

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 05.09.2017

JUDGMENT PRONOUNCED ON: 18.12.2017

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND

THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.313 of 2015

1. The Commandant, Regimental Centre,
Avadi, Chennai.
- 2.The Deputy Inspector General of Police,
Armed Police, Chennai - 10
- 3.The Inspector General of Police,
Armed Police, Chennai - 10
- 4.The Director General of Police,
Chennai-2.
- 5.The Secretary to Government, Home
Department, [PoI-9] Fort St.George,
Chennai-9.Appellants/Respondents

... Vs ...

G.SampathRespondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent,
against the order dated 8.4.2014 and made in Writ Petition
No.27443 of 2005 on the file of Hon'ble High Court.

WP.No.27443/05:Writ Petition having been transferred from the
file of the Tamil Nadu Administrative Tribunal in O.A.No.3409/99
is filed to call for the records of the respondents 2 to 5 in
connection with the orders passed in (1) PR No.2/97dt.17.3.97
(2) C.No. A2/1729/IG/97 dt. 28.7.97 (3) RC.No. AP
III/2/162876/359/97 dt. 25.11.97 and (4) GO 2D No.261 Home
Police 9 Dept. dt. 6.11.98 and quash the same and direct the
respondents to reinstate the petitioner into service and grant
him all consequential service and monetary benefits.

For Appellants : Mr.R.Prathapkumar, AGP
For Respondent : Mr.K.S.Govindaprasad
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JUDGMENT

RMT.TEEKAA RAMAN, J.

Challenging the correctness of the order passed in W.P.No.27443 of 2005, dated 08.04.2014, the State has preferred this appeal.

2. The case of the petitioner is that the petitioner joined as directly recruited Gr-II Police Constable in Tamil Nadu Special Police on 25.10.1993. While working so, the petitioner was served with suspension order dated 05.01.1996 stating, he was involved in various criminal cases and was convicted and underwent punishment before he entered into the police department and the said facts were suppressed by him. Thereafter, he was issued with charge memo for the same charges. The petitioner submitted his explanation by denying his involvement in any criminal case. The same was followed by departmental enquiry, in the course of which, four witnesses were examined on the side of the department and four witnesses were brought from the concerned police station, on the file of which, so called criminal cases were said to be registered.

3. According to the Respondent/Writ Petitioner, the Enquiry Officer, on the basis of the oral evidence, arrived at a conclusion that the charges levelled against the petitioner stood proved and accordingly submitted his enquiry report to the disciplinary authority. The disciplinary authority, without duly considering the explanation offered by the petitioner and the nature of the defence raised therein, agreed with the finding of the Enquiry Officer and imposed the extreme punishment of dismissal from service. Aggrieved by the same, the petitioner preferred an appeal and the appellate authority has also confirmed the same, which compelled the petitioner to approach the Tamil Nadu Administrative Tribunal by way of O.A.No.3409 of 1999 for the relief as stated supra and the same was thereafter transferred to this Court and renumbered as Writ Petition No.27443 of 2005.

4. The Appellants/official respondents, filed a counter, stating that after the appointment of the Writ Petitioner on 25.10.1993, he completed the training on 25.04.1994 in Kancheepuram Police District. Based upon the informations collected and the documents, it is found that the Writ Petitioner was involved in Civil, Criminal cases which he has

suppressed and accordingly, a charge memo in P.R.No.1/1996 dated 05.02.1996 was issued by the 1st appellant herein. The Article of charge is that:

" Even though you have indulged in several theft cases during the year 1982 and 1983, before joining the Special Police Force as a Constable, at the time of your appointment, when you were asked to state whether you have indulged in any criminal case and subjected to punishment, you have stated 'No'. Thus, you have furnished false information about your antecedent and thereby brought disrupt to the police force".

5. Based upon the Enquiry Report, the Disciplinary Authority passed an order of dismissal from service against which, the Writ Petitioner has preferred an appeal to the Appellate Authority-third respondent which was rejected by an order dated 28.07.1997 and as against that, Review Petition has been filed to the Director General of Police-4th respondent, which was dismissed on 25.11.1997. As against which, the Writ Petitioner seems to have filed Mercy Petition to the 5th appellant-Government of Tamil Nadu, Home Department, which was also dismissed on 6.11.1998. Thereupon, he has filed O.A.No.3409 of 1999 before the Tamil Nadu Administrative Tribunal and subsequently, transferred to this Court and re-numbered as W.P.No.27347 of 2005.

6. It appears that the learned single Judge is of the considered view that there was no fair enquiry and violation of the principles of justice and allowed the Writ Petition. Hence, this Writ Appeal by State.

7. After hearing the rival contentions of both the parties and also taking note of the order passed by the learned Single Judge, it appears from the Enquiry Report that one P.W.1 S.Ramanathan, Sub-Inspector of Police, Nannilam Police Station, has given evidence to the effect that the petitioner was involved in various cases pertaining to several criminal in nature and undergone the sentence by the respondent herein on the file of Nannilam Police Station. While, P.W.2 T.S.Devadoss, Sub-Inspector, Perambalur, Nagapattinam District, has deposed regarding other criminal cases in which, the Writ Petitioner was charge sheeted. After investigation, the respondent was found to have been convicted and sentenced to undergo the punishment as stated therein. P.W.,4 Manikavasagam, Former S.I of Police, Thanjavur Town South P.S., has deposed regarding the verification role dated 11.04.1993 as to the facts of the convictions in criminal cases during the year 1982 and 1983, which are found to be suppressed in the information furnished to the department.

