

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.11.2018

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P. No. 17122 of 2008

N. Venugopal

....Petitioner

Vs.

1. The Director General of Police,
Tamil Nadu
2. The Commissioner of Police,
Greater Chennai, Commissioners Office,
Egmore, Chennai.
3. The Additional Commissioner of Police,
North Zone, Perambur, Chennai - 11.Respondents

Prayer: This writ petition has been filed under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the entire records of the order passed by the third respondent dated 23.05.2006 in P.R.No.12/PR.IV(1)/2006 NZO. No. 266 of 2006 under order 17(a) which was confirmed by the first respondent order dated 24.08.2006 in D. Dis No: 132430/AP3 (3)/2006 and the second respondent order dated 21.06.2006 in C.No: 10685/ 2006 in P.R.No: 12/PRN(1) / 06 and quash the same and pass further orders.

For Respondent : Mr.R.S.Anandan

For Respondents: Mrs.Thangavadana Balakrishnan
Additional Government Pleader

सत्यमेव जयते
O R D E R

The petitioner prays to issue a writ of Certiorari calling for the entire records of the order passed by the third respondent dated 23.05.2006 in P.R.No.12/PR.iv(1)/2006 NZO. No. 266 of 2006 under Rule 17(a) of the Tamil Nadu Civil Servants (Discipline and Appeal Rules) which was confirmed by the order of the first respondent order dated 24.08.2006 in D.Dis No: 132430/AP3 (3) / 2006 and the second respondent order dated 21.06.2006 in G.No: 10685/ 2006 in P.R.No: 12/PRN(1) / 05 and quash the same.

2. It is the case of the petitioner that when he was working as Assistant in the office of the Joint Commissioner of

Police, North zone, Chennai -11, he used to help office staff and friends to prepare petition or letters. Likewise, one person named Varalakshmi, requested the petitioner to prepare a petition for obtaining permission from Joint Commissioner of police, North Zone to put a canteen in the office premises and the petitioner helped the said person. It is the further contention of the petitioner that the said Varalakshmi under the inducement of some body had given a petition before the 3rd Respondent/Additional Commissioner of police, incharge of Joint Commissioner Office on 04.01.2006 stating that the petitioner is giving troubles to her.

3. On the basis of the said complaint the Additional Commissioner of Police issued a show cause notice to the petitioner on 08.02.2006 calling upon the petitioner to give reply for the allegations levelled against him. In the said show cause notice it has been stated that:

"Reprehensible conduct is having misbehaved with the widow by name Tmt. D. Varalakshmi of Kolathur by unnecessarily visiting her residence and obtained signature in the white paper on 04.01.2006".

4. The petitioner gave a reply to the said complaint on 27.02.2006 stating that the allegation levelled against him are baseless and he had not obtained any signature as alleged by the said Varalakshmi in the blank paper. Then, an enquiry was conducted by the Personal Assistant to Joint Commissioner of Police and a clear finding has been given that there is no evidence available to say that the petitioner had attempted to misbehave with the said Varalakshmi. The said enquiry officer has taken a statement from the petitioner and also from the said Varalakshmi and also from other staff in the office. Based on the said statements, the Additional Commissioner of Police had passed an order vide PR.No.126PR.N(1) 2005, dated 23.05.2006 awarding punishment of postponement of increment for one year.

5. As against the order of the Additional Commissioner of Police the petitioner had filed an appeal before the 2nd respondent/Commissioner of Police, Greater Chennai on 25.05.2006 and the same was dismissed.

6. Against the said dismissal order the petitioner had filed a review petition before the 1st respondent/ Director General of Police on 30.06.2006 and it was also dismissed vide order D.Dis. 132430/AP 3(3)/2006 on 24.08.2006. Having no other alternative other than approaching this Court, the petitioner has filed this writ petition.

7. The learned counsel for the petitioner states that the

the 3rd respondent without following any of the procedures contemplated under law had passed an order based on the false complaint.

