



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.13647 of 2014
and MP(MD)No.1 of 2014

N.Samidurai (Died)

1. Rani
2. Shika
3. Ajai Kannan
4. Maha
5. Ramu

... Petitioners/Petitioners

*(P2 to P6 are substituted as petitioner
in the place of deceased petition
as per order dated 31.01.2017)*

-vs-

1. The Principal Secretary to Government,
The State of Tamil Nadu,
St.George, Fort,
Chennai.
2. The Director General of Police,
Tamil Nadu, Chennai.
3. The Superintendent of Police,
Sivagangai District.
4. The Superintendent of Police,
Ramanathapuram District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus, calling for the compulsory retirement order in G.O.2(D) No.272 dated 01.08.2014 on the file of the 1st respondent herein and to quash the same as illegal and further direct the respondents to reinstate the petitioner in service with all back wages.

For Petitioner : Mr.K.R.Laxman
For Respondents : Mr.A.K.Baskara Pandian
Spl. Govt. Pleader



O R D E R

This writ petition has been filed, seeking to quash the order of the 1st respondent dated 01.08.2014 passed in G.O.2(D) No.272, by which the petitioner was imposed with the punishment of compulsory retirement. The petitioner also sought a direction to the respondents to reinstate the petitioner in service with all back wages.

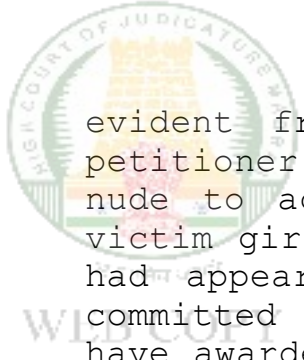
2. The case of the petitioner is as follows:

i) The petitioner was recruited by the respondent as Grade II Constable and joined the service on 17.01.1986; that in connection with a case in Crime No.67 of 1997, one Krishnamoorthy was secured, for committing rape upon one Sujatha and also murdering her; that pursuant to the confession of the said Krishnamoorthy, he was sentenced to undergo 80 years and after completion of the period of 8 years, he was released on bail and after his release, the said Krishnamoorthy came to know that the victim girl Sujatha was alive and therefore, he racked up the said issue, stating that his earlier confession was on account of treatment done by the Investigating Officer; that since he was one of the persons in the team, who investigated into the case, he was issued a charge memo.

ii) It was submitted that the petitioner worked as a Head Constable in Armed Reserve, Ramanathapuram and was one among the people of the SP-Striking Force; that on the instruction of the Superintendent of Police, Ramanathapuram, he was assigned the duty in respect of the accused detained at Ramanathapuram Bazaar Police Station in Crime No.61 of 1997 to prevent the law and problem, for which, he has been made a prey; that there is no material to prove that the petitioner tortured him so as to make him confess the crime; that though he has submitted a detailed explanation, without considering the same, the impugned order came to be passed imposing the punishment of compulsory retirement; and therefore, aggrieved by the same, the petitioner is before this Court.

3. The 4th respondent has filed a counter, wherein it has been stated as follows:

i) A case in Crime No.61 of 1997 was registered by the S.P.Pattinam Police for offences under Sections 376 and 302 and 201 IPC, alleging that one young girl by name Sujatha was raped and murdered; that in connection with the said case, one Krishnamoorthy along with others was arrested and remanded to judicial custody; that later on it was found that the said girl was not dead, but alive and the said fact brought by Krishnamoorthy after considerable difficulties; that the petitioner also obtained a false and misleading confessional statement from the said Krishnamurthy by way of torture, which is



evident from the deposition of P.W.2 to the effect that the petitioner along with other Police personnel made Krishnamoorthy nude to accept the crime; that to the shock and surprise, the victim girl, who was allegedly killed by Krishnamoorthy and others had appeared before the Trial Court; that as the delinquency committed by the petitioner was grave in nature, the Government have awarded the punishment of compulsory retirement vide impugned order after a detailed enquiry and therefore, the impugned order does not call for any interference by this Court.

4. Learned counsel for the petitioners has submitted that since the 1st petitioner has expired, his legal heirs have been brought on record; that he relied upon the reply given by the petitioner to the charge memo to contend he is not all connected with the duty of obtaining a misleading confession statement, as he was at that time working in the Armed Reserve; that the alleged occurrence took place in the year 1998, for which, a charge memo came to be issued on 23.04.2011 after a lapse of 13 years. He would further submit that the said Krishnamoorthy in his statement as P.W.18 has not specifically mentioned the name of the 1st petitioner and the 1st petitioner, as a dutiful Police Constable, has executed the work allotted by his Superior Officer.

5. Learned counsel for the petitioners also drew the attention of this Court the statement of defacto complainant / Krishnamoorthy, wherein he has stated that due to unbearable torture meted out at the hands of Rajamani (Head Constable), Dasarathan (Sub-Inspector of Police) and Madhavan (Inspector of Police), he was forced to accept the guilt and he has nowhere pointed the name of the 1st petitioner. Learned counsel also relied upon the judgment of this Court in the case of **Pump Operator vs. Divisional Engineer (TNHB), Thanjavur**, in which it has been held that "merely saying that the petitioner had committed the delinquency does not communicate anything unless it is set out in the charge memo including the time, place and the context."