8. Based upon the above statement of witnesses and also taking note of the judgement copies relating to Crime No.182/81, under Section 379 of I.P.C; in Crime No.197/82 sec.379 I.P.C; Crime No.271/82 Sec.379 I.P.C and Cr.No.285/82 Sec.65 M.C.P.Act in C.C.73/83, 74/83,101/83 and 118/83 dated 26.02.83; so also, the criminal cases arising out of the crime No.117/82 under Section 379/82 I.P.C in calendar case C.C.No.177/82,185/82, 193/82 orders of the Judicial Magistrate, Tirukazhukundram, and also taking note of the Ex.P.5 and Ex.P.6 finger print reports from the FPB of Chennai, the Enquiry Officer has held that the Writ Petitioner has been involved in various criminal cases and also suffered conviction and sentences and the identification of the finger print has also been tallied with Ex.P5 and Ex.P6 and based upon the statement of P.W.4, Manikavasagam who has verified the statement relating to column-1 to 28 in the verification role, the Enquiry Officer, in his report, has stated the charges are proved.

9. On a further check up with single Digit Finger Bureau Nagapattinam and Finger print Bureau, Madras, it was revealed that he was also involved in Thirukalukundram Police Station Cr.No.148/82 u/s 60 MCP Act and Crime No.177/82 under Section 379 I.P.C and 178/82 under Section 379 I.P.C; Nannilam P.S. Cr.No.285/82 under Section 379 IPC and Perambur P.S. Cr.No.215/83, 216/83, 217/83 under Section 457 and 380 I.P.C. In the last three cases, he was convicted to undergo Rigorous Imprisonment for 6 weeks by the Judicial Magistrate, Mayiladuthurai, on 6.11.1984 and accordingly, issued the articles of charge alleging that the Writ Petitioner has deliberately not informed the factum of his involvement in criminal cases and conviction passed by the Judicial Magistrate and sentence underwent by him in his enlistment application form.

10. The learned Single Judge failed to note that the involvement of the respondent/petitioner herein in the following criminal cases:-

Sl No.	Name of the Police Station, Crime No and Section of I.P.C	Details of Sentence / disposal of the case
1.	Nannilam P.S. Cr.No.7/82 u/s 379 I.P.C	Sentenced to undergo Rigorous Imprisonment for 35 days by JM, Thiruvarur in C.C.No.101/82 on 20.07.82 and released u/s.428 of I.P.C

Sl . No.	Name of the Police Station, Crime No and Section of I.P.C	Details of Sentence / disposal of the case
2.	Nannilam PS Cr.Nos 182/81;197/82;271/82 u/s 379 I.P.C Cr.No.285/82 u/s 65 MCP Act	Released under 4(1) of P.O Act in C.C.73/83, 74/83, 101/83, 118/83 to be of good behaviour for one year on executing a bond for Rs.1000/-

11. After perusing the proceedings of the Domestic Enquiry and the evidence placed thereon, we do not find that the finding recorded by the learned Single Judge is a reflection of the Domestic Enquiry. While, we find that a fair opportunity was given to the Writ Petitioner and the respondent herein was given opportunity to cross examine the parties and also sufficient time has been given to him to defend and put forward his case and hence, we do not find any violation of principles of natural justice and accordingly, the said finding of the learned Single Judge is hereby vacated.

12. After going through the various records and also the judgement of conviction and sentence passed in several cases against the Writ Petitioner which has been narrated and extracted above and also taking note of the judgment of the Hon'ble Supreme Court reported in 2006 (8) SCC 471 (Avtar Singh V.Union of India and others), the proposition that has been held in Para 34 of the said judgement, reads as follows:-

"...34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects...".

After going through the impugned order/award and being satisfied that the second appellant has taken into consideration the entire report and the nature and duty of the Police Constable, has held the charges are proved. Hence, we do not find any reasons to interfere with the well merited order passed by the first appellant herein which has been confirmed by the appellants 2 to 5 by way of appeal or revision or mercy petition and the order passed by the learned Single Judge does not stand to reason called for interference by us.

13. Accordingly, we allow the appeal by setting aside the order of the learned Single Judge, dated 8.4.2014 and made in

Writ Petition No.27443 of 2005 and the impugned order dated 27.03.1997, passed by the first appellant is hereby confirmed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Commandant, Regimental Centre,
Avadi, Chennai.
 - 2.The Deputy Inspector General of Police,
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 - 4.The Director General of Police,
Chennai-2.
 - 5.The Secretary to Government, Home
Department, [PoI-9] Fort St.George,
Chennai-9.
- +2 ccs to Mr.K.S.Govinda Prasad Advocate sr 898
+1 cc to Govt Pleader sr 10820

W.A.No.313 of 2015

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