

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No10431 of 2015

Subramanian

..Petitioner

vs.

1.The Director General of Police,
Tamil Nadu, Chennai-04.

2.Deputy Inspector General of Police,
Villupuram Range,
Villupuram District, Villupuram.

3.The Superintendent of Police,
Cuddalore District, Cuddalore.

4.The Deputy Superintendent of Police,
Armed Reserve, Cuddalore District,
Cuddalore.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records relating to the proceedings of the first respondent in Rc.No.194597/AP.1 (2)2010 dated 06.10.2014 and quash the same and consequently direct the first respondent to pay all backwages and arrears payable to the petitioner.

For Petitioner : Mr.N.Vijaya Baskar
for M/s.Law Vision

For Respondents : Mr.K.Dhananjayan,
Special Government Pleader

O R D E R

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner, in the affidavit filed in support of this writ petition would aver among other things that while he was working as Armed Reserve Constable, he along with one

Arumugam were put on escort duty to take two persons, namely Eruthi @ Eruthaiyaraj and Tulasi @ Tulasingam to the IX Metropolitan Court, Saidapet, Chennai for the purpose of remand extension and accordingly, the said persons were taken in a public transport bus and after remand extension was over, the petitioner as well as another Armed Reserve Constable Arumugam along with those persons/accused were waiting to board the bus to Cuddalore and at that time, the accused developed quarrel with each other and some of their friends also joined them and taking advantage of the same, the accused, namely Thulasingham tried to escape by removing the handcuff and tried to mingle with the crowd and therefore, the petitioner as well as another Armed Reserve Constable made a hot chase and the AR Constable, namely Arumugam also fired from his weapon, but they could not catch the fleeing accused. Thereafter, a complaint was lodged on the file of the Guindy Police Station, based on which a case in Crime No.1646 of 1997 was registered for the alleged commission of offences under Section 224 and 506(i) IPC and the investigation also revealed that the facts narrated by the petitioner and another AR Constable were found to be true. The third respondent placed the petitioner under suspension and also initiated departmental proceedings in P.R.6/98 and after enquiry, the petitioner was imposed with a punishment of reduction in time scale of pay by two stages for two years with cumulative effect, vide order dated 21.10.1998. The petitioner also submitted a representation to the first respondent in the form of mercy petition and it was dismissed, vide impugned order dated 06.10.2014 and challenging the legality of the same, the petitioner has come forward with this writ petition.

3. The learned counsel appearing for the petitioner would submit that normally the accused persons, for the purpose of remand extension, will be taken in police van and admittedly, the petitioner, who was on escort duty, was directed to take them in a public transport bus and after extension, they were waiting in the bus stop for boarding bus to Cuddalore and at the time, the accused quarreled with each other and some of their friends also joined and taking advantage of the situation, they tried to flee away and a hot chase was made and at that time, another AR Constable, namely Arumugam fired from his weapon and however, the accused managed to escape and later on, they were caught and convicted also and taking into consideration the petitioner's past record of service, except for the present charge memo, prays for appropriate orders for modification of the punishment.

4. Per contra, Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents has invited the attention of this Court to the counter affidavit of the respondents and would submit that the petitioner along with one Arumugam, AR Constable was entrusted with duty to escort accused persons for the purpose of remand extension and since they failed to discharge their duties properly and effectively, they were

imposed with punishment of reduction in time scale of pay by two stages for two years with cumulative effect, after following due process of law and though they are to be visited with major penalty, the Disciplinary Authority, taking into consideration, the past record of service, was lenient in imposing such minor punishment and would further add that in the matter of proportionality of punishment, this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, may not interfere and prays for dismissal of this writ petition.

5. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

6. A perusal of para 4 of the counter affidavit filed by the respondents coupled with other facts and circumstances would disclose that two accused persons were taken in a public transport bus from Cuddalore to Chennai and they were produced before the IX Metropolitan Magistrate Court, Chennai for extension of remand and the petitioner and another AR Constable, namely Arumugam were entrusted with the duty of escorting them and they were waiting for bus after remand to take them back to Central Prison Cuddalore and at that time, the remand prisoners started quarreling with each other and some of their friends also joined and taking advantage of the situation in the locality, they tried to flee away and they were chased and one of the AR Constables, namely Arumugam fired upon them by using his weapon and despite best efforts, both of the accused had escaped and subsequently, they were apprehended and dealt with in accordance with law.

7. Normally, accused persons will be taken in police van for the purpose of remand in order to maintain safety and security and however, in the case on hand, they were entrusted to the petitioner and another AR Constable without any police vehicle and they were forced to take them in public transport bus and after remand, they were waiting for bus for the purpose of lodging them in Central Prison, Cuddalore and at that time, the incident had happened. The materials placed before this Court would also indicate that the petitioner and another AR Constable took best efforts to nab and apprehend them, but unfortunately their efforts failed. It is not in serious dispute that subsequently, the escaped accused were apprehended and they were dealt with in accordance with law. Though the jurisdiction of this Court under Article 226 of the Constitution of India is limited with regard to proportionality of punishment, this Court in the light of the facts and circumstances, is of the view that the punishment of postponement of increments for two years with cumulative effect is highly disproportionate to the proved charges and therefore, it warrants interference.

8. In the result, this Writ Petition is partly allowed and the punishment imposed on the petitioner is modified to one of postponement of increment for two years without cumulative effect and as a consequence of reduction in punishment, the respondents are directed to confer all consequential financial and service benefits to the petitioner as expeditiously as possible and not later than ten weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner. No costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1. The Director General of Police,
Tamil Nadu, Chennai-04.
2. Deputy Inspector General of Police,
Villupuram Range,
Villupuram District,Villupuram.
3. The Superintendent of Police,
Cuddalore District, Cuddalore.
4. The Deputy Superintendent of Police,
Armed Reserve, Cuddalore District, Cuddalore.

+1cc to M/S. Law Vision, Advocate Sr. 14063
+1cc to the Government Pleader Sr. 14478

W.P.No.10431 of 2015

MP (CO)
VR(14/03/2017)

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