

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

CORAM:

**THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN**

**W.A.No.1420 of 2015 and M.P.No.1 of 2015 and
C.M.P.No.18360/2017**

1. State of Tamil Nadu
rep. by its Secretary to Government,
Home (Pol.IV) Department,
Fort St. George,
Chennai-9.
 2. The Director General of Police,
Chennai-600 004.
 3. The Commissioner of Tribunal for
Disciplinary Proceedings,
No.5/1A Vinayaga Nagar,
Madurai-20.
- ... Appellants

Vs

E.Parthiban ... Respondent

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 03.06.2014 made in W.P.No.28146/2010 by a
learned Single Judge.

For Appellants : Ms.Narmatha Sampath,
Additional Advocate General
assisted by
Mr.P.S.Siva Shanmuga Sundaram,
Special Government Pleader

For Respondent : Mr.K.Sathish Kumar
for Mr.K.K.Senthilvelan

JUDGMENT

(Judgment of the Court was pronounced by **RMT.TEEKA RAMAN, J.**)

The Writ Appeal is directed against the Order dated 03.06.2014 made in W.P.No.28146/2010 by a learned Single Judge whereby the punishment of compulsory retirement passed against the writ petitioner by the 1st appellant herein is set aside and he is exonerated from the charges with a further direction to the appellants herein to reinstate him in service without back wages, but, with continuity of service only for other benefits.

2. The relief sought for in the writ petition is to call for the records relating to the order passed in appeal filed by the writ petitioner in G.O.(D) No.521, Home (Pol.IV) Department, dated 19.6.2009 on the file of the 1st respondent, confirming the order of punishment passed in Rc.No.87124/Con.V(1)/2002-1 dated 04.07.2008 on the file of the 2nd respondent and to quash the same and seeking a direction to reinstate the writ petitioner in service with all consequential benefits.

3. The case of the Writ Petitioner in brief is as follows:

(a) The petitioner joined the Tamil Nadu Police Service as Sub-Inspector of Police in the year 1987 and thereafter, promoted as Inspector of Police in the year 1998. While so, on 28.10.2002, the 3rd respondent therein issued a Charge memo to the writ petitioner stating that while he was working as Inspector of Police, Thoothukudi South

Police Station during 1998, in collusion with Grade-1 P.C.879 Thiru S.Chockalingam of Prohibition Enforcement Wing Unit, Thoothukudi, he has demanded a bribe of Rs.1 ½ Lakhs on 26.12.1998 from one Thiru Solomon of Thoothukudi who was involved in illicit drug trafficking to favour his clandestine activities without taking criminal action against him and also accepted the bribe of Rs.1,00,000/- on 29.12.1998 for extending the said illegitimate favour and thereby committed grave misconduct and misdemeanor and failed to maintain absolute integrity and devotion to duty.

(b) Thereafter, after completing the enquiry, the 3rd respondent submitted his findings to the 2nd respondent therein on 25.09.2006 stating that based on the circumstantial evidence of P.W.5 and P.W.11 that the charges against him are held to be proved. Accordingly, the 2nd respondent awarded the punishment of compulsory retirement to the writ petitioner.

© Aggrieved over the said punishment order, the writ petitioner preferred an appeal before the 1st respondent and the same was rejected by G.O.(D) No.521, Home Department, dated 19.6.2009. Challenging the same, the Writ Petition has been filed.

4. A detailed counter affidavit has been filed by the respondents in which it is stated that so far as the police officers are concerned, not only the Proceedings initiated under the Tamil Nadu

Police Subordinate Service (Discipline and Appeal) Rules can be applicable, but also, the provisions of Tamil Nadu Civil Services (Discipline and Appeal) Rules can be applied. It is further stated that based on the document and circumstantial evidence, the allegations are held to be proved by the Commissioner of Tribunal for Disciplinary Proceedings after following the due process of law. Hence prayed for dismissal of the Writ Petition.

5. After hearing the rival submissions made on either side, the learned Single Judge of this Court allowed the writ petition thereby setting aside the order of the 1st respondent therein with a direction to the respondents therein to reinstate the writ petitioner in service without back wages, but, with continuity of service only for other benefits and aggrieved over the same, the State is before this Court by way of this Writ Appeal.

6. The matter is listed today under the caption, "for admission". Mr.K.K.Senthilvelan, learned Counsel takes notice for the respondent. On the consent of both sides, the Writ Appeal is taken up for final disposal.

7. Ms.Narmatha Sampath, learned Additional Advocate General appearing for the appellants submitted that when in the departmental proceedings, the 3rd appellant found the respondent herein, guilty of the charge of demanding and accepting bribe of Rs.1,50,000/- from one

Thiru Solomon of Thoothukudi who was involved in illicit drug trafficking and given a finding that the respondent herein has committed grave misconduct and misdemeanor and failed to maintain absolute integrity and devotion to duty and the same has been confirmed by the 1st respondent in appeal. However, the writ petition is allowed only on the ground that P.W.15 Mr.Solomon, who made a complaint against the respondent herein and another witness P.W.16 Mr.Raju during domestic enquiry have turned hostile, the learned Single Judge has allowed the Writ Petition, which is erroneous.

8. The learned Additional Advocate General further submitted that there are circumstantial evidences of P.W.7, 8 and 13 to the effect that arrangement were made through Solomon P.W.15 to pay the bribe to the respondent herein. That apart, the delinquent employee has also admitted his guilt by giving a statement to that effect and by applying the test of preponderance of probability towards his misconduct, the punishment of compulsory retirement has been imposed on him by the 2nd respondent and the same was also confirmed by the 1st respondent. But the learned Single Judge has failed to take note of the settled law. Hence, prays for allowing the present Writ Appeal.

