neither convincing nor acceptable. Hence, I award him the punishment of 'Postponement of increment for two years which shall not operate to postpone his future increments.'

6. The reasoning given by the authority is in the interest of the public and that has to be appreciated. Permitting obscenic and pirated VCDs/DVDs and collecting mamools as held by the second respondent is against the public interest. Moreover, the charges levelled against the Petitioner has been proved as grave in nature and that cannot be taken very lightly."

7. Aggrieved over the same, the appellant / Writ petitioner filed the present Writ Appeal on the ground that the respondent ought not to have appointed a second Enquiry Officer without assigning reasons for conducting re-examination of the witnesses and the 2nd respondent / Deputy Inspector General of Police insisted the Enquiry Officer to rely upon the statement recorded behind the back of the appellant, which reveals the high handed attitude of the respondents. When the prosecution witnesses had not deposed against the appellant during oral enquiry, it is unwarranted for the 2nd respondent / Deputy Inspector General of Police to give a dissenting minute.

8. The learned Special Government Pleader appearing for the respondents submitted that as against the order passed by the 2nd respondent, an appeal remedy is available, before the 1st respondent. Without availing such alternative remedy, the appellant cannot file the Writ Appeal to challenge the impugned order, which has been passed by the 2nd respondent.

9. The learned counsel for the appellant submitted that if <https://hcservices.apn.tegov.in/hcservices/> filed before the Appellate Authority, they will take long time for disposing of the same by that time the juniors of the appellant would be promoted.



10. In view of the submission made by the both sides, without going into the merits of the matter, the appellant is directed to file an appeal before the 1st respondent and on filing such an appeal, the 1st respondent is directed to dispose of the appeal on merits and in accordance with law within a period of 6 weeks from the date of receipt of a copy of this judgment.

11 Accordingly, the Writ Appeal is disposed of. No costs.

Sd/-

Assistant Registrar (CSII)

/True Copy/

Sub Assistant Registrar

nbj

TO

1. The Additional Director General of Police,
(Law and Order),
Mylapore, Chennai - 4.

2. The Deputy Inspector General of Police,
Tirunelveli Range, Tirunelveli.

3. The Commissioner of Police,
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(i/c) D.I.G. of Police,
Tirunelveli Range, Tirunelveli.

4. The Superintendent of Police,
Kanyakumari District.
Nagercoil.

+1cc to Mr. K. Vemanan Advocate Sr.No. 80181

+1cc to Spl. Government Pleader Sr.No. 80014

JAM/12.01.2017/EM-MPA/ 5p-7c

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