

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03 .10.2018

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THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.15693 of 2008

D. Samiukannu

.. Petitioner

Versus

1. The Deputy Inspector General of prison,
Chennai - 600 008.
2. The Superintendent of Central Prison,
Vellore District.
3. The Accountant General (A and E)
No.361, Anna Salai, Chennai 600 018. ... Respondents

(R3 impleaded as per Court Order dated 28/08/2008 made in
M.P.No. 3 of 2008 in W.P.No. 15693 of 2008.)

Prayer: This Writ petition has been filed under Article 226 of
the Constitution of India for issuance of a Writ of Certiorari
to call for the records in relating to the proceeding of the 1st
respondent in 4308/MU/2004 dated 30.04.2008 in confirming the
order of the 2nd respondent in proceedings No.7499/PO-1/2004
dated 03.06.2004 and quash the same.

For Petitioner

: Mr.M. Muthappan

For Respondents 1 & 2

: Mrs.Thangavadana Balakrishnan
Additional Government Pleader

For Respondent 3

:Mr. V. Vijay shankar

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ORDER

The petitioner prays to issue a Writ of Certiorari to call
for the records relating to the proceedings of the 1st respondent
in 4308/MU/2004 dated 30.04.2008 in confirming the order of the
2nd respondent in proceedings No.7499/PO-1/2004 dated 03.06.2004
and quash the same.

2. The case of the petitioner is that while he was working in Central Prison, Vellore, a charge memo was issued by the second respondent by proceedings No.7499/PO-1/2004 dated 03.06.2004, under Rule 17(b) of the Tamil Nadu Civil Servants (Discipline and Appeal) Rules. The charge against the petitioner was that he has beaten a prisoner by name one Selvam and caused injuries to him. For the said charge the petitioner has also submitted his explanation on 30.06.2004 denying the charge against him. The enquiry was conducted and the report was sent on 03.09.2004 to the petitioner holding that the charge against the petitioner was proved. The petitioner also submitted his additional explanation on 10.09.2004 and a personal hearing was held on 22.09.2004.

3. The Superintendent of Central Prison, the second respondent herein issued an order in proceedings No.7499/PO-1/2004 dated 29.09.2004, imposing punishment of stoppage of increment for a period of one year without cumulative effect. Against the said order of punishment the petitioner had filed an appeal before the first respondent dated 04.11.2004. Since, there was no progress in the said appeal the petitioner had challenged the order of the second respondent dated 29.09.2004 in W.P.No.3611 of 2005. The respondent also filed a counter in January 2008 and the said writ petition was disposed of by directing the first respondent to consider the case and dispose of the appeal within a period of 4 weeks.

4. Since, the petitioner's retirement was due on 31.01.2008 he was allowed to retire on the said day. The first respondent in compliance to the earlier orders of this Court has disposed of his appeal confirming the order of punishment imposed by the 2nd respondent on 30.04.2008 in proceedings No.4308/MO/2004. Aggrieved by the orders passed by the respondents herein this writ petition is filed raising various grounds.

5. The petitioner would contend that the victim, who is the cause for the issuance of charge memo has not been arrayed even as a defendant in the said enquiry proceedings. The charge itself is based on the injuries caused to the prisoner and the respondents have not taken into consideration that the said Selvam has not given complaint to any one of the Jail Authorities, nor a statement of the alleged occurrence on 04.05.2004. The said prisoner was not at all examined and the injury caused in the eye brow of the victim was not consequent upon the act of the petitioner, rather it was due to the hitting towards the corner of the wall in the prison by the said Selvam himself. The enquiry officer has not passed an order with reasons substantiating the findings. There is a possibility of recording statements of other prisoners, who are with criminal

background and had been confined for some offences due to coercion, force and compulsion and he would also submit that the impugned order was passed in a mechanical way. He would also contend that even though the petitioner was served with number of charges, all most all of them have been set aside by this Court consistently and if they were all had taken together, the malafide motive of the respondents/department would stand expose. The punishment of stoppage of increment for one year without cumulative effect has to be set aside. The petitioner would also submit as he was imposed with the punishment, the retirement benefits was also not settled, which was due to him and not even paid any terminal benefits.

6.The learned Additional Government Pleader would submit that the petitioner was working as Grade II Warder at Central Prison, Vellore and on 04.05.2004, the petitioner had assaulted the TPDA Prisoner 4526 namely one Selvam with latr on his back, thigh and left eye brow. The act of the petitioner is against the prison rules. The above act of the petitioner caused problem to the prison administration due to the assembling of prisoners and the enraged prisoners were pacified and an untoward incident was averted by the staff. The injured prisoner was treated in the prison hospital by the prison doctor. Therefore, the petitioner was placed under suspension as per proceedings No. 7499/G1/2004, dated 04.05.2004 by the second respondent. Thereafter, the petitioner was dealt under the Rule 17 (b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules as per Memo No. 7499/G1/2004 dated 03.06.2004 for the misconduct of assault of TPDA Prisoner No. 4526 Selvam.

7.The learned Additional Government Pleader further submit that the Disciplinary Authority after considering the findings of the Enquiry Officer and the further representation of the petitioner, imposed the punishment of postponement of his next increment for a period of one year without cumulative effect in his Proc. No. 7499/G1/2004-1, dated 29.09.2004. Hence, the petitioner has preferred an appeal on 04.11.2004 before the first respondent. The first respondent after giving him an opportunity, has reduced the punishment to six months from one year in the appeal.

8. Heard both sides and perused the available records.

9. In M.P.No.2 of 2008 filed by the petitioner seeking direction to settle the retirement benefits, this Court on 10.09.2008 has passed an order to the effect that the petitioner was sanctioned with the retirements benefits by order dated 25.08.2008 and no further orders was required to be passed in

that direction petition and the same was dismissed as infructuous. As per the said order, he was paid the entire retirement benefits. Similarly on 10.09.2008, this Court also has dismissed the stay petition in M.P.No. 1 of 2008 recording that since the petitioner has already retired from service, the question of staying the punishment will not have any effect. Hence, the stay petition was also dismissed. The 3rd respondent was also impleaded as a party respondent in this writ petition vide order dated 10.09.2008 made in M.P.No. 3 of 2008.

10. The learned Additional Government Pleader also produces a letter of the Jail Superintendent, Central Prison, Madurai dated 30.06.2018, wherein it has been stated that the petitioner was paid with retirement benefits, viz, leave salary, SPF,DCRG, GPF, commutation etc., in the year 2008 itself. It is also stated in the said letter that petitioner's pay was refixed as per 6th pay commission recommendations and the arrears amount was also paid to him

11. The charge against the petitioner was not without any cause and the petitioner had resorted to violence. Hence, as per Rule 17(b) of the Tamil Nadu Civil Servants (Discipline and Appeal Rules) the charges have been framed and the petitioner was imposed with the punishment in the appeal and the same has been confirmed by the first respondent. This Court finds no merits in the statement of the petitioner who had indulged in the activities relating to violence in the prison. Hence, with the above observations, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

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To.

1. The Deputy Inspector General of prison,
Chennai - 600 008.

2. The Superintendent of Central Prison,
Vellore District.

3. The Accountant General (A and E)
No.351, Anna Salai, Chennai 600 018.

+1cc to Mr.M. Muthappan, Advocate sr.no.68401

+1cc to Mr.Vijaysankar, Advocate sr.no.68458

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