



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01.12.2016

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CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition(MD)No.19496 of 2013

Loganathan

... Petitioner

-Vs-

1.The Secretary to Government,
Department of Home Affairs,
Secretariat, Fort St. George,
Chennai.

2.The Director General of Police,
Kamarajar Salai,
Chennai.

3.The Superintendent of Police,
Virudhunagar District.

4.The Enquiry Officer,
Deputy Superintendent of Police,
Sivakasi, Virudhunagar District.

... Respondents

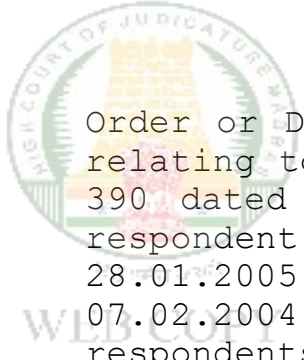
Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, by calling the records relating to the order passed by the 1st respondent by his G.O.(2D) 390 dated 01.08.2013 by confirming the order passed by the 2nd respondent in his Proceedings No.RC.No.1380/AP/II(3)/2005 dated 28.01.2005 and the 3rd respondent in P.R.No.63/2003 dated 07.02.2004 and quash the same and consequently direct the respondents to pay the petitioner all the consequential attendant, service and monitory benefit.

For Petitioner : Mr.V.B.Sundareshwar

For Respondents : Mr. K. Guru
Government Advocate

ORDER

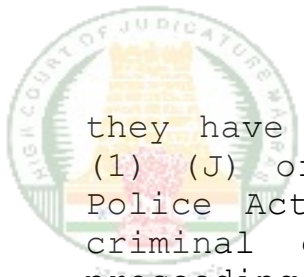
<https://hcservices.courts.gov.in/hcservices/>
The petitioner has filed this writ petition for issuance of Writ of Certiorarified Mandamus or any other appropriate Writ or



Order or Direction, in the nature of Writ, by calling the records relating to the order passed by the 1st respondent by his G.O.(2D) 390 dated 01.08.2013 by confirming the order passed by the 2nd respondent in his Proceedings No.RC No.1380/AP/II(3)/2005 dated 28.01.2005 and the 3rd respondent in P.R.No:63/2003 dated 07.02.2004 and quash the same and consequently direct the respondents to pay the petitioner all the consequential attendant, service and monetary benefits and pass such further or other orders.

2.The case of the petitioner is that he was appointed as Constable on 23.12.1985 and posted to Armed Reserve, Sivakasi Battalion. After successful completion of his service in Armed Reserve Police, he was given posting in the Local Police Station. Thereafter he was transferred to Seithur Police Station of Virudhunagar District. Ever since the date of appointment he discharged his duties to the utmost satisfaction of the superior officers. No single adverse remarks have been made against him except the punishment under challenge in this writ petition. In his service he has earned 20 rewards for his meritorious service.

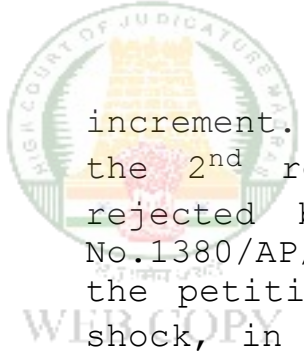
3.When he was working as constable at Seithur Police Station of Virudhunagar District, on 18.04.2003, at about 18.00 hrs, he was posted for Bandhopasth duty at 'Thalavaipuram' Temple. When he was on Bandhopasth, the Sub-Inspector of Police Mr.Kannan had called him and allotted another duty of 'Night Rounds'. He explained that as he was posted for Bandhopasth duty, it is physically not possible for him to do simultaneously the 'night rounds' duty also. Moreover on that day he was un-well and hence he requested the Sub-Inspector of Police to post any other constable who is not in Bandhopasth duty for night rounds. When he was explaining with the Sub-Inspector of Police, the Head Constable Mr.Angeeswaran alone was present in the police station. Further, when he was making his appeal to the Sub-Inspector of Police, the Inspector of Police namely Mr.Rajamannar came to the police station. The Sub-Inspector of police has threatened the petitioner that if he gives such explanation, he will complain the Inspector. The petitioner voluntarily went to the Inspector of Police and explained the fact. Aggrieved on his reporting to the Inspector of Police, the said Sub-Inspector of Police Mr.Kannan reported falsehood to the Inspector as if he scolded him with filthy words. Immediately the Inspector of Police on sudden provocation assaulted on the face of the petitioner. Out of this inhuman assault, the petitioner lost a teeth and he suffered bleeding injury. In order to get over from the assault and the criminal act of the said Inspector of Police Mr.Rajamannar, and the Sub-Inspector of Police have conspired and foisted a case against him as if he was in a drunken mode and scolded the Inspector of Police and the Sub-Inspector of Police. Immediately