6. Learned Special Government Pleader would contend that due to the wrongful act of the 1st petitioner, it has brought great disrespect to the entire Police machinery, pursuant to which, this Court, while ordering compensation of Rs.1,00,000/- to the said Krishnamoorthy, entrusted the case to the CBI. He would further submit that therefore, by adopting the principles of preponderance of probability, he was awarded punishment of compulsory retirement, as the charge against him is also specific and does not suffer from any infirmity. The respondents would contend that that the charges of this nature should be allowed to be established on the basis of preponderance of probabilities as in civil litigation and not by asking for proof of the allegation beyond reasonable doubt as in a criminal case.



7. Heard the learned counsel for the petitioners and the learned Special Government Pleader appearing for the respondents.

8. On a conspectus reading of the facts of the present case, it would unravel that though much reliance was placed on the statement of Krishnamoorthy / defacto complainant to isolate the petitioner from others, who tortured him, a close reading of it would undoubtedly unearth that along with other Police Officers, a team of Armed Police had also beaten him and normally, at the time of inflicting torture upon a person, it is highly impossible for him to notice the names of persons beating him and therefore, he has generally stated that Armed Reserve Police also involved in the act. The relevant passage in Tamil is extracted below:

.....பிறகு அதிரடிப்படை வீரர்களை வைத்து அவரது
நுமிலேயே அடித்து பிரட்டி எடுத்தார்கள். அதன்பிறகு அப்பெண்ணை
எரித்தாயா புதைத்தாயா என்று உண்மையை கூறு என்று
மிரட்டினார்கள். "~~~~~"

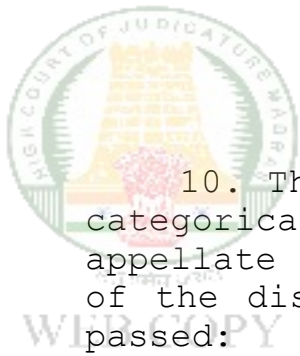
The delinquent himself admitted that at that time, he worked as Head Constable in Armed Reserve Police and was assigned duty in the Police Station in respect of the said crime number. Thus, it is clear that at the relevant point of time, the 1st petitioner was also present in the scene and therefore, the adoption of preponderance probabilities by the Government does hold good. A presumption is a legal or factual assumption drawn from the existence of certain facts. In P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd edition, at page 3697, the term 'presumption' has been defined as under:

"A presumption is an inference as to the existence of a fact not actually known arising from its connection with another which is known.

A presumption is a conclusion drawn from the proof of facts or circumstances and stands as establishing facts until overcome by contrary proof.

A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged but of which there is no direct proof. It follows, therefore that a presumption of any fact is an inference of that fact from others that are known". (per ABBOTT, C.J., R. v. Burdett, 4 B. & Ald"

9. In Hiten P. Dalal v. Bratindranath Banerjee [(2001) 6 SCC 16], a 3- Judge Bench of Hon'ble Supreme Court held that "although by reason of Sections 138 and 139 of the Act, the presumption of law as distinguished from presumption of fact is drawn, the court has no other option but to draw the same in every case where the factual basis of raising the presumption is established."



10. The Hon'ble Apex Court in the following cases clearly and categorically laid down that when the disciplinary authority or appellate authority is accepting the inquiry report or the order of the disciplinary authority, no further speaking order need be passed:

1. Sunil Kumar Banerjee Vs. State of West Bengal [1980 (3) SCC 304].
2. Managing Director, ECIL, Hyderabad Vs. B. Karunakar [1993 (1) SC SLJ 444].
3. Orissa Mining Corporation & Anr. Vs. Ananda Chandra Prusty [1996 (11) SCC 600].
4. U.P. SRTC Vs. Mahendra Nath Tiwari & Another [2006 SCC (L&S) 61]

11. In the present case on hand, the evidence adduced by the respondents, even if it is taken on its face value to be correct in its entirety, meet the requirement of burden of proof, namely, preponderance of probability. The Hon'ble Division Bench of this Court in the case of **Union of India vs. Central Administrative Tribunal, reported in (2005) 4 MLJ 104** has held that in a departmental enquiry, the guilt can be arrived at on the preponderance of probability and that that the appreciation of evidence is the exclusive domain of the disciplinary authority to consider the evidence on record and to render findings, whether charges have been proved or not.

12. It is settled legal proposition that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority. The only consideration the Court has in its judicial review, is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. The adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings. This Court in a writ petition for Certiorari does not sit in appeal, but exercises only supervisory jurisdiction, and therefore, does not enter into the question of sufficiency of evidence.

13. From the above, it is clear that this Court cannot re-appreciate the evidence, unless or otherwise the same is perverse and non-est in the eye of law. Moreover, in this case, the petitioner alone has not been singled out and his co-delinquents, who were presumed to be present on the fateful day were also imposed similar kind of punishment of compulsory retirement by the Government and therefore, at no stretch of imagination, it can be



said that there is a discrimination or partiality in awarding punishment.

14. In the light of the foregoing discussions, it is considered that there is a preponderance of probability to prove the charges framed against the petitioner and therefore, the punishment of "Compulsory Retirement, imposed against the petitioner is perfectly valid in the eye of law and does not call for any interference by this Court.

15. In the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

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To:

1. The Principal Secretary to Government,
The State of Tamil Nadu,
St.George, Fort,
Chennai.
2. The Director General of Police,
Tamil Nadu, Chennai.
3. The Superintendent of Police,
Sivagangai District.
4. The Superintendent of Police,
Ramanathapuram District.

+1CC to Mr.K.R.Laxman, Advocate Sr.No.8499

+1CC to Spl.Government Pleader Sr.No.8641

GJM/CM/MSA/28.2.17-6p-7c

W.P. (MD) No.13647 of 2014
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