



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

W.A. (MD) No.1452 of 2017
and
C.M.P. (MD) No.11141 of 2017
in
WP (MD) No.14558 of 2017

P.Ragupathy : Appellant /Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Public (Law and Order) Department,
Fort St. George,
Chennai-600 009.

2.The Director General of Police,
Chief of Prison Department,
Egmore,
Chennai-600 008.

3.The Superintendent of Prison,
Central Prison,
Trichy-30.

4.The Inspector General of Police,
Coastal Security Group,
Mylapore, Chennai-600 004.

: Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, praying to set aside the order dated 04.08.2017 made in W.P. (MD) No.14558 of 2017.

PRAYER IN WP(MD)No.14558/2017 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari and call for the records relating to the charge memo issued by the 4th respondent in P.R.No.1/2016 dated 22.03.2016 and quash the same.

For Appellant

: Mr.B.Karunanithi

For Respondents

: Mr.VR.Shanmuganathan,
Special Government Pleader



JUDGMENT

[Judgment of the Court was delivered by M.VENUGOPAL, J.]
Heard both sides.

2. The Appellant/Writ Petitioner has focussed the instant Writ Appeal as against the order dated 04.08.2017 in W.P.(MD)No.14558 of 2017 passed by the Learned Single Judge.

3. Earlier, the Learned Single Judge, while passing the impugned order on 04.08.2017 in W.P.(MD)No.14558 of 2017 filed by the Appellant/Writ Petitioner, at Paragraph Nos.5 to 7, had observed the following:

"5.In the present case, the communication dated 28.04.2016, clearly shows that the petitioner is entitled to receive the documents as sought for. Therefore, without furnishing the aforesaid documents, the respondents cannot proceed with the enquiry.

6.The learned Additional Government Pleader, who takes notice on behalf of the respondents, sought two weeks time to furnish the aforesaid documents.

7.In view of the above said submission, the fourth respondent is directed to furnish the documents mentioned in the letter dated 28.04.2016 issued by the Superintendent of Police, CSG, Nagapattinam and to proceed further and conclude the enquiry as expeditiously as possible."

and disposed of the Writ Petition by issuing necessary directions.

4. Being dissatisfied with the impugned order dated 04.08.2017 in W.P.(MD)No.14558 of 2017 passed by the Learned Single Judge, the Appellant/Writ Petitioner has filed the present Writ Appeal by taking a plea that the Learned Single Judge had failed to consider that the impugned charge memo was issued only on 22.03.2016 for the alleged negligence in duty on 23.12.2006, i.e., after a lapse of more than nine years, which vitiated the Disciplinary Proceedings and as such, the impugned order of the Learned Single Judge is an illegal one and liable to be interfered with by this Court sitting in appellate jurisdiction.

5. The Learned Counsel for the Appellant contends that since there was no allegation of misconduct during the service of the Appellant in the Prison Department and no disciplinary action was initiated by the Prison Department, the third Respondent (Jail Department) had issued the No Objection Certificate dated 13.09.2007 to the Appellant/Writ Petitioner, when he was posted as Sub-Inspector of Police in the Police Department.



6. The other plea taken on behalf of the Appellant/Writ Petitioner is that the third Respondent had issued the 'No Disciplinary Case Certificate' while relieving the Appellant/Writ Petitioner from the service of the Police Department, by means of an order dated 17.01.2008 and only on that basis, the Appellant/Writ Petitioner was permitted to join duty in the present Police Department. When that be the fact situation, the impugned order of the Learned Single Judge is clear case of non-appreciation of relevant facts.

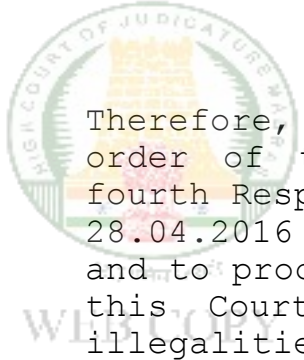
7. According to the Learned Counsel for the Appellant, the Learned Single Judge had failed to appreciate the fact that the Appellant/Writ Petitioner was the Single Warder watching 92 prisoners of CP.5 Block, who were outside their Cell and taking lunch at the time of alleged occurrence and, therefore, the Appellant/Writ Petitioner cannot watch a single person slipped out of the group to the backside of the Cell and climbed the tree. As such, there was no negligence in duty and no charge was framed by the Prison Department during the service of the Appellant/Writ Petitioner under Prison Department.

8. Lastly, it is the submission of the Learned Counsel for the Appellant that there is no dereliction of duty on the part of the Appellant/Writ Petitioner and in fact, the Superintendent of Police, Crime Branch CID, Trichy, after enquiry, had concluded that the death of the remand prisoner was a suicide due to frustration for not taking him out on bail by his father.

9. Per contra, it is the submission of the Learned Special Government Pleader appearing for the Respondents that the purported delay of more than nine years in regard to the issuance of charge memo cannot be a ground to quash the Disciplinary Proceedings initiated against the Appellant/Writ Petitioner.

10. The Learned Special Government Pleader appearing on behalf of the Respondents proceeds to state before this Court that the fourth Respondent, who was directed to furnish the documents mentioned in the letter dated 28.04.2016 issued by the Superintendent of Police, CSG, Nagapattinam and to proceed further and conclude the enquiry as expeditiously as possible, will follow the same strictly as per the direction issued by the Learned Single Judge and, therefore, prays for dismissal of the present Writ Appeal.

11. At this juncture, a perusal of the impugned order dated 04.08.2017 in W.P.(MD)No.14558 of 2017 passed by the Learned Single Judge, filed by the Appellant (as Writ Petitioner), by this Court clearly indicates that the Learned Single Judge had rightly observed that the communication dated 28.04.2016 clearly shows that the Appellant/Writ Petitioner was entitled to receive the documents as sought for and, therefore, without furnishing the aforesaid documents, the Respondents cannot proceed with the enquiry.



Therefore, this Court is of the considered view that the impugned order of the Learned Single Judge in issuing directions to the fourth Respondent to furnish documents mentioned in the letter dated 28.04.2016 issued by the Superintendent of Police, CSG, Nagapattinam and to proceed further, etc., does not, in the considered opinion of this Court, suffer from any material irregularities or patent illegalities in the eye of Law. Viewed in that perspective, the Writ Appeal fails.

12. In fine, the Writ Appeal is dismissed leaving the parties to bear their own costs. Consequently, the connected Miscellaneous Petition is closed.

13. Before parting with the case, this Court makes it quite clear that the dismissal of the present Writ Appeal will not preclude the Appellant/Writ Petitioner to take all available Factual and Legal Pleas before the Enquiry Officer at the time of conduct of Disciplinary Enquiry and to seek redressal of his grievances in the manner known to law and in accordance with law.

Sd/-
Assistant Registrar (CSIII)

/True Copy/

Sub-Assistant Registrar

To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Public (Law and Order) Department,
Fort St. George,
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2. The Director General of Police,
Chief of Prison Department,
Egmore, Chennai-600 008.

3. The Superintendent of Prison,
Central Prison, Trichy-30.

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SML

RL/5C/4P/KK/SAR1/2/1/2018

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