



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2017

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.5704 of 2010

1. K.Raja (Died)

2. Yogambal

3. Shankar

(Minor rep. By her natural guardian
and mother s next friend yogambal)

4. Sowmiya (Minor)

P2 to P4 are substituted as LR's in the place of
deceased petitioner as per order dated 03.01.2012
in M.P.No.1 of 2011 in W.P.No.5704 of 2010

... petitioners

Vs

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

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

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records of the respondent 1 and 2 in connection with impugned orders passed by them in PR16/2009 u/r 3(b) dated 12.12.2009 and C.No.B2/APPEAL.10/2010 dated 16.02.2010, respectively and quash the same and grant such other further relief as this Court may deem fit and proper under the circumstances arising out of this case.

For petitioners : Mr.T.Ayngaraprabhu

For Respondents : Mr.S.Gunasekaran,
Additional Government Pleader

O R D E R

Heard Mr.T.Ayngaraprabhu, learned counsel for the petitioners and Mr.S.Gunasekaran, learned Additional Government Pleader appearing for the respondents.



2. The petitioners have approached this Court for seeking the following relief,

"To issue a writ of Certiorari, to call for the records of the respondent 1 and 2 in connection with impugned orders passed by them in PR.No.16/2009 u/r 3 (b) dated 12.12.2009 and C.No.B2/APPEAL.10/2010 dated 16.02.2010, respectively and quash the same and grant such other further relief as this Court may deem fit and proper under the circumstances arising out of this case."

3. The case of the petitioners is as follows:-

The petitioner (Deceased) was appointed as Grade I Police Constable in the Nagapattinam District Armed Reserve on 26.12.1988. He was thereafter upgraded as Grade I Police Constable in the year 1999 and further promoted as Head Constable in the year 2004. According to the petitioner, he had received 46 rewards for his meritorious service and had not come to any adverse notice till the charge memo was issued against him on 14.05.2009, Which is the subject matter of the present writ petition.

4. While serving as Head Constable in the Nagapattinam Town, he was directed to perform escort duty of escorting the women prisoner along with the Women Warden Gr.I Tmt.C.Ilanjiyam from Nagapattinam to Central Prison, Trichy on 12.03.2009. After completion of duty, while returning from Trichy to Nagapattinam, the said Women Warden had requested the hand loan of Rs.3000/- for medical expenses of her daughter and she had promised to return the same. According to the petitioner, he withdrew a sum of Rs.5,000/- in ATM Centre in Tanjavur, on the way back and paid Rs.3,000/- to the said Women Warden.

5. When the petitioner had demanded for the return of the money, strangely the Women Warden had complained to the Higher Official that the petitioner had misbehaved with her when they were returning from Trichy Prison on 18.03.2009. On the basis of the complaint, a charge memo was issued under Rule 3(b) of Tamil Nadu Police Subordinate Services (D & A) Rules on 14.05.2009. After holding enquiry on the charges, the Enquiry Officer submitted a report on 20.10.2009, holding the charges proved against the petitioner. Thereafter, the first respondent, the disciplinary authority passed an order on 12.12.2009, imposing a punishment of removal from service, along with the penalty order, copy of the enquiry report also enclosed.

6. An appeal against the said order was preferred to the second respondent on 24.01.2010. However, the same came to be rejected by the second respondent, the Appellate Authority on 16.02.2010. The orders passed by the Disciplinary Authority



dated 12.12.2009 and the Appellate Authority dated 16.02.2010, are put to challenge in the present writ petition.

7. The learned counsel for the petitioners, at the outset, submit that no proper opportunity was given to the petitioner during the course of the enquiry, as the defence of the petitioner was not properly appreciated by the Enquiry Officer, more particularly, the Enquiry Officer did not permit to examine one of the co-passengers who travelled along with the petitioner and the Women Warden, on the return journey from Trichy to Nagapattinam, in support of the defence of the petitioner that the Women Warden/Complainant had borrowed money from the petitioner. He would further submit that even the Enquiry Officer's report was not furnished to him, which is contrary to the Rules and non-furnishing of the report has vitiated the entire disciplinary action.

8. The learned counsel for the petitioners would also submit that the Disciplinary Authority without appreciating the infirmities in the conduct of the enquiry and also the fact that the enquiry report was not furnished to the petitioner, had imposed a penalty of removal from service. The Disciplinary Authority had not even properly applied his mind as to the clean record enjoyed by the petitioner in the past and the petitioner was in receipt of several rewards for his meritorious service. Further, the Appellate Authority has also not properly appreciated the detailed appeal submitted by the petitioner on 24.01.2010, in which he had clearly pointed out that in the absence of examination of the Defence Witness, he was denied the effective opportunity to prove his innocence. Moreover, the non-furnishing of the enquiry report to the petitioner was also pointed out in the appeal.

9. The learned counsel for the petitioners would further submit that unfortunately, the Appellate Authority without addressing the crucial issues pointed out by the petitioner, had passed a non-speaking order on 16.02.2010. The order of the Appellate Authority is also contrary to the relevant disciplinary rules, since the Appellate Authority is mandated to consider every issue that is raised in the appeal including the issue of proportionality of punishment.

10. Upon notice, learned Additional Government Pleader appearing for the respondents, entered appearance and filed a detailed counter affidavit. The learned Additional Government Pleader would contend that the petitioner was charged with the serious act of misconduct and there was no effective defence put up by the petitioner as to any personal enmity between the petitioner and the complainant. In the absence of the same, the complaint was enquired into and found to be genuine and



३.१.२. अनेक प्रकारचे

14. In the said circumstances, for securing the ends of justice, the impugned orders in PR.No.16/2009 u/r 3(b) dated 12.12.2009 and C.No.B2/APPEAL.10/2010 dated 16.02.2010 are set aside and the matter is remanded back to the first respondent-Disciplinary Authority to impose any other punishment other than dismissal or removal or compulsory retirement, on notional



basis. The first respondent is directed to comply with the direction within a period of four weeks from the date of receipt of a copy of this order. On being imposed with the lesser penalty, the legal heirs of the petitioner are entitled to all attendant and consequential benefits that may arise thereof.

15. With the above direction, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

gsk

To

1. The Superintendent of Police,
Nagapattinam District,
Nagapattinam.
2. The Deputy Inspector General of Police,
Thanjavur Range,
Thanjavur.

+1cc to Mr.M.Muthappan, Advocate SR.No.86676

W.P.No.5704 of 2010

EV(CO)
GN(04/01/2018)