

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.29121 of 2012
and M.P.No.1 of 2012

M.Kadirvel

.. Petitioner

Vs.

1. The Director General of Police,
Mylapore, Chennai - 4.
2. The Commissioner of Police,
Greater Chennai, Egmore,
Chennai - 8.
3. The Deputy Commissioner of Police,
Ambattur District, Chennai - 53.
4. The Asst. Commissioner of Police
(Enquiry Officer),
Central Crime Branch II,
St. Thomas Mount, Chennai - 16.

... Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the charge memo No.PR No.198/H1/09 u/r3(b) dated 28.10.2009 passed by the Deputy Commissioner of Police, Ambattur District, the third respondent herein and the order of removal from service No.PR No.198/H1/2009 CSPO No.885/2010 dated 30.04.2010 passed by the Deputy Commissioner of Police, Ambattur District, the third respondent herein and the order of modification on the petitioner's appeal No.RC.No.43561/AP.3(2)/2011 dated 31.07.2012 passed by the DGP the first respondent herein and quash the same consequently direct the first respondent herein to reinstate the petitioner into service with all monetary benefits.

For Petitioner .. Mr.Muthappan

For Respondents .. Mr.T.M.Pappiah,
Spl. Govt. Pleader

ORDER

The petitioner has approached this Court seeking the following relief:

to issue a writ of certiorarified mandamus to call for the records pertaining to the charge memo No.PR No.198/H1/09 u/r3(b) dated 28.10.2009 passed by the Deputy Commissioner of Police, Ambattur District, the third respondent herein and the order of removal from service No.PR No.198/H1/2009 CSPO No.885/2010 dated 30.04.2010 passed by the Deputy Commissioner of Police, Ambattur District, the third respondent herein and the order of modification on the petitioner's appeal No.RC.No.43561/AP.3(2)/2011 dated 31.07.2012 passed by the DGP the first respondent herein and quash the same consequently direct the first respondent herein to reinstate the petitioner into service with all monetary benefits.

2.The petitioner joined the Police Department as Grade II Police Constable in the year 1986. In 1997, he was promoted as Grade I Police Constable and further promoted as Head Constable in 2001. According to the petitioner, on the basis of the false complaint from some third party, he was chargesheeted on 28.10.2009. The allegations against the petitioner was that he had gone to the local hotel and ate food free of cost on several occasions and took parcel and refused to pay the amount. He was also alleged to have snatched a sum of Rs.100/- from the pocket of the restaurant owner on a particular date. According to the petitioner, the local Merchants Association for the area was inimical towards him and therefore, the entire complaint was set up in order to victimise the petitioner.

3.An enquiry was conducted into the charges and the report was submitted holding the charges proved against the petitioner. The disciplinary authority accepted the finding and imposed the punishment of removal from service by order dated 30.04.2010. Aggrieved by the imposition of penalty, the petitioner preferred an appeal on 03.05.2010 before the second respondent. However, the same came to be rejected on 06.10.2010. Thereafter, review petition was submitted on 05.03.2011 before the first respondent and the first respondent passed an order on 31.07.2012 modifying the punishment of removal from service into one of compulsory retirement. In the present proceedings, the petitioner challenges the charge memo dated 28.10.2009, the order of punishment by the disciplinary authority dated 30.04.2010 and the subsequent order by the first respondent modifying the punishment into one of compulsory retirement.

4. Upon notice, Mr. T. M. Pappiah, learned Special Government Pleader entered appearance on behalf of the respondents and filed a detailed counter.

5. Mr. Muthappan, learned counsel appearing for the petitioner would at the outset submit that the premise on which the charges were framed was invalid and the so-called complainant had given evidence in favour of the petitioner in the departmental enquiry stating that his complaint itself was foisted and was not given by him out of his own volition. The entire piece of evidence adduced by the complainant did not advance the case of prosecution. However, the evidence of the complainant was treated as hostile and the enquiry officer had directed him to answer a few queries but even such queries did not elicit any answers, which could be even remotely relied on for establishing the charges against the petitioner. Learned counsel appearing for the petitioner would further submit that in the report, reliance was made on the statements obtained in the preliminary enquiry, which cannot be relied on unless the same is part of the regular enquiry. In the said circumstances, the enquiry report is flawed and the disciplinary authority's order accepting such flawed findings and imposition of penalty of removal from service cannot therefore be countenanced both in law and on facts. He would further submit that even the first respondent did not properly appreciate the infirmities in the findings of the enquiry officer and the disciplinary authority's order removing the petitioner from service since it was the case of no evidence and therefore, the ultimate imposition of penalty of compulsory retirement was also not in order.

