

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No. 13377 of 2011

&

MP.No.2 of 2011

C.Kamaraj

... Petitioner

-Vs-

1.The Superintendent of Police,
Thanjavur District, Thanjavur.

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

3.The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore,
Chennai.4

..... Respondents

Prayer:

This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the respondents in connection with the impugned order passed by the respondents 1 to 3 in PR.No.98/2006 dated 09.08.2008, C.No.B2/18548/2008 dated 12.01.2009 and RC.No.137042/API(1)/2009 dated 19.02.2011 respectively and quash the same.

For Petitioner : M.Muthappan

For Respondents : Mr.S.V.Duraisolaimalai

Additional Government Pleader

O R D E R

The petitioner has approached this Court seeking the following relief:

'To issue a Writ of Certiorari to call for the records of the respondents in connection with the impugned order passed by the respondents 1 to 3 in PR.No.98/2006 dated 09.08.2008, C.No.B2/18548/2008 dated 12.01.2009 and RC.No.137042/API(1)/2009 dated 19.02.2011 respectively and quash the same'.

2.The case of the petitioner is as follows:

The petitioner was appointed as Grade-II Police Constable by way of direct recruitment, by the Tamilnadu Uniformed Services Recruitment Board in the year 1994. On successful completion of training of probation, the petitioner was posted in the District Armed Reserve, Perambalur in June 1998. Thereafter, he was transferred to District Armed Reserve, Trichy District in June 2000. Subsequently, the petitioner was promoted as Grade-I, Police Constable in June 2004. According to the petitioner, he had received several rewards for his meritorious service and did not come under any adverse notice while discharging his official duties. According to the petitioner, he was falsely implicated in a criminal case and he was shown as accused for committing offences under various Sections of the Indian Penal Code. However, criminal cases foisted against him ended in acquittal in CC.Nos.812 & 819 of 2006 dated 09.02.2007. After acquittal of the petitioner, he was issued with a departmental charge memo under Rule 3(b) of the Tamilnadu Police Subordinate Service Rules. The charges framed against the petitioner were that he absented himself for duty without prior permission from the forenoon of 15.12.2005, after availing one day casual leave on 14.12.2005 and for the act of involvement in a rioting occurred in Punnianallur Big street in Ayyampettai Police Station limits while assaulting one Ramanathan on 14.12.2005. The said Ramanathan was also happened to be a member of the police service. An enquiry was conducted against both the petitioner and the said Ramanathan, however, in view of the absence of any material further action was dropped against the said Ramanathan.

3.As regards the petitioner was concerned, a departmental enquiry was completed and the enquiry report was submitted holding the charges proved. Thereafter, the enquiry report was furnished to the petitioner and on receipt of his explanation, the disciplinary authority namely the first respondent herein has imposed a punishment of postponement of increment on 09.08.2008 for a period of two years with cumulative effect on the petitioner.

4.Against the order passed by the disciplinary authority, the petitioner seems to have preferred an appeal on 15.09.2009. However, the said appeal was returned without any order being passed on merits on the ground that the appeal was preferred beyond the period of limitation. Therefore, the petitioner was constrained to prefer a petition to the third respondent and in response to the petition, the third respondent issued a show cause notice to the petitioner on 22.03.2010 stating that the petitioner was involved in a quarrel by assaulting a member of the force and therefore, a punishment imposed on him by the

disciplinary authority, was not commensurate to the gravity of misconduct proved against him.

5. On receipt of the show cause notice, the petitioner has submitted an explanation on 13.04.2010 denying the charges altogether. However, the third respondent notwithstanding the explanation, passed an order on 19.02.2011 by enhancing penalty of punishment as 'reduction in rank' for a period of two years. The orders passed by the respondents 1 to 3 are put to challenge in this writ petition.