9. Per contra, Mr.K.Sathish Kumar, learned Counsel appearing for the respondent submitted that it is true that in official capacity as an Inspector of Police, the statement given by the delinquent to other police official cannot be considered as confession and the same is not

permissible in evidence. The learned Counsel further submitted that since there was no evidence to prove the misconduct alleged to have been committed by the respondent herein, the learned Single Judge of this Court has rightly set aside the punishment order of the 2nd appellant which calls for no interference at the hands of this Court.

10. Considered the rival submissions made on either side and we have also gone through the materials placed on record including the papers relating to domestic enquiry.

11. In the facts and circumstances of the case, as rightly contended by the learned Additional Advocate General appearing for the appellants that P.W.15 Mr.Solomon, who made a complaint against the respondent herein and another witness P.W.16 Mr.Raju to the effect that the respondent has demanded bribe and accepted bribe of Rs.1,00,000/- from P.W.15, who was involved in illicit drug trafficking, during domestic enquiry, have turned hostile. In the matters of domestic enquiry, the test to be applied is only preponderance of probability and not proving charges beyond reasonable doubt. Further, a perusal of the Enquiry Report filed along with the typed set of papers shows that there are circumstantial evidences regarding arrangement of money made by the P.W.15 and the loan availed by him from other departmental witnesses and to prove the guilt of the delinquent in demanding and accepting the alleged bribe amount and it is pertinent to note that the delinquent has himself given a statement admitting his

guilt and also depositing the amount with the Enquiry Officer. Further, though the learned Counsel for the respondent contended that the same cannot be taken as confession as in criminal case, thus, the onus of proof is cast only on the delinquent to prove his innocence. As stated above, the respondent has to prove his innocence which he failed to do so. That apart, we are satisfied with the proceedings and the findings of the Domestic Enquiry and therefore, we are of the view that the order of the learned Single Judge needs interference.

12. Accordingly, the Writ Appeal is allowed and the order dated 03.06.2014 made in W.P.No.28146/2010 is hereby set aside and the order of Compulsory Retirement passed against the respondent herein by the 2nd appellant by order dated 4.7.2008 which was confirmed by the 1st appellant in appeal by way of G.O.(D) No.521, Home Department, dated 19.6.2009 is restored. No costs. Consequently, connected Miscellaneous Petitions are also closed.

WEB COPY

(H.G.R.J.) (T.K.R.J.)

01.02.2018

Index : Yes/No

Internet : Yes/No

tsi

To

1. Secretary to Government,
State of Tamil Nadu,
Home (Pol.IV) Department,
Fort St. George, Chennai-9.
2. The Director General of Police,
Chennai-600 004.
3. The Commissioner of Tribunal for
Disciplinary Proceedings,
No.5/1A Vinayaga Nagar,
Madurai-20.



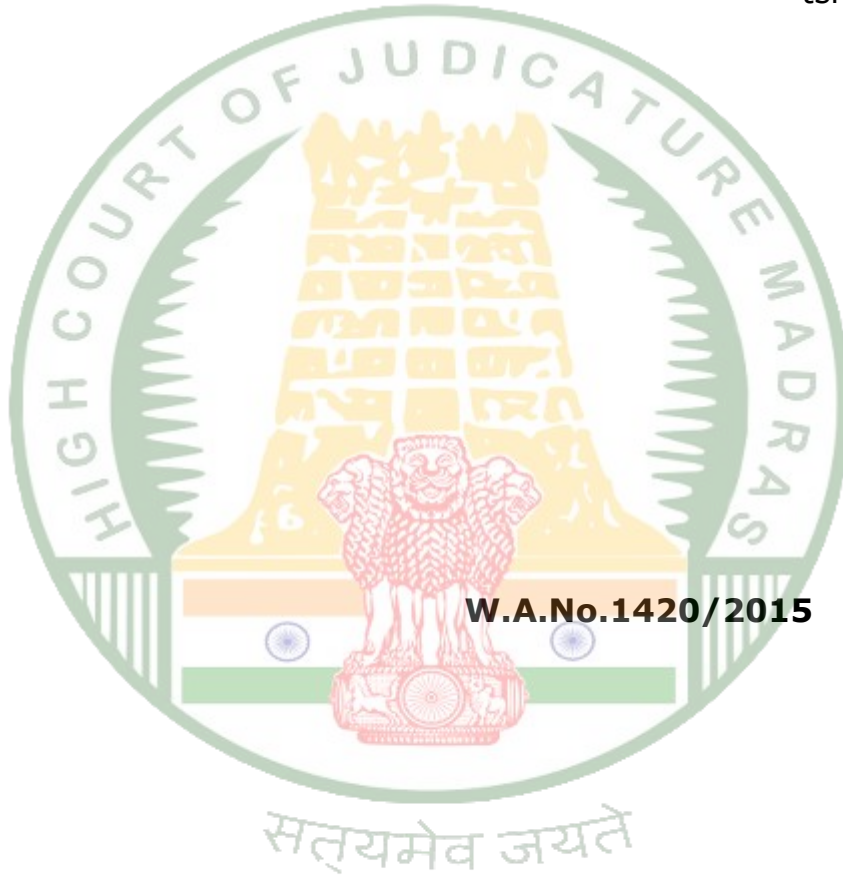
WEB COPY

HULUVADI G.RAMESH,J.

and

RMT.TEEKA RAMAN, J.

tsi



WEB COPY

02.01.2018