they have registered a false case in Cr. No.81/2003 under Sec.4 (1) (J) of Tamilnadu Prohibition Act r/w Sec.75 of Madras City Police Act. Subsequently, on 06.07.2012 they have dropped the criminal case. On 06.06.03 they have initiated departmental proceedings.

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4.The 3rd respondent by his Proceedings under Rule 3(b) of the Police Subordinate Services (Disciplinary and Appeal) Rules, 1955, issued the Charge Memo No.56/03 dated 01.07.2003. Immediately the petitioner sent his explanation for the charges made against him. Only one charge was framed against him by holding that on 18.04.2003 when the petitioner was on duty, at about 22.00 hrs at Seithur Police Station, he misbehaved with the reprehensible conduct with the Sub-Inspector of Police and Inspector of Police. He made his detailed explanation that as because he was assaulted by the Inspector of Police, Mr.Rajamannar and in order to escape from their illegal activities, he conspired with the Sub-Inspector of Police and made the complaint as if the petitioner was in a drunken mood and misbehaved with higher officers. The Sub-Inspector of Police and the Inspector of Police have obtained the Certificate of Drunkenness from the doctor by using their influence. At the same time, in his explanation, the petitioner narrated that he was not well on 18.04.2003 for that he had taken the medicine "Benadril", as advised by the doctor. Further, in this context, the said Inspector of Police has deposed before the Enquiry Officer that he was not accompanied him for obtaining the medical certificate. But the evidence has categorically deposed that the said Inspector of Police did not accompany and was not present at the time of the issuance of medical certificate. Moreover the Head Constable Mr.Angeeswaran has deposed that Police Constables 1204, 2146 and 2143 along with the Inspector of Police were also accompanied with the petitioner to get the medical certificate from the doctor. There are other contradictions that the police constables 1204, 2146 and 1204 were present at the time of the incident. But it was categorically proved that at the time of the incident, except the said Head Constable Angeeswaran none other constable were present at the police station. Hence by considering all the evidence and the significant aspect of the important witness being the Driver of the Inspector of the Police, the Enquiry Officer by his 22 pages of Enquiry Report has exonerated the petitioner from the charges leveled against him. But the Disciplinary Authority has differed with the findings of the Enquiry Report and without discussing any of the findings of the Enquiry Report; the Disciplinary Authority has arbitrarily concluded that the petitioner committed the delinquency. The order of punishment was passed at the instance of the said Inspector of Police and the Sub-Inspector of Police. Without any speaking order, the Disciplinary Authority has passed the order of punishment dated 07.02.2004, by stoppage of increment for postponing the increment for a period of one year and the period of postponing shall operate the postponing of the future



increment. Thereafter the petitioner preferred an appeal before the 2nd respondent by his appeal dated 01.12.2004, which was rejected by the 2nd respondent by his Proceedings in No.RC No.1380/AP/II(3)/2005 dated 28.01.2005, without considering any of the petitioner's grounds of appeal and passed the order, to his shock, in a printed format. Against the order of 2nd respondent, the petitioner had preferred Revision before the 1st respondent by the Revision Petition dated 23.09.2011, which was also rejected by the Government by G.O.(2D) 290 dated 01.08.2013, simply rejecting the revision on non-application of mind. Against the same the instant writ petition is filed before this Court.