6. At the outset, Mr. M. Muthuppan, the learned counsel for the petitioner would submit that it is a case of no evidence in the enquiry and therefore, the punishment originally imposed by the disciplinary authority namely postponement of increment for a period of two years with cumulative effect cannot be sustained in law at all. Alternatively, the learned counsel would submit that even otherwise the impugned order of the third respondent dated 19.02.2011 enhancing penalty from postponement of increment to reduction in rank for a period of two years cannot be countenanced both in law and on facts for the reasons that the third respondent while passing the order had simply relied on the contents of the First Information Report, which was the subject matter of criminal proceedings and the criminal proceedings eventually ended in acquittal.

7. The learned counsel for the petitioner in support of his contention would also draw the attention of this Court to the enquiry proceedings stating that there was hardly any piece of evidence to establish the charges framed against the petitioner and in the absence of strong piece of evidence, the report of the enquiry officer cannot be relied upon for the purpose of imposing penalty. More over, even assuming that there was some piece of evidence, the disciplinary authority imposed penalty of postponement of increment for a period of two years with cumulative effect on the basis of gravity of the charges framed against the petitioner. That being the case, the third respondent passed orders in enhancing the penalty on the basis of the flawed findings of the departmental enquiry cannot be considered as a valid punishment in the eye of law and therefore, the same is liable to be interfered with.

8. Upon notice, Mr. S. V. Duraisolaimalai, learned Additional Government Pleader entered appearance and filed a detailed counter affidavit. The case of the respondents was clearly spelt out in a nutshell in paragraph No. 7 of the counter affidavit, which is extracted below:

7. It is most respectfully submitted with reference to grounds that the orders passed by the respondents 1 to 3 are according to the provisions laid down in the

statutory rules. All the 3 orders are maintainable in law and on facts. The charges against the petitioner were held proved based on the evidences adduced during the oral enquiry. The private witnesses gave some contradictory evidences during the cross examination for the reasons known to them. Further preponderance of probability was there. Hence the orders awarding punishment by the first respondent is correct. As already submitted the second respondent is having no power to condone the delay of 30 days as contended by the petitioner. The issuance of show cause notice and passing orders on it by the third respondent is proper. She enhanced the punishment as it was felt that the punishment is very incommensurate to the nature of the charge which was proved based on the proper evidences. The preponderance of probability is enough in departmental enquiries, but cent percentage proof is not necessary. He cannot claim by comparing PC 1720 Ramanathan. Because PC 1720 Ramanathan was really affected person and the charges against him was not held proved. There is no wrong to mention in the show cause notice that it has been decided to enhance the punishment. All the witnesses in their depositions (Chief) adduced evidences that they saw the petitioner at the scene of incident. But they have given some contradictory evidence during the cross examination. Hence their main evidences cannot be ruled out. As already submitted there was no partiality in conducting enquiry in the departmental proceedings against the petitioner and another constable. The punishment awarded by the third respondent to the petitioner is commensurate. As the petitioner involved in the criminal conspiracy and it was held proved during the departmental enquiry, the punishment is proportionate''.

9. The learned Additional Government Pleader appearing for the respondents would therefore, submit that the orders passed by the respondents 1 & 3 are perfectly valid and the authorities have taken into consideration the real position and also the type of penalty to be imposed with reference to the charges against the petitioner. In the said circumstances, he would pray that no interference is called for from this Court.

10. This Court after having evaluated rival submissions and after perusing the relevant materials and the pleadings placed on record is of the considered view that the contentions raised on behalf of the petitioner are unacceptable and are contrary to the facts as found in the materials. First of all, the contention that there is no evidence available in the

departmental enquiry as against the petitioner cannot be correct for the simple reason that there was enough material available in the departmental enquiry for holding the charges proved against the petitioner.

