

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.Nos.4509 and 4510 of 2018 and
W.M.P.Nos.5545 to 5548 of 2018

A.Khaja Khalandar ... Petitioner in W.P.No.4509/2018
R.Daniel ... Petitioner in W.P.No.4510/2018

Vs

1. The Director General of Police,
Mylapore, Chennai-4.

2. The Joint Commissioner of Police,
East Zone, Egmore, Chennai-8.

.... Respondents in both W.Ps.

Prayer: Petitions filed under Article 226 of the Constitution of India, to to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the 1st respondent in his Proceedings Rc.No.200443/Con.I(2)/2010, dated 22.4.2017 and quash the same and consequently, direct the respondents to disburse gratuity, terminal benefits like Encashment of Earned Leave, Encashment of Unearned Leave on Private Affairs and salary for the period of suspension by treating the suspension period as duty period for all purpose to the petitioners.

For Petitioners: Mr.G.Prakasam
For Respondents: Mr.V.Jayaprakash Narayanan,
Special Government Pleader

C O M M O N O R D E R

These two writ petitions have been filed challenging the minor punishment of 'censure' awarded against the petitioners by the 1st respondent, namely, the Director General of Police, Mylapore, Chennai, in his Proceedings in Rc.No.200443/Con.I(2)/2010, dated 22.04.2017.

2. The petitioners were appointed as Grade-II Police Constables in the year 1975. Subsequently, they were promoted as Grade-I Police Constables in the year 1992 and 1993 respectively and further promoted as Head Constables in the year 1998 and thereafter, promoted as Sub Inspector of Police in the year 2004 and 2005 respectively. While they were serving as Sub

Inspector of Police at Poonamallee in Traffic Investigation Wing, one Mr.D.Raja, who is the owner of a lorry bearing Registration No.TN-67-X-2929, met with an accident on the highways and caused heavy traffic. Therefore, to remove the said lorry from the highway road, the Traffic Wing Police engaged a Recovery Van (private) and as the police demanded a sum of Rs.2,000/- towards expenses for the said Recovery Van, he lodged a complaint before the Vigilance and Anti-Corruption Department complaining about the petitioners that they have demanded a sum of Rs.2,000/-. The Vigilance and Anti-Corruption Department laid a trap and the trap was successfully made on 25.05.2009 at about 14.40 hours at the office of the petitioners/A.1 and A.2 (A.1-R.Daniel and A.2-A.Khaja Khalandar) at Poonamallee Highways Traffic investigation Wing, Poonamallee. The first accused reiterated his earlier demand of Rs.2,000/- from the complainant/Mr.D.Raja as gratification other than legal remuneration, when the said Mr.D.Raja handed over the bribe amount to the 1st accused, it was received by him from the complainant and at the time when he was counting the said money, the 1st accused was caught red-handed. Therefore, an FIR was also registered against both the petitioners/A.1 and A.2 for the allegation of demand and acceptance of Rs.2,000/-, for releasing the lorry belonging to the complainant/Mr.D.Raja and sending it to the Regional Transport Office for brake test.

3. When the criminal case was taken up, the learned Special Judge and Chief Judicial Magistrate, Thiruvallur, in Special Case No.20 of 2010, on a perusal of the evidence of P.W.2 and P.W.15 and Ex.P.2-complaint and Ex.P.12-FIR, found that the Trap Laying Officer-P.W.15 had not made any preliminary enquiry either to know about the genuineness of the contents of the complaint or about the conduct of the accused, because, he has registered the FIR after receiving the complaint and that cannot be taken as an evidence for the alleged demand made by the first accused prior to the trap proceedings and the trial court has come to the conclusion that non-conducting of preliminary enquiry prior to the registration of FIR by P.W.15 is fatal to the case of prosecution. Accordingly, acquitted the petitioners herein.

4. Although the statement of Mr.Saravanan recorded under Section 161(3) of Cr.P.C. was supported by sufficient evidence, the trial court giving a finding that without conducting a preliminary enquiry prior to the registration of FIR, case cannot be registered and on that basis, acquitted them of the charges. No appeal was also filed as against the said judgment. But immediately after the trap, the petitioners were suspended on 28.05.2013 and 30.05.2014 respectively. When the departmental proceedings were initiated for the reasons best known to the respondents, a charge under Rule 3(a) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules,

1955 (hereinafter referred to as the said Rule) alone was issued. After receiving the minutes, both the petitioners herein were finally issued with a punishment of 'censure'. Challenging the order of 'censure' dated 22.04.2017, the petitioners have come to this Court to set aside the said order of 'censure'.

5. The petitioners were imposed with punishment in PR Nos.18 & 17 of 2012 respectively, as they were prosecuted only under the said Rule. It has to be seen that Charge No.1 clearly shows that the petitioners herein were arrested after the trap was successfully laid and they were also remanded to judicial custody for the allegation of making demand and acceptance of Rs.2,000/- from one Mr.D.Raja, who is the owner of the lorry bearing Registration No.TN-67-X-2929. When they were subsequently prosecuted criminally before the Criminal Court after filing the FIR and laying the Charge Sheet for the offence under Sections 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988, it is highly unfortunate on the part of the Officer initiating minor departmental proceedings against the petitioners under the said Rule.