8. The learned counsel for the petitioner would also further contend that against a person under the Rule 17(a) impugned order, viz, punishment of postponement of increment can be passed only after issuance of show cause notice, followed by a charge memo and in the case on hand charge memo has not been served. In the absence of charge memo, awarding punishment on the basis of statement given by the complainant is quite illegal and in gross violation of principles of natural justice. The copy of the enquiry report was also not furnished to the petitioner. He would further contend that the complaint given by the complainant does not contain allegations about misbehaviour or he obtaining the signature in the white paper on 04.01.2006 for the purpose of starting a canteen and hence the order awarding the punishment is not correct and it has to be quashed. It is also pleaded that the petitioner was given an opportunity to cross examine the complainant and other witness and there is no evidence to show that the petitioner has obtained the signature in the white sheet. The learned counsel for the petitioner would contend that after getting the petition copy filled up the said varalakshmi had not contacted him in any manner as stated in the charge memo. The said varalakshmi has given a complaint against the petitioner as if she was disturbed by the petitioner. He would further submit that the punishments awarded is not correct. The petitioner had explained that he visited the house and obtained her signature for the purpose of running a canteen in the office premises.

9. The learned counsel for the petitioner produced the Judgment of Hon'ble Supreme Court in [Inids of Roop Singh Negi Vs Punjab National Bank and others, (2009) 2 SCC 570,] wherein at paragraph No.14, it is held as under:

"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer persons a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties." The purported evidence collected during investigation by the investigation officer against the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The witnesses merely tendered the documents and not proved the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR

which could not have been treated as evidence.

10. The Paragraph No.5 of the letter of the Additional Commissioner of police, Greater Chennai, Incharge North Zone, Chennai -8 is extrated hereunder:

"The enquiry revealed that the petitioner andd Assistant Tr.N.Venugopal are living in Periyar Nagar and knows each other. He had obtained her signature in a petition addressed to the Joint Commissioner of Police, seeking permission to start a Canteen and a copy of the same is enclosed by him. It seems that he had visited her house to get the petition on 04.01.2006. The petitioner and her two elder sister, have visited the office and quarreled with Assistant Tr.N.Venugopal on 04.01.2006 around 13:30 hours. There is no evidence available to say that he had attempted to misbehave with the petitioner".

11. The petitioner had previoulsy filed a writ petition bearing No.35790 of 2006 for the same prayer as in the present writ petition and that he was instructed to withdraw the writ petition. As otherwise he will be denied further promotion. Therefore, he sought permission of this Court to withdraw the writ petition and the said writ petition was dismissed as withdrawn on 03.11.2006. Inspite of the withdrawal of the said writ petition, promotion was not given to the said petitioner and he challenges the impugned punishment awarded by the 3rd respondent.

12. A detailed counter has been filed by the respondents wherein it has been stated that the petitioner was charged under Rule 17(1) under the Tamil Nadu Civil Servants (Discipline & Appeal) Rules in P.R.No.12/PR N (1)/ 2000 for having misbehaved with a widow by name Tmt. D. Varalakshmi of Kolathur by unnecessarily visiting her house and obtained signature in a white paper on 04.01.2006. The enquiry officer has also given a minute after getting explanation from the petitioner, wherein the charges against the petitioner were held as partly proved. The Disciplinary Authority, Additional Commissioner of police, in-charge Joint Commissioner of police, North Zone has awarded a punishment of postponement of increment for one year and it will not affect his future increments.

13. Heard the learned counsel on eitherside and perused the materials placed on record.

14. Admittedly, the statements of Tmt. D. Varalakshmi and her sister Tmt.Kothainayaki have clearly elicited that the

petitioner has committed the offence of visiting the house of Tmt. D. Varalakshmi, widow and obtained her signature, which the petitioner himself accepted.

15. The present scenario is that there is no security for the women especially to widows who have no support from the family of any male member, while so, even the surrounding men from the society, who has muscle power and man power is trying to interfere in their life as if they will try to help them in dire circumstances and they try to exploit such women in other ways. On many circumstances, the poor women circumvent to the poverty is trying to come out and pointing out the discrepancies committed by them to the outside public. No woman will come and give a false complaint against men unless she herself is a person who has been affected. They are aware, if she gives complaint this world look at her with a veil which has a stigma attached with other faces.

16. Hence, when there is no evidence to prove his innocence and in the absence of any evidence to prove that he was innocent, this Court does not find any reason to interfere with the punishments imposed on the petitioner. On the foregoing reasons, this writ petition is dismissed. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To.

1. The Director General of Police, Tamil Nadu

2. The Commissioner of Police,
Greater Chennai, Commissioners Office,
Egmore, Chennai.

3. The Additional Commissioner of Police,
North Zone, Perambur, Chennai - 11

+1cc to Mr. R. S. Anandan, Advocate, S.R.No. 76029

+1cc to the Government Pleader, S.R.No. 76805

W.P. No. 17122 of 2008

GJ II (CO)

GN (08/02/2019)