



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:27.04.2017

CORAM:

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.(MD) No.1023 of 2015 &
M.P.(MD).Nos. 2 & 3 of 2015

1. The State of Tamil Nadu Represented by
The Principal Secretary to Government,
Home Department,
Fort St. George,
Chennai.
2. The Director General of Police,
(Law & Order)
Chennai.
3. The Deputy Commissioner of Police,
Crime and Traffic,
Madurai City,
Madurai.
4. The Superintendent of Police,
Madurai City,
Madurai.

... Appellants/Respondents

vs.

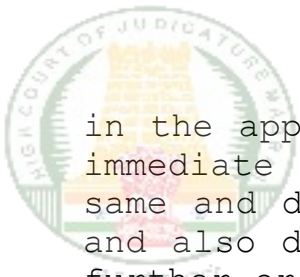
M.Ganesh

... Respondent/Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act to set aside the order dated 11.02.2014 made in W.P(MD)No.11534 of 2010 on the file of this Hon'ble Court and thereby allow the above writ appeal.

Prayer in WP(MD). 11534/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ or order in the Certiorarified Mandamus calling for the records of the respondents resulting in the 3rd respondents Impugned Order datd 30.09.2004 passed in P.R.40/2004 U/s. 3(b) and confirmation orders of the 1st respondent passed on 04.10.2006 vide in G.O.2D (590) and the order of the 2nd respondent consequently to put his name



in the appropriate place in the seniority list over and above his immediate junior passed in R.C.No.31007/PR.2(3)/2005 and quash the same and direct the respondent to pay all attendant and backwages and also due promotion onpar with his junior and pass such other, further or other orders.

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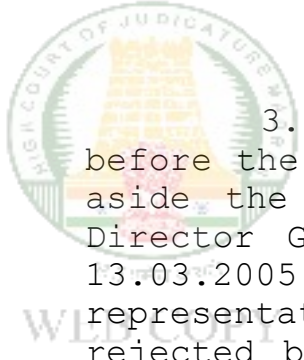
For Appellants : Mr.S.Chandrasekar
Government Advocate
For Respondent : Mr.V.R.Venkatesan

JUDGMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM,J]

This appeal, by the State represented by the Principal Secretary to Government, Home Department and three others, is directed against the order, dated 11.02.2014 in W.P.(MD).No.11543 of 2010. The said writ petition was filed by the respondent challenging the punishment imposed on him by an order, dated 30.09.2004 under Rule 3(b) of the Tamil Nadu Police Subordinate Service Rules, which was confirmed in appeal and for consequential direction to place the respondent in an appropriate place in the Seniority list and direct the appellants to pay all attendant and back-wages and due promotion.

2.The respondent joined as Constable under the control of the third respondent during 1988 and worked in various places in Madurai City and was promoted as Grade-I Constable and promoted as Head Constable on 15.08.2008. The respondent came to adverse notice of the Department based on a complaint which lead to the issuance of charge proceedings in P.R.39 framing two charges, firstly, he had left the police station without obtaining permission and secondly, he has not given first aid to a person, who was lying unconscious. Along with the respondent, one other Special Sub- Inspector by name Mohankumar, was also issued a charge proceedings for the very same incident. The respondent submitted his explanation stating that he had obtained permission from the Sub Inspector of Police before leaving the station and the person, who is said to have been lying down on the road, was in drunken stage. Apart from that, the respondent also placed other factual details and requested to drop the proceedings. Not being satisfied with the explanation, an enquiry officer was appointed to enquire into the charges and he submitted his report holding that the charges are proved by report, dated 16.07.2004. The Disciplinary Authority by its order, dated 30.09.2004 imposed a punishment of reduction of pay by three stages for three years without cumulative effect. The order was implemented by the Police, Madurai City by proceedings, dated 03.11.2004.

