

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 23.12.2016****CORAM:****THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN****W.P. (MD) No.24559 of 2016**

Muniyasamy

... Petitioner

Vs.

1.The Deputy Inspector General of Police,
Ramanathapuram Range.2.The Superintendent of Police,
Ramanathapuram District.3.The Deputy Superintendent of Police,
Ramanathapuram District.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned proceedings of the 1st respondent in C.No.B1/Appeal16/2016, dated 03.08.2016 confirming the order passed by the 2nd respondent in C.No.F1/P.R.No.45/2015, dated 17.11.2015 and quash the same and consequently, direct the respondents to give suitable promotion with all monetary benefits.

For Petitioner : Mr.K.K.Ramakrishnan

For Respondents : Mr.K.P.Krishnadoss, G.A.

O R D E R

This Writ petition has been filed to issue a Writ of Certiorarified Mandamus, to quash the proceedings of the 1st respondent in C.No.B1/Appeal 116/ 2016, dated 03.08.2016, confirming the order passed by the 2nd respondent in C.No.F1/P.R. No.45/2015 dated 17.11.2015 and consequently, direct the respondents to give suitable promotion with all monetary benefits.

2.The case of the petitioner is that he joined as Grade-II Police Constable in Tamil Nadu Uniform Service on 17.11.1988 and in the year 2004, he was promoted as Grade-I Constable and in the year 2009 he was further promoted as Head Constable. While the petitioner was serving as Head Constable, he purchased TATA Indica Car by obtaining loan from the Department. Since the petitioner was unable to pay instalments regularly, he sold the said Car to one Kajendran by receiving Rs.1 lakh and handed over the same to



him with all relevant records. Thereafter, on 29.09.2014 Kenikarai Police Inspector seized the said car from the said Kajendran, alleging that Gold and cash of Rs.50 lakhs were smuggled in the said car and also handed over it to the Customs Officials by initiating criminal proceedings. At that time, after conducting enquiry and also based on the confession of the said Kajendran and one Senthilvelan, no criminal case was initiated against the petitioner.

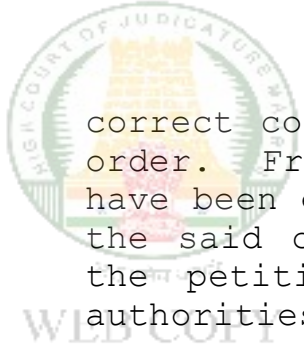
3.The grievance of the petitioner is that eventhough no criminal case was registered against him, the 2nd respondent issued a charge memo, stating that the petitioner used the said car for smuggling gold by receiving a sum of Rs.5,000/- and Rs.10,000/- as rent and also Rs.2 lakhs after completion of the act of smuggling and that by proceedings in P.R.No.45 of 2015 the 2nd respondent appointed an Enquiry Officer. The Enquiry Officer conducted enquiry by examining 7 witnesses.

4.The further grievance of the petitioner is that without examining the witnesses properly and without adducing evidence properly, the Enquiry Officer gave a finding that the charges leveled against the petitioner were proved. Based on the report of the Enquiry Officer, without considering the explanation given by the petitioner, the 2nd respondent by order dated 17.11.2015 imposed the punishment of compulsory retirement, as against which, the petitioner preferred an appeal before the 1st respondent. However, the 1st respondent by order dated 03.08.2016 confirmed the order dated 17.11.2015 passed by the 2nd respondent. Challenging the said order dated 03.08.2016, the petitioner is before this Court with the present Writ petition.

5.The respondents would contend that the petitioner, without obtaining prior permission from the respondents, has sold the car even before clearance of the loan amount advanced by the respondents and that when the petitioner anticipated that he is going to be caught red-handed on account of seizure of his car in respect of smuggling of gold he has manipulated the records as if he had sold the vehicle much prior to the incident.

6.Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

7.A perusal of the record it reveals the fact that the petitioner purchased the car for his own use by obtaining loan from the Department and thereafter, due to his inability to pay instalments, he sold it on 24.09.2014 and on 29.09.2014, the car was used for smuggling gold and thereby, it was seized and handed over to the Customs Officials. By order dated 17.11.2015 the 3rd respondent imposed the punishment of compulsory retirement after giving sufficient opportunity of hearing to the petitioner and also by examining witnesses in proper perspective. In the appeal also, the 1st respondent / the Appellate Authority has come to the



correct conclusion that the compulsory retirement is perfectly in order. From the records it is also clear that nearly 7 witnesses have been examined and the evidence of P.W.6 reveals the fact that the said car was used for smuggling gold on many occasions when the petitioner owned the same. Therefore, the order of the authorities is based on finding of fact.

8. The Hon'ble Supreme Court in a judgment reported **AIR 1964 SC 477 (Syed Yakooob Vs. K.S. Radhakrishnan and others)** has held that a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law, which is apparent on the face of the record, can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued, if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, Court must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court.

9. Merely because of indicating a sentence in the impugned order passed by the Appellate Authority that the petitioner was partly involved in assisting and arranging the conveyance (whether knowingly or unknowingly), will not complete erase the charges ~~from the mind of the court~~ the petitioner more particularly, in the appeal the petitioner has admitted that he has sold the car due to his family circumstances. However, there is no iota of evidence to prove the

said fact that he has obtained prior permission from the authorities to sell the vehicle.

10.As stated supra, there is a categorical finding that the vehicle was involved in several smuggling activities, when the petitioner owned the said car. There is no reason why the respondents have not imposed the capital punishment, however, showed leniency to the petitioner by imposing the punishment of compulsory retirement from service. Since it is also prerogative of the respondents, I do not interfere with the said finding. However, this Court is of the view that the punishment of compulsory retirement is perfectly justified.

11.Accordingly, the Writ petition is dismissed, thereby confirming the order dated 03.08.2016 passed by the 1st respondent in C.No.B1/Appeal 116/ 2016. No costs.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

nbj

TO

1.The Deputy Inspector General of Police,
Ramanathapuram Range.

2.The Superintendent of Police,
Ramanathapuram District.

3.The Deputy Superintendent of Police,
Ramanathapuram District.

+1cc to Spl.Government Pleader Sr.No. 83577

+1cc to Mr.K.K.Ramakrishnan,Advocate Sr.No. 83018

Jam/17.02.17 /PN-PM/4p-6c

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23.12.2016