6. This Court also finding that the punishment of 'censure' awarded against the petitioners is not commensurate to the proven charges, directed the Director General of Police to file a detailed counter affidavit. Pursuant thereto filing a counter affidavit, Mr.V.Jayaprakash Narayanan, learned Special Government Pleader submitted that when the petitioners were departmentally prosecuted under the said Rule, only the following punishment alone can be imposed viz.,

- (a) Reprimand
- (b) Censure or Black mark
- (c) Withholding of increments or promotions
- (d) Recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders and
- (e) Suspension.

7. The learned Special Government Pleader appearing for the respondents further submitted that as the petitioners have already crossed their date of superannuation and they were also permitted to retire from service on 30.01.2017, the only punishment of Reprimand or Censure could be implemented, in view thereof, the aforementioned punishment was imposed. But, this Court is unable to agree with the said submission. The reason is, the time for issuance of Charge Memo under the said Rule shows that no Officer with ordinary proven can issue such a show cause notice under Rule 3(a) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 for serious and grave misconduct.

8. Admittedly, the Department is well aware of the fact that both the petitioners were facing criminal proceedings for serious charges under the provisions of the Prevention of Corruption Act and that itself is good enough for the Disciplinary Authority to hold an enquiry by issuing suitable Charge Memo under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955. But, in the present case, the issuance of Charge Memo under Rule 3(a) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 itself is wholly untenable and unacceptable and instead, both of the petitioners could have been issued with Charge Memo under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, for the reason that they were already arrested and remanded to judicial custody and also suffered registration of FIR for the offence under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act. In view of these facts and circumstances, the charge memo issued under Rule 3(a) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, shall be deemed to have been issued under Rule 3(b).

9. Accordingly, the first respondent, namely, the Director General of Police, Mylapore, Chennai-4, is hereby directed to issue a Charge Memo under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 and proceed with the departmental enquiry by giving sufficient time to the petitioners to file additional explanation, and on receipt of the same, if not satisfied by the Disciplinary Authority, an Enquiry Officer can be appointed expeditiously who shall complete the enquiry within a period of three months thereafter. On completion of the enquiry, the Enquiry Officer as I have mentioned above, to submit his report to the Disciplinary Authority and on receipt of the same within two months thereafter final orders shall be passed. Till the final order is passed by the Disciplinary Authority in the enquiry, the respondents need not disburse the retiral benefits.

10. With the above directions, the Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

jrl/tsi

To

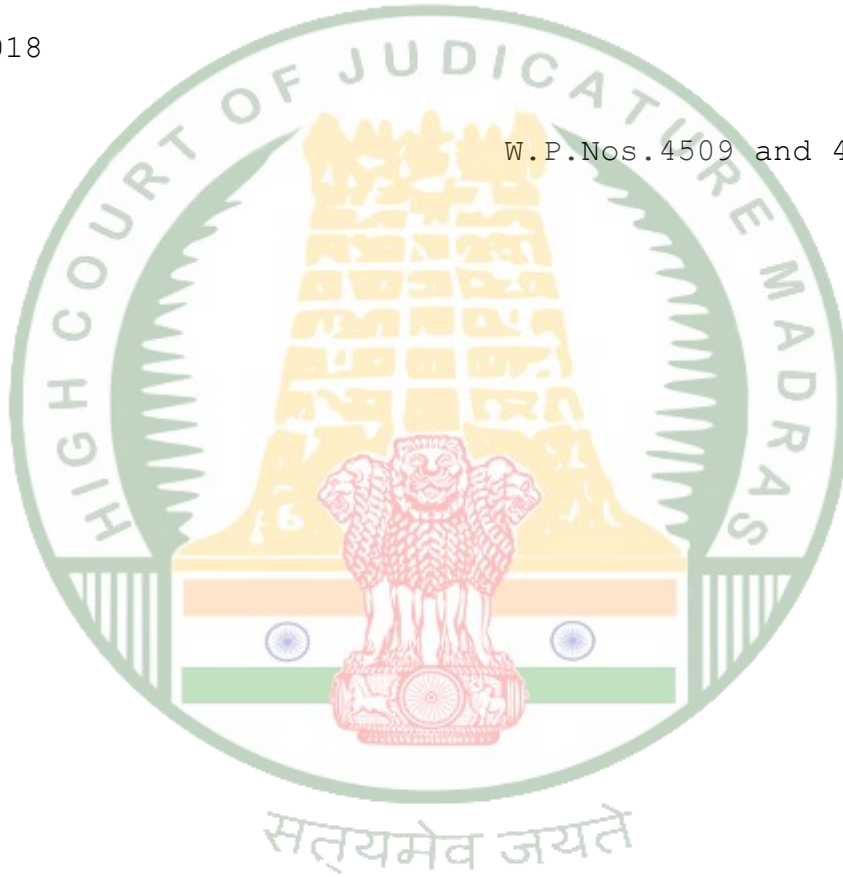
1. The Director General of Police,
Mylapore, Chennai-4.
2. The Joint Commissioner of Police,
East Zone, Egmore, Chennai-8.

+lcc to Mr.C.PRakasam, Advocate Sr.NO.20345

+lcc to Mr.C.PRakasam, Advocate Sr.NO.20345 dt.9.5.2018

sm:26.4.2018

W.P.Nos.4509 and 4510 of 2018



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