11. Although the other contention on behalf of the petitioner that the second respondent had returned the appeal without exercising his discretion for condoning the delay in filing the appeal, it must be seen that in view of the return of the appeal, no prejudice was caused to the petitioner since his further petition to the third respondent was considered on merits and in accordance with law by the third respondent. In fact, the third respondent, as could be seen from the order, by a detailed analysis, has rightly held that the original punishment of postponement of increment for a period of two years with cumulative effect was not sufficient in respect of the gravity of charges proved against the petitioner. The third respondent has passed a well considered order on 19.02.2011 and clearly adverted to the evidence let in in the departmental enquiry and finally held that the charges were fully established as against the petitioner and therefore, proceeded toward that the initial punishment imposed on the petitioner was not commensurate on the gravity of the mis conduct established against the petitioner. In fact, the third respondent had concluded that the charges against the petitioner was so serious in nature that he was not fit to be retained in disciplinary force. However, it appears, he took a lenient role in imposing the penalty reduction in rank only for a period of two years. This Court, in the circumstances as explained above, does not find any infirmity both in the orders passed by the respondents 1 & 3, particularly, the order passed by the third respondent, since the same is a well considered order and does not require any intervention. In the said circumstances, the writ petition lacks merits and substance and therefore, the same is liable to be dismissed.

12. Accordingly, the writ petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

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Sub Assistant Registrar

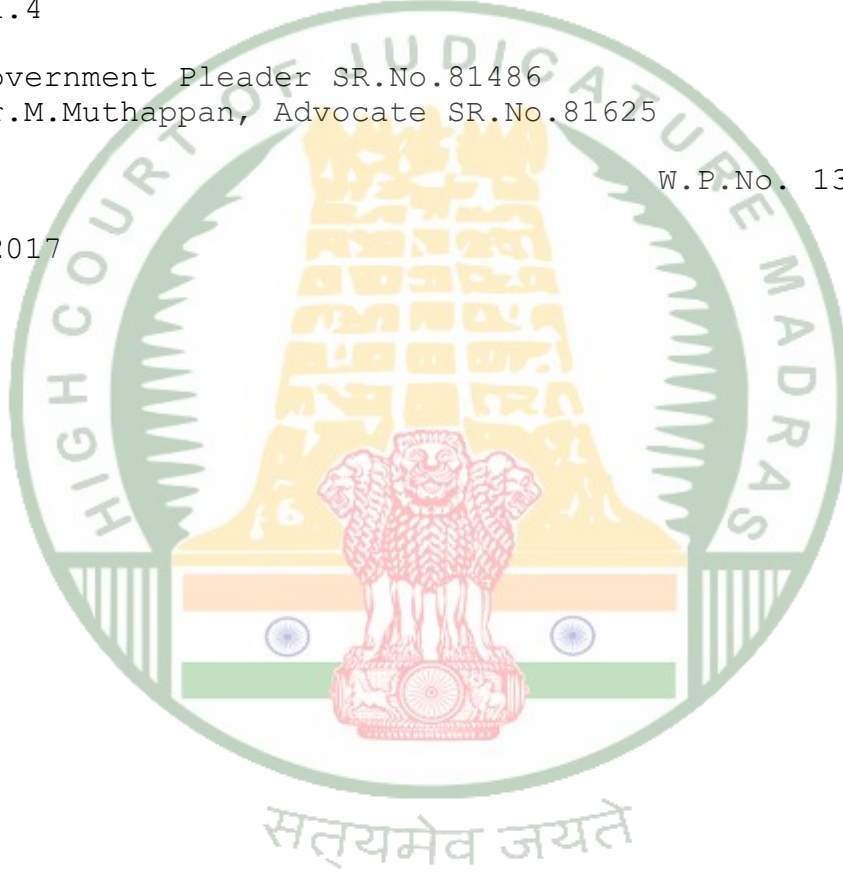
To

- 1.The Superintendent of Police,
Thanjavur District, Thanjavur.
- 2.The Deputy Inspector General of Police,
Thanjavur Range, Thanjavur.
- 3.The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore,
Chennai.4

+1cc to Government Pleader SR.No.81486
+1cc to Mr.M.Muthappan, Advocate SR.No.81625

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