

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.29554 of 2010

& M.P. Nos.2 & 3 of 2010

R.Muthukumaran

.... Petitioner

Versus

- 1.The Secretary to Government,
Home(Prison-2) Department,
Fort St George,
Chennai-9.
 - 2.The Additional Director General of Prisons,
Egmore, Chennai-8.
 - 3.The Deputy Inspector General of Prison,
Coimbatore, Coimbatore District.
 - 4.The Superintendent of Prison,
Central Prison, Salem,
Salem District.
- ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a certiorarified mandamus to call for the records relating to the proceedings of the fourth respondent in No.Po.1/2186/2001-2 dated 06.01.2004, the proceedings of the third respondent in No.2204/tha.vu/2004 dated 12.06.2004, the proceedings of the second respondent in No.39260/EW-1/2004 dated 20.10.2004 and the proceedings of the first respondent in G.O.(D) No.989 dated 01.09.2008 and quash the same and consequently to direct the fourth respondent to award all service and monetary benefits to the petitioner including retrospective promotion on par with his junior.

For Petitioner : Mr.P.I.Thirumoorthy

For Respondents : Mr.S.Gunasekaran, AGP

ORDER

The petitioner has approached this Court seeking the following relief:

'To issue a writ of certiorarified mandamus to call for the records relating to the proceedings of the fourth respondent in No.Po.1/2186/2001-2 dated 06.01.2004, the proceedings of the third respondent in No.2204/tha.vu/2004 dated 12.06.2004, the

proceedings of the second respondent in No.39260/EW-1/2004 dated 20.10.2004 and the proceedings of the first respondent in G.O.(D) No.989 dated 01.09.2008 and quash the same and consequently to direct the fourth respondent to award all service and monetary benefits to the petitioner including retrospective promotion on par with his junior''.

2.The case of the petitioner is as follows:

The petitioner joined as Grade II Warder in the Prison Department and he was recruited through Tamil Nadu Uniformed Service Board on 23.03.1998. While the petitioner was working at Central Prison on 19.10.2000, he was posted for para duty between two gates otherwise called second gate. His duty hours was from 1 p.m to 6 p.m.

3. According to the petitioner, normally after 6 p.m till 6 a.m, the following day gate keeper in the main gate alone will be the in-charge in respect of the second gate also. While so, the petitioner was served with a charge memo issued by the fourth respondent in his proceedings dated 06.02.2001, alleging that the petitioner had left the work spot and went out of Prison without prior permission and without being relieved properly. In response to the charge memo, the petitioner submitted his representation stating that although his duty was over at 6 p.m on 19.10.2000, he was orally requested by his superior to stay on till 9 p.m as there was a film show shown to the inmates of the prison on that day. According to him, that he continued his para duty without any reliever till 10 p.m and thereafter, handed over the key to the key guard and left the Central Prison.

4. This fact, according to the petitioner was duly recorded in the Para Room record maintained in the Para Room. However, in spite of the representation, an enquiry was conducted and the enquiry officer was none other than the complainant himself namely Dorairaj, the Jailor. Initially, the petitioner had approached the then Tamil Nadu Administrative Tribunal in O.A.No.1721 of 2001, for quashing of the charge memo. Nevertheless, he co-operated with the departmental enquiry, notwithstanding filing of the application before the Tribunal. It appears that subsequently, the appointment of the said Durairaj was cancelled on 22.02.2002. The petitioner had also requested certain documents which were very crucial for the purpose of effective defence on his side.

5. However, in spite of the petitioner's request for furnishing of the copies of the documents, according to him, only some documents were furnished and the petitioner was

directed to peruse remaining documents insisted by him. According to the petitioner, that without furnishing some of the documents demanded by him, which were crucial to his defence, an enquiry was conducted and completed.

6. The most crucial document, which was to support the case of the petitioner was the Para Book, which was maintained by the department, which would support the case of the petitioner that he handed over the key to the Key Guard at 10 p.m on that day and left the Central Prison. However, by communication dated 04.08.2003, by the disciplinary authority it was informed that the crucial page relating to 19.10.2000, had been missing from the Para Book and therefore, the same was not produced in the enquiry.

7. Be that as it may, the enquiry concluded by holding that the charges proved against the petitioner. The petitioner was also directed to submit his representation on the enquiry report and in response to the same, a detailed representation was submitted by the petitioner on 21.10.2003, pointing out the infirmities in the conduct of the enquiry and denial of proper opportunity to the petitioner. The fourth respondent, on receipt of the representation, passed an order of dismissal from service without properly considering the representation of the petitioner. Against which, an appeal was preferred before the third respondent on 23.01.2004 and the appellate authority had modified the penalty of dismissal from service into reduction of pay to the bottom scale for five years without cumulative effect.

