

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.01.2017

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THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN

W.P.No.2294 of 2014
and M.P.No.1 of 2014

R.Balakrishnan

.. Petitioner

Vs

1.The State rep. by
Secretary to Government,
Home Department,
Secretariat, Chennai-9.

2.The Director General of Police,
Kamarajar Salai, Chennai-4.

3.The Additional Director General of Police,
Kamarajar Salai, Chennai-4.

4.The Deputy Inspector General of Police,
Tanjore Range, Tanjore.

5.The Superintendent of Police,
Thiruvarur District, Thiruvarur.

6.The Additional Superintendent of Police,
Prohibition Enforcement Wing,
Thiruvarur District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records in Na.Ka.No.B[1]/2879/13 dated 02.05.2013 passed by the fourth respondent and quash the same and consequently direct the respondents to reinstate the petitioner in service with all monitory and service benefits.

For Petitioner : Mr.T.Sellapandian
for Mr.M.Rajendiran

For Respondents : Mr.K.Dhananjayan
Special Govt. Pleader

O R D E R

By consent, the main writ petition itself is taken up for final disposal.

2. The petitioner was formerly Inspector of Police, challenging the order of removal of service passed by the fifth respondent, has filed this writ petition. The petitioner joined services of Tamil Nadu Police in 28.10.1987 as Sub Inspector of Police and claims that he has rendered sincere and blemish less service to the satisfaction of the superior officers. The petitioner was promoted as Inspector of Police, during the year 2003 and worked in that capacity in various places and was working at Thirukalur Police Station, Thiruvarur District.

3. The petitioner would further aver that while working as Inspector of Police in Agricultural Department Special Cell, Nannilam, he was given additional charge of Peralam Police Station, Thiruvarur District on 25.07.2008 and 26.07.2008 respectively. During that period, an intimation was received from the Government Hospital, Thiruvarur, with regard to the demise of one Abirami, who died on 25.07.2008. Based on the intimation, the petitioner has ordered registration of case in Crime No.489 of 2008 under Section 174 Cr.P.C. and the F.I.R. was registered by one Veludevi, woman Sub Inspector of Police attached to the said Police Station. The petitioner conducted inquest over the body of the deceased on 26.07.2008.

4. However, to the shock and surprise of the petitioner, he was issued a charge memo under Rule 3[b] Tamil Nadu Police Subordinate Service [D&A] Rules, 1955 in P.R.23 of 2010 on 03.08.2010, alleging that though there are enough materials to indicate that the deceased Abirami was set on fire by her husband, the petitioner has ordered registration of case only under Section 174 Cr.P.C., instead of offence under Section 302 IPC and secondly, the relevant records have not been despatched on time.

5. The petitioner has submitted his explanation stating among others that he was in charge of the Police Station only for two days and admittedly, the woman Sub Inspector of Police, who recorded the statement of the said Abirami and the

petitioner was telephonically informed about the same and as such, he cannot be found fault with the registration of F.I.R. under Section 174 Cr.P.C. and it would further contend, insofar as delay of despatch of documents is concerned, admittedly it was despatched much later, inspite of the fact that the regular Inspector of Police took charge and as such, he prays for exoneration.

6. The fifth respondent was appointed as Enquiry Officer and filed his report stating that charges framed against the petitioner were proved and the petitioner was afforded with an opportunity and accordingly, he has submitted his explanation.

7. The fourth respondent as a disciplinary authority has passed an order on 09.09.2011, awarding the punishment of reduction in time scale of pay by one stage for one year with cumulative effect. The petitioner challenging the order of punishment, filed an appeal before the third respondent. The third respondent after going through the appeal papers, passed the following order:

"I have gone through the appeal petition. P.R. filed and all the connected records carefully perused. The punishment of reduction in time scale cannot be imposed after the introduction of Tamil Nadu Revised Scales of Pay Rules, 2009 by which time scale and stage in time scale are not in existence. I therefore, set aside, the orders of the Deputy Inspector General of Police, Thanjavur Range and remit back the P.R. [Punishment Roll] file to him with liberty to pass appropriate orders afresh which could be implementable."

8. The fourth respondent after remand, has passed an order dated 02.05.2013, removing the petitioner from service. Challenging the legality of the same, the petitioner has filed this writ petition.