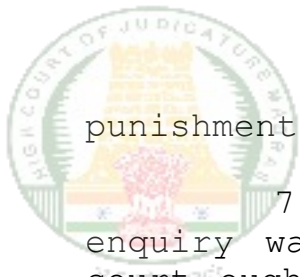


3.The petitioner filed representation dated 19.01.2005 before the Additional Director General of Police requesting to set aside the order of punishment. The same was considered by the Director General of Police and was rejected by an order, dated 13.03.2005. Subsequently, the respondent submitted a representation to the first appellant on 26.05.2005, which was rejected by the G.O.(2 D) No.590, Home (POLVS) Department, dated 04.10.2006. After exhausting all the statutory remedies available, the respondent filed a writ petition challenging the said order. In the writ petition the appellants filed a counter affidavit setting out the facts and circumstances as to how the charge proceedings was issued and the manner in which the departmental enquiry was conducted and sought to sustain the order of punishment.

4.The writ petition was heard finally and the writ Court allowed the writ petition by setting aside the impugned order on two grounds. Firstly, on the ground that the competent person to say as to whether permission was obtained by the respondent or not, is the Sub Inspector of Police, who was not examined in the Domestic Enquiry owing to which, the respondent herein lost his opportunity to cross-examine the said officer and this amounts to serious violation of principles of natural justice. This was considered as a very serious defect in the disciplinary proceedings as the respondent herein took a specific stand in his explanation that he had left the station with the permission of the Sub Inspector of Police. One more factor which was noted by the Writ Court was, though that the incident is stated to have occurred on 10.04.2013 but the charge memo was issued after one year and in the interregnum, the respondent was allowed to discharge his duties.

5.With regard to the second charge, the writ Court found that the other official, by name Mohankumar, who accompanied the respondent, was not examined to ascertain whether the other person was found lying in drunken state or not and to ascertain the veracity of the statement of the respondent as if, they were informed about the prior intimation given to the police station etc., Thus, the Writ Court concluded that there was no material witnesses examined to say that the other person was lying unconscious stage due to illness and the deposition of the witness who was examined on the side of the respondent, was not considered by the enquiry officer. Therefore, the Writ Court concluded that this defect is yet again is in violation of principles of natural justice.

6.The orders, passed by the Disciplinary Authority and the appellate authority, were faulted on the ground that they were inconsistent with the contentions raised by the respondent that there has been serious violation of principles of natural justice. Ultimately, the writ petition was allowed by setting aside the



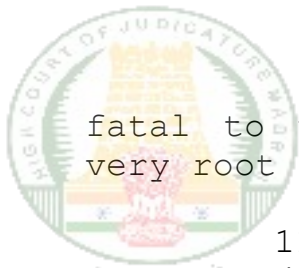
punishment and granting all monetary and attendant benefits.

7.The appellants contentions are that the domestic enquiry was conducted in a fair and proper manner and the writ court ought not to have interfered with the order of punishment, when there was no entry in the general diary or any other documents to show that the respondent left the police station on rest with the permission of the Sub Inspector of Police or on other duty. It is further submitted that the other police constable Mohankumar travelled with the respondent and he was also charge-sheeted simultaneously and there is no discrimination.

8.The third appellant has filed a reply to the counter affidavit filed by the respondent in this appeal, wherein certain new points are canvassed, which were not mentioned in the counter affidavit filed in the writ petition. By way of reply counter affidavit, the appellant seeks to justify the punishment has supplementing the reasons and by stating that the punishment has been imposed on the co-delinquent Mohankumar and against the respondent. Four disciplinary proceedings have been initiated and as on date, the impugned punishment has been fully implemented and nothing further survives for adjudication. It is further submitted that when the writ Court faulted the appellants for issuing charge memo belatedly, the writ court ought to have considered that the writ petition was also filed belatedly.