8. Having aggrieved by the modified penalty, a revision was preferred to the second respondent on 18.08.2004 and the same was dismissed by a non speaking order. Thereafter, a review petition was filed before the first respondent on 06.06.2008 and the same was rejected on 01.09.2008, again by a non speaking order. The orders passed by the respondents are put to challenge in this writ petition.

9. The learned counsel for the petitioner would submit that some of the crucial documents, which were required to be furnished to the petitioner as demanded by him, were not furnished and therefore, the same resulted denial of proper opportunity to the petitioner for his effective participation in the departmental enquiry. He would further submit that particularly, the Para Book, which was maintained by the department, which contained the entry relating to the date i.e., 19.10.2000, according to the learned counsel, for some strange reason, the said page alone was missing, which give rise a legitimate doubt about the veracity of charges framed against the petitioner.

10. The learned counsel would further submit that although the appellate authority had modified the penalty, but yet the same was a major penalty and in the said circumstances, a revision petition was preferred before the second respondent. However, as it could be seen from the order passed by the second respondent dated 20.10.2004, even the review petition filed before the Government was rejected by a non speaking order.

11. Therefore, the learned counsel would contend that the enquiry report which held the charges proved is vitiated for the reason that the crucial document had not been furnished to the petitioner and in the absence of the same, the findings of the enquiry officer was nothing but perverse. Moreover, the original order passed by the fourth respondent dated 06.01.2004, dismissing the petitioner from service disclosed the vindictive nature of mind on the part of the authority concerned, although, several infirmities were pointed out in the conclusion of the enquiry officer, by the petitioner.

12. The learned counsel for the petitioner would further submit that the appellate authority though moderated the penalty apparently by taking a lenient view, nevertheless imposed a major penalty, which cannot be countenanced both in law and on facts. Further, the revisional authority's order did not address the issues raised in the revision petition and it was bald and a non speaking order and the same is contrary to the scheme of service regulations. Even the review petition has been dismissed by a non speaking order by the first respondent.

13. Upon notice, Mr. S. Gunasekaran, learned Additional Government Pleader entered appearance for the respondents and filed a detailed counter affidavit. Per contra, the learned Additional Government Pleader for the respondents would submit that most of the documents which were demanded by the petitioner were furnished to him and the petitioner was given an opportunity to peruse the documents. Mere absence of one document alone does not absolve the petitioner of the misconduct alleged against him. The petitioner having posted in the sensitive duty, cannot leave the spot without being relieved properly. According to the learned Additional Government Pleader, it is not the simple act of leaving the spot but the act of gross dereliction of duty, since the security of the Prison was at stake. According to him, that the petitioner had been given an opportunity to participate in the enquiry but unnecessarily he had demanded certain documents, which were not relevant to the charges framed against the petitioner. Therefore, he would contend that the punishment imposed by the disciplinary authority was in order and in any event, the same

was modified in favour of the petitioner by taking a lenient view and the other authorities have considered the revision / review petitions on the basis of on its merits and rejected the same, which cannot be faulted with in the facts of the case.

14. This Court has considered the rival submissions of the learned counsel and perused the materials and the pleadings placed on record. This Court is of the view that there is some merit in the contention putforth on behalf of the learned counsel appearing for the petitioner that a crucial document namely, the Para Book containing the page relating to the date i.e., 19.10.2000 was not produced and the same was declared to be missing by the officials themselves. In the absence of such crucial material, the only conclusion possible with the explanation offered by the petitioner that he had informed the Key Guard that he had handed over the Key and thereafter, he left the Central Prison ought to be accepted. According to the petitioner, that this factual position would be reflected in the Para Book maintained by the Department. As rightly pointed out by the learned counsel for the petitioner that he raised a serious doubt as to the action initiated by the authorities concerned against the petitioner that the particular page in the Para Book was missing. In fact, the enquiry officer ought to have taken that into consideration before rendering a finding against the petitioner.

15. Be that as it may, the disciplinary authority, who was entrusted with a task of discharging the statutory responsibility ought to have appreciated both the case of the prosecution and defence in a proper perspective. In the instant case, such an approach is completely absent and the very fact that the disciplinary authority has chosen to impose a penalty of dismissal from service would only disclose the vindictive nature of mind set on the part of the fourth respondent namely, the disciplinary authority.