5.The respondents have filed counter affidavit and contended that the petitioner was placed under suspension with effect from 19.04.2003 FN for his reprehensible conduct in having misbehaved with Thiru.Kannan, Sub-Inspector of Police, Seithur Police on 18.04.2003 at 22.00 hrs., in drunken state of mind and thereby involved in a Criminal case in Seithur Police Station Cr.No.81 of 2003 u/s 4(1) (j) TNP Act and 75 MCP Act. subsequently, the Deputy Superintendent of Police, Rajapalayam has been nominated to conduct preliminary enquiry against the writ petitioner. In the preliminary enquiry report, the Inquiry officer has stated that prima-facie case has been made out against the petitioner and also recommended to initiate the departmental disciplinary proceedings against the petitioner. Accordingly, a charge under rule 3(b) of Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules, 1955 was framed against the petitioner.

6.Having gone through the connected records, the then Superintendent of Police, Virudhunagar District nominated the Deputy Superintendent of Police, Sivakasi Sub-Division as Inquiry Officer in the departmental disciplinary proceedings. The Deputy Superintendent of Police, Sivakasi Sub-division conducted the enquiry and examined the witnesses and recorded the statements of prosecution witnesses and also recorded the statement of defence witnesses produced by the petitioner. The petitioner also submitted his written explanation to the Inquiry Officer on 09.10.2003. The Inquiry Officer concluded that the Charge framed against the petitioner was not proved vide minute dated 31.10.2003 and forwarded the same to the disciplinary authority. The Disciplinary authority had disagreed with findings of the Inquiry and hence, a dissenting minute dated 27.12.2003 was drawn on the grounds that the Inquiry Officer had failed to take strong points in support of prosecution and the same was served on the petitioner on 09.01.2004 with instruction to submit further written representation on the dissenting minute. The petitioner also submitted further written representation on 19.01.2004. After

<https://hcservices.ecourts.gov.in/hcservices/> through the records of the disciplinary proceedings, the competent disciplinary authority awarded a punishment of "Postponement of next increment for a period of one



year and the period of postponement shall operate to postpone future increments".

7. Feeling aggrieved over the order passed by the 3rd respondent, the writ petitioner has filed the present writ petition as against the orders passed by the 1st to 3rd respondents by praying for the quashment of those orders. At the outset, the case of the petitioner is that he was deputed in Bandhopasth duty at Thalavaipuram temple on 18.04.2003. When he was on the said duty, the Sub-Inspector of police one Mr. Kannan directed him to present before him and subsequently, he allotted the simultaneous Night-Rounds duty. This fact has not been disputed by the respondents concerned. Apart from that this particular incident is the genesis of the case. However, in accepting the Night-Rounds duty, 2 different versions have been placed before this court. So this court is constrained to appreciate the evidence adduced before the Enquiry Officer during the disciplinary proceedings.