9. Learned counsel appearing for the petitioner apart from making the facts on submissions, contending that the petitioner being in charge of the Police Station only for two days, cannot be mulcted with the said responsibility of allegation. He would further contend that in any event, the order of removal of service is high and before passing of order of removal from service, a fair and reasonable opportunity has to be afforded to the petitioner and admittedly, it was not done so and it would further contend that this petitioner is now aged about *55 years and therefore, prays for interference.

10. Per contra, Mr.Dhananjayan, learned Special Government Pleader would submit that the scope of interference in exercise

under Article 226 of the Constitution of India is very limited, unless and until, this Court holds that the findings are not based on evidence or perverse, the order of punishment imposed by the disciplinary authority cannot be interfered, and prays for dismissal.

11. This Court has considered the rival submissions and also perused the materials available on record.

12. In the light of the factual submissions made by the learned counsel appearing for the petitioner, this Court has gone through the report of the Enquiry Officer and it would indicate, on receipt of the intimation from the Police outpost attached to Thiruvarur Government Hospital, Veludevi, Sub Inspector of Police was deputed and she has recorded a statement and handed over the same to the Sub Inspector of Police, Rajamani and the said Sub Inspector of Police kept the said report in his drawer and went on leave. When the Head Constable opened the drawer of the Sub Inspector of Police, Rajamani, he found out the statement. Immediately, he telephonically contacted the Sub Inspector of Police, who directed him to register F.I.R. under Section 174 Cr.P.C.

13. Learned counsel appearing for the petitioner on instructions would submit that the Sub Inspector of Police, Veludevi and Rajamani also imposed with punishment of reduction of increment. Though greater responsibility has cast upon the said officials, they have been lightly dealt with. But, who was in charge of the Police Station only for two days was punished, imposing major penalty.

14. As rightly contended by the learned counsel appearing for the petitioner, in the light of the findings recorded by the Enquiry Officer, coupled with the fact that the person who recorded the statement, person who was in charge of the said statement, did not take effective steps to inform the petitioner, who was in charge of the Police Station for two days and only on telephonic information, the petitioner given his instructions to record F.I.R. under Section 174 Cr.P.C. and therefore, he cannot be held solely responsible.

15. Insofar as the belated despatch of documents is concerned, the regular Inspector of Police has belatedly despatched the documents. On the ground also, the petitioner cannot be held primarily responsible.

16. The petitioner preferred an appeal, challenging the original order of punishment and it was remanded by the appellate authority, on the ground, on account of introduction

of Tamil Nadu Revised Scales of Pay Rules, 2009 by which time scale and stage in time scale are not in existence to the disciplinary authority. The disciplinary authority instead of imposing the minor penalty, has imposed minor penalty of removal from service, without assigning any specific reason and without putting the petitioner on notice.

17. In the considered opinion of this Court, in the light of the above facts and circumstances, the punishment imposed on the petitioner is disproportionate to the delinquency. Normally, this Court, while setting aside the order of punishment, would remand the matter to the disciplinary authority for passing appropriate punishment. This Court, taking into consideration above facts and circumstances and prolongation of disciplinary proceedings, is of the view that, no purpose will be achieved by remanding the matter once again to the disciplinary authority and therefore, order of removal from service passed against the petitioner, requires modification.

18. In the result, the writ petition is partly allowed and the impugned order dated 02.05.2013, is set aside and the petitioner is imposed with the punishment of postponement of two increments without cumulative effect. The respondents 1 to 5 are directed to take into consideration that it is a modified punishment and pass appropriate orders as to the reinstatement and settlement for conferment and consequential benefits to the petitioner within a period of ten weeks from the date of receipt of a copy of the order and communicate the decision taken, to the petitioner. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar(CCC)

Dated: 31.01.2017

***Corrected as per order of this
Court dated 27.02.2017 and made herein
Assistant Registrar(CCC)
Dated: 08.03.2017**

True Copy

Sub-Assistant Registrar

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To

1.The Secretary to Government,
Home Department,
Secretariat, Chennai-9.

2.The Director General of Police,
Kamarajar Salai, Chennai-4.

3.The Additional Director General of Police,
Kamarajar Salai, Chennai-4.

4.The Deputy Inspector General of Police,
Tanjore Range, Tanjore.

5.The Superintendent of Police,
Thiruvarur District, Thiruvarur.

6.The Additional Superintendent of Police,
Prohibition Enforcement Wing,
Thiruvarur District.

+1 cc to M/s.M.Rajendran Advocate sr 12506
+1 cc to the Government Pleader sr 3055

To be
Substituted the
order already
despatched

W.P.No.2294 of 2014
and
M.P.No.1 of 2014

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