16. Further, it has to be seen that the appellate authority though modified the punishment by setting aside the order of dismissal apparently taking a lenient view in the matter yet, even the appellate authority did not primarily appreciate the infirmities pointed out by the petitioner in the appeal. The revision petition was also rejected by a non speaking order, which is contrary to the scheme of the service regulations. Particularly, when the revision is preferred against the penalty imposed by the appellate authority. As rightly contended by the learned counsel for the petitioner that the order passed by the revisional authority dated 20.10.2004, is bereft of any consideration and the same is a non speaking order and cannot be justified. In addition that the review petition preferred before the Government also was disposed of, by a non speaking

order. In the said circumstances, it has to be concluded that the punishment imposed on the petitioner vide the impugned action on behalf of the respondents, cannot be sustained in law and therefore, the same is liable to be interfered with.

17. In the light of the above, the impugned orders, viz., No.Po.1/2186/2001-2 dated 06.01.2004 passed by the fourth respondent, No.2204/tha.vu/2004 dated 12.06.2004 by the third respondent, No.39260/EW-1/2004 dated 20.10.2004 by the second respondent and the proceedings of the first respondent in G.O. (D) No.989 dated 01.09.2008 are set aside and a consequential direction to the respondents to grant all attendant benefits to the petitioner including mandatory benefits and promotion as admissible. Such exercise shall be completed by the respondents within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
Home(Prison-2) Department,
Fort St George,
Chennai-9.
- 2.The Additional Director General of Prisons,
Egmore, Chennai-8.
- 3.The Deputy Inspector General of Prison,
Coimbatore, Coimbatore District.
- 4.The Superintendent of Prison,
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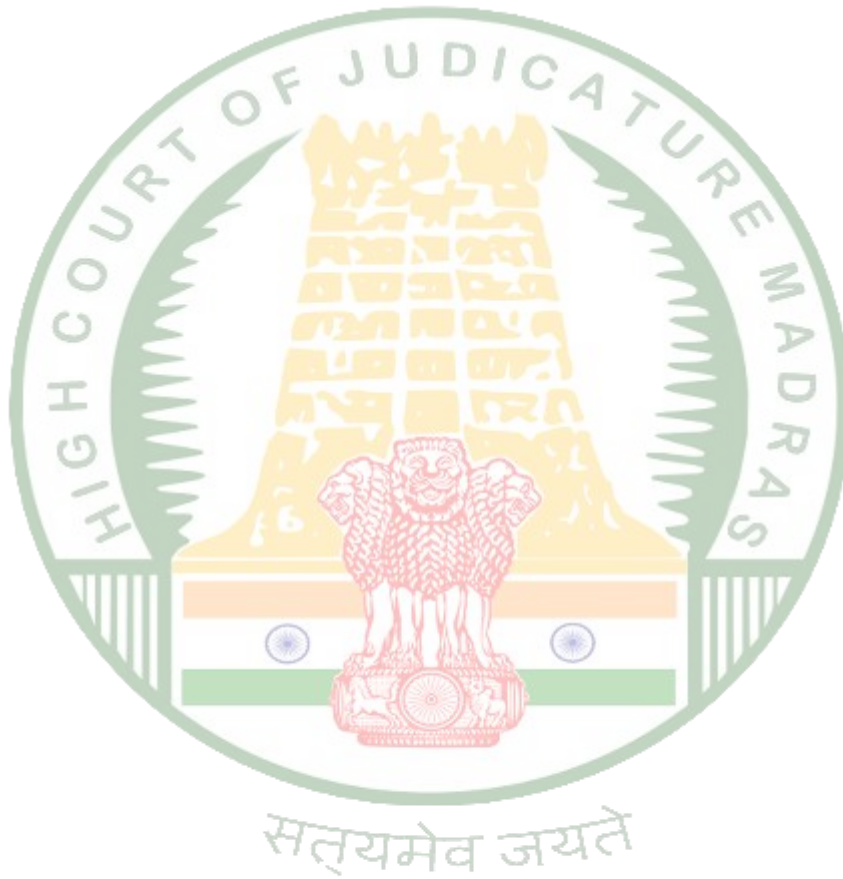
+1cc to Mr.P.I.Thirumoorthy, Advocate, S.R.No.80023

+1cc to the Government Pleader, S.R.No.79612

W.P.No.29554 of 2010

VG II(CO)

RRK(19/12/2017)



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