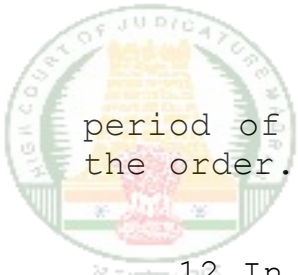
8. In the disciplinary proceedings, totally 8 witnesses have been examined and 17 exhibits have been marked on the side of the prosecution. In turn on the side of the petitioner 1 witness was examined and 1 exhibit is marked, which the medical prescription is given by one Dr. Ponramakrishnan. In addition to that it is to be noted here that the petitioner already suffered nearly 80 days of suspension. Further when the enquiry report dated 31.10.2003 is subjected for careful perusal there is no corroborative evidence is available in proving the alleged offence of reprehensible behaviour of the petitioner at the Sub-Inspector of police and Inspector of Police. Further as for as the consumption of alcohol, no cogent and reliable evidence is available to warrant modification of the finding of the Enquiry Officer. The exhibit marked on the side of the petitioner and its genuineness is not disputed by the respondents. It is the admitted case that though the petitioner allegedly refused to subject himself for medical examination, no charge has been framed in this for his non-cooperation. Further the criminal case resisted against the petitioner in Crime No. 81/2003 on Seithur Police Station was taken on file in S.T.C.No.4844 of 2003 by the learned Judicial Magistrate, Rajapalayam. But the order of the said Court dated 06.07.2012, would show that all the further proceedings have been stopped without proceeding further under section 258 of Code of Criminal Procedure. Though it is stated that in view of the disciplinary proceedings initiated on the petitioner and as recommended by the 3rd respondent, the criminal prosecution is stopped, it would considerably affect the credibility of the initiation of criminal prosecution. Further, the stopping of criminal prosecution would definitely have a bearing on the genuineness of initiation of criminal prosecution.



9. That apart the learned counsel for the petitioner draw the attention of this Hon'ble Court that the Inspector of Police was though, allegedly very well available in the police station, at the relevant point of time, he did not accompany the petitioner to hospital get the medical certificate to substantiate the intoxicate mind-state of the petitioner. On the other hand, this court put its anxious consideration into the vital factor that the assault on the petitioner that too by the Inspector of Police. It is not disputed by the respondents that the petitioner was not subjected for physical assault by the Inspector of Police. Though the 3rd respondent has filed counter affidavit, he has not even denied the allegation of the petitioner that he was assaulted by the Inspector of police and in order to escape from the act of assault, the false criminal case is registered. This would create doubt over the initiation of prosecution on the petitioner.

10. At the same time the learned counsel for the Respondents submitted that in the departmental enquiry there is cogency in adducing the evidence and the occurrence is also proved through the prosecution witness. At the same time through the evidence of PW5, the presence of Head Constables 1204, 246 and Grade I Constable 2143 who are all witness in the disciplinary proceeding is doubtful and the same is found by the enquiry officer. The respondent has not put forth any explanation, reasonably in the counter affidavit to ascertain the presence of those witness. Once the prosecuting authority is failed to prove the charge, the prosecution has no legs to stand in making allegation which would badly affect the service of the petitioner. In addition to that it is not acceptable to assign to alternative duties in a same time knowing fully well that the same is not possible. So, the dissenting minutes issued by the 3rd respondent dated 27.12.2003 is unacceptable and unsustainable also. So, the punishment of postponement of next increment for a period of 1 year and the postponement shall operate the postponement to future increment is unsustainable as because of lack of credibility in accepting the evidence on the side of the department. So no reliance can be put forth in accepting case of the prosecuting.

11. Therefore, I have no other option except to accept the case of the petitioner by setting aside the impugned order of the respondents. Accordingly the order passed by the 1st respondent by his ZIO (2D390) dated 01.08.2013 by conforming by the order passed by the 2nd respondent in his proceedings in R.C.No.1380/AP/II(3)/2005 dated 28.01.2005 and the order of the 3rd respondent in <https://hccresnecourts.gov.in/10393> dated 07.02.2004 are all quashed and the respondents also directed to provide the petitioner all the consequential attendant service and monetary benefits with in a



period of six weeks from the date of the receipt of the copy of the order.

12. In the result, the writ petition is allowed. There is no order as to cost.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Department of Home Affairs,
Secretariat, Fort St. George,
Chennai.

2. The Director General of Police,
Kamarajar Salai,
Chennai.

3. The Superintendent of Police,
Virudhunagar District.

4. The Enquiry Officer,
Deputy Superintendent of Police,
Sivakasi, Virudhunagar District.

+1CC to Mr. J. Suresh, Advocate Sr.No.75002
+1CC to Spl. Government Pleader Sr.No.79031

Gjm/GSV/PM/SAR-I-23.12.16-7p-7c

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