9.Further, with regard to promotional aspects, in paragraph 9 of the reply counter affidavit, certain averments have been set out justifying the action of the appellants in promoting the said Mohankumar as there was no disciplinary proceedings pending against him at that particular point of time when he became eligible for consideration. It is reiterated that the writ petition filed after the punishment order was implemented, is liable to be dismissed.

10.After hearing the learned counsels on either side and carefully considering the materials placed on record, we find that the reasons assigned by the writ Court are perfectly valid and fully justified. It is seen that when the disciplinary proceedings are initiated against an employee, onus is on the department to prove the charge, only after the initial burden is discharged the onus shifts on the delinquent employee. The respondent's specific case is that he had obtained permission from the Sub Inspector of Police, who was available in the station. If such is the case, the department to establish the charge ought to have examined the Sub Inspector of Police, who was on duty on that particular day, after that had been done and if such witnesses had deposed that he had never given any permission, then onus shifts on the respondent to disprove the same by cross-examination. The fault committed by the appellants is, in not examining the Sub Inspector of Police, who was in the police station at the relevant time and this error is



fatal to the entire departmental proceedings as it goes to the very root of the charge proceedings.

11. With regard to the second charge, we find that there was no evidence to show that the person, who was lying in the road was suffering from some illness. When the case of the respondent was that the said person was in a fully drunken state. Though the respondent might have produced a private witnesses to substantiate the same, that by itself cannot be a reason to discredit the statement of such witness. The witnesses should have been cross-examined and such evidence should have been dealt with by the disciplinary authority to hold that the respondent was guilty of the said charges.

12. Thus, we are satisfied with the reasons assigned by the writ court holding that there has been gross violation of principles of natural justice. One more important issue that has to be noted is that the said Mohankumar, who was co-delinquent was also issued the charge proceedings in P.R.39 for the very same incident and he was awarded the punishment of reduction in pay by three stages for three years without cumulative effect. This order of punishment, which was passed in the year 2004 was confirmed by the Director General of Police, Madurai City by the order, dated 12.03.2004, as could be seen from the Page-12 of the typed set of papers filed by the Additional Government Pleader, rejecting the mercy petition filed by the said Mohankumar.

13. However, from the order, dated 19.11.2013 in P.R.124 of 2003 passed by the Commissioner of Police, Madurai City against K.Mohankumar there is a reference to P.R.39/04 in paragraph 2 and 3. On a reading of the said paragraphs, we find that the punishment imposed on Mohankumar in PR.39/04 was modified because there was an instruction from the Chief Office that the said punishment cannot be imposed after the introduction of the Tamil Nadu Revised Scale of Pay Rule, 2009, by which, time scale and stage in time scale are not in existence. After receiving the said instructions from the Chief Office, the punishment imposed on Mohankumar was modified by order dated 19.03.2011 as "Black Mark". This is one more factor, which has to be taken into consideration as two delinquents, who have been charged for the same incident by two separate charge proceedings which were dealt with simultaneously there should be parity in punishment unless there are circumstances mentioned to take a different view. Therefore, the respondent herein cannot be discriminated from that of said Mohankumar, who was also charged for the same incident.

14. For all the above reasons we are convinced with the reasons assigned by the Writ Court in setting aside the order of punishment. Hence, we reject the appeal filed by the appellants. So far as the relief sought for by the respondent with regard to promotion is concerned, it is open to the respondent to work out



his rights in the manner known to law by approaching the authorities.

15. With the above observation, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Principle Secretary to Government,
State of Tamil Nadu
Home Department,
Fort St. George,
Chennai.
2. The Director General of Police,
(Law & Order)
Chennai.
3. The Deputy Commissioner of Police,
Crime and Traffic,
Madurai City,
Madurai.
4. The Superintendent of Police,
Madurai City,
Madurai.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 55345
+ 1 CC TO Mr.V.R.VENKATESAN, ADVOCATE IN SR No. 21457, 54568

AM

TE/MMS/SAR-IV : 08/05/2017 : 6P/7C

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