6. Learned counsel appearing for the petitioner would further rely on the decision of this Court in K. Ramalingam Vs. Superintendent of Police, Perambalur ((2009) 7 MLJ 578) in which a learned Judge of this Court has held as follows:

There is no controversy about the enquiry officer's finding of guilt on the part of the petitioner, relying upon the statements given by the witnesses during the preliminary enquiry and there was no occasion to cross examine the said witness during the preliminary enquiry. Court is of the view that the charges framed against the petitioner cannot be said to be validly proved. Hence the petitioner is bound to succeed in this writ petition challenging the order of dismissal passed against him.

7. Learned counsel for the petitioner would therefore submit that in this case, there is not even a shred of evidence against the petitioner in the departmental enquiry but however much reliance was placed on the statement given during the preliminary enquiry which was not part of the regular enquiry

and therefore the entire disciplinary action has to be interfered with.

8. In the alternative, learned counsel for the petitioner would submit that as regards the punishment is concerned, in the facts and circumstances of the case, the same is disproportionate since it is a matter of no evidence and therefore, the punishment of compulsory retirement is liable to be interfered with. For the said purpose, he would rely on the following decisions viz.,

(i) Dev Singh Vs. Punjab Tourism Development Corporation Ltd., and Another ((2003) 8 SCC 9)

(ii) S.R.Tewari Vs. R.K.Singh and Another ((2013) 6 SCC 602)

(iii) Collector Singh Vs. L.M.L.Limited Kanpur ((2015) 2 SCC 410)

9. In all these cases, the Courts have found that the punishment was shockingly disproportionate and the Courts have either substituted the punishment or remitted the matter back to the authorities concerned for imposing the lesser punishment. Therefore, in the above circumstances, the learned counsel for the petitioner would urge this Court, in case the entire disciplinary action is not interfered with, at least the punishment imposed on the petitioner may be interfered with.

10. The learned Special Government Pleader for the respondents would submit that even though the main witness had turned hostile in the enquiry, the enquiry officer relied on other corroborative evidence for finding of guilty on the part of the petitioner and therefore, it cannot be said that it is a case of no evidence. According to him, there was some material available for establishing the charges framed against the petitioner and therefore the entire disciplinary action cannot be faulted with on the basis of the submissions made by the learned counsel for the petitioner. As regards the proportionality of penalty is concerned, he would submit that the same was commensurate with the gravity of the misconduct alleged against the petitioner.

11. On consideration of the rival submissions of the learned counsels and after perusing the documents and materials placed on record, this Court is constrained to reach the following conclusion:

(i) Firstly, it must be seen that as contended by the learned counsel for the petitioner, the complainant himself has turned hostile in the regular enquiry and given evidence in favour of the petitioner contrary to his statements which was recorded during the preliminary enquiry. Therefore, the conclusion reached by the enquiry officer is not a reasonable one, although as contended by the learned Special Government Pleader for the respondents, there was some material available to establish the charges.

(ii) Secondly, it has to be seen that the punishment imposed by the disciplinary authority for removal of petitioner from service was not commensurate with the gravity of misconduct alleged against him, even though the same has been proved fully. However, in these circumstances only, the first respondent interfered with the quantum of penalty and ultimately imposed the punishment of compulsory retirement on the petitioner.

(iii) Thirdly, this Court has to see whether the punishment of compulsory retirement itself is disproportionate to the grave misconduct alleged against the petitioner. From the totality of the circumstances as discussed and narrated above, it has to be seen that there is a thin piece of evidence available in the regular enquiry for establishing the charges against the petitioner and therefore, this Court though conscious of the fact that the act of misconduct alleged against the petitioner cannot be condoned but taking a view that there was insufficiency of evidence and the quantum of penalty imposed on the petitioner by the first respondent is liable to be interfered with.

(iv) Considering the circumstances of the case, this Court is of the view that the matter has to be remanded back to the competent authority. The impugned order passed by the first respondent dated 31.07.2012 is set aside and the matter is remanded back to the respondents/competent authority to pass fresh orders by imposing any other lesser penalty on the petitioner. This direction shall be complied with the authority concerned within a period of two months from the date of receipt of a copy of this order.

12.With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1. The Director General of Police,
Mylapore, Chennai - 4.
2. The Commissioner of Police,
Greater Chennai, Egmore,
Chennai - 8.
3. The Deputy Commissioner of Police,
Ambattur District, Chennai - 53.
4. The Asst. Commissioner of Police
(Enquiry Officer),
Central Crime Branch II,
St. Thomas Mount, Chennai - 16.

+2ccs to M/S.M.Muthappan, Advocate Sr. 61487
+1cc to the Government Pleader, Sr. 61682

सत्यमेव जयते

W.P.No.29121 of 2012

SK(CO)
VR(14/09/2017)

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