

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.07.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.8178 of 2008

P.Subramanian

... Petitioner

Vs.

1. Government of Tamil Nadu,
Rep. by Secretary to Government,
Home (Police IVA) Dept.,
Fort St. George,
Chennai - 600 009.
 2. The Director General of Police,
Chennai - 600 004.
 3. The Deputy Inspector General of Police,
Coimbatore Range,
Coimbatore.
- ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the orders in (1) Pro.R.C.No.AP.I(1)/53/017939/2005-1 dated 25.09.2005 of the 2nd respondent and (2) G.O.(2D)No.624, Home (Police IV A) Department, dated 25.09.2007 of the 1st respondent and quash the same, and to issue consequential directions to the respondents (1) to grant consequential monetary benefits i.e., Sanction of with held increment and promotion as Inspector of Police (Category I), pursuant to inclusion of the petitioner's name in the 'C' List for the year 2001 - 02 and fix petitioner's pay in the cadre of Inspector of Police (2) to refix petitioner's pensionary benefits on that basis and (3) to disburse consequential monetary benefits with interest.

For Petitioner : Mr.R.Thamaraiselvan
For Respondents : Mrs.Thangavadhana Balakrishnan
Additional Government Pleader.

ORDER

This Writ Petition has been filed to call for the records relating to the orders in (1) Pro.R.C.No.AP.I(1)/53/017939/2005-1 dated 25.09.2005 of the 2nd respondent and (2) G.O.(2D)No.624, Home (Police IV A) Department, dated 25.09.2007 of the 1st respondent and to quash the same, and to issue consequential directions to the respondents (1) to grant consequential monetary benefits i.e., Sanction of withheld increment and promotion as Inspector of Police (Category I), pursuant to inclusion of the petitioner's name in the 'C' List for the year 2001 - 02 and fix petitioner's pay in the cadre of Inspector of Police (2) to refix the petitioner's pensionary benefits on that basis and (3) to disburse consequential monetary benefits with interest.

2. The brief facts of the case is that the petitioner herein was enlisted as Grade - I, Police Constable on 02.05.1969 and retired from service as Sub-Inspector of Police on 28.02.2007. Since he was very sincere and efficient in service, he has got 169 rewards to his credit. When he was working as Sub-Inspector of Police, in Nambiyur Police Station, Erode District, from 25.01.2002 to 18.12.2002, the respondent herein, by proceedings dated 17.12.2002 in Rc.No.12790/D1/2002 (R.O.No.317/2002), has placed him under suspension, on the ground that an enquiry was pending against him in connection with a grave charge of minimizing the gravity of the offence in Nambiyur Police Station, Crime No.299 of 2002 under Section 457 and 480 IPC altered into 394 IPC. Subsequently, by order dated 30.12.2002, the 3rd respondent had ordered to release the petitioner from suspension with immediate effect and to transfer him to Nilgiris District. Thereafter, the 3rd respondent, by proceedings in C.No.J1/PR.92/Erode/2002 dated 31.12.2002 (served on the petitioner on 03.02.2003), had initiated disciplinary proceedings against the petitioner under Rule 3(b) of the Tamil Nadu Police Sub-ordinate Service (D&A) Rules and had framed the following charges.

Charge No: I

Highly reprehensible and unscrupulous conduct by willfully minimizing the offence and registering a case on 10.11.2002 in Nambiyur PS Cr.No.299/2002 under Section 457 and 380 IPC instead of 394 IPC with an ulterior motive.

Charge No: II

Gross neglect of duty in not informing the reporting of a grave case in Nambiyur PS Cr.No.299/2002 registered on 10.11.2002 to the Superintendent of Police, Erode and tried to hide and misguided by giving false information.

Charge No: III

Gross neglect of duty in having failed to send an express FIR to the Superintendent of Police, Erode on 10.11.2002 as per PSO 555, Volume - I.

3. While that being the situation, the petitioner was called upon to submit his explanation to the said charges and accordingly, he submitted his detailed explanation on 17.08.2004, denying the charges and requesting the 3rd respondent to drop the charges leveled against him and to exonerate him by accepting the explanation. Meanwhile, the Deputy Superintendent of Police, Erode Town Sub Division, was appointed as Enquiry Officer to enquire into the above charges. After conducting the enquiry, the said enquiry officer had submitted a report dated 07.10.2004 and given a finding that the charges leveled against the petitioner has been proved. Thereafter, the said order was communicated to the petitioner on 03.06.2005 by the 2nd respondent and the petitioner had sent his further representation to the 2nd respondent on 15.06.2005, disputing the findings of the Enquiry Officer and requesting to drop the proceedings. However, the 2nd respondent, by proceedings in Pro.R.C.No.AP.I(1)/53/017939/2005-1 dated 25.09.2005, had passed final orders, accepting the findings of the Enquiry Officer and imposed a punishment of "Reduction in the time scale of pay by one stage for one year to affect future increments and pension" i.e., stoppage of increments for one year with cumulative effect.

4. It could be seen from the contention of the petitioner that the Superintendent of Police, Nilgiris District by D.O.No.893/2006 dated 09.11.2006, had reduced the pay of the petitioner from Rs.7400/- to Rs.7250/- for one year in the scale of pay of Rs.5300 - 150 - 8300 with effect from 25.09.2005. After the punishment period was over on 24.09.2006, the petitioner's pay was fixed at Rs.7400/- with effect from 25.09.2006 vide D.O.No.964/2006 dated 30.11.2006. Assailing the stand taken by the respondent, the petitioner would contend that even though the appeal filed by him was pending before the 1st respondent, the punishment was implemented against him.

5. Aggrieved by the said order of punishment, the petitioner had filed an appeal dated 01.11.2005 before the

1st respondent, but, no order was passed within a reasonable period. Thereafter, since the petitioner was attained superannuation, he submitted a reminder representation on 11.01.2007 before the 1st respondent and finally, the 1st respondent has passed a non-speaking order by G.O.(2D). No.624 Home (Police IV A) Dept., dated 25.09.2007, rejecting the petitioner's appeal without considering the petitioner's contention on merits and without considering the mandatory factors contemplated under Rule 6(1) of the Tamil Nadu Police Sub-ordinate Services (D&A) Rules.

6. The petitioner would further contend that his name was included in the 'C' list of the Sub-Inspector (Category I) for promoting him as Inspector of Police (Category I) for the years 2001 - 2002, but, it was deferred due to his suspension. Thereafter, his name was passed over in the subsequent lists for the years 2003 - 2004 and 2004 - 2005, however, he was not considered for inclusion in the "C" list till his retirement on 28.02.2007. Aggrieved by the same, the petitioner has approached this Court by filing this Writ Petition raising various grounds.

7. The learned counsel for the petitioner would vehemently contend and argue that even though the Superintendent of Police, Erode, has sent a report dated 30.11.2002, recommending initiation of disciplinary proceedings under Rule 17(a) of the Tamil Nadu Civil Services (D&A) Rules against the Deputy Superintendent of Police, one Thiru.Somasundaram in respect of the delinquency committed by him, no action was taken against him. Similarly, though the Superintendent of Police, Erode, recommended to suspend both the Inspector of Police, Thiru.Velu and the petitioner, and initiation of disciplinary proceedings under Rule 3(b), the Inspector Thiru.Velu was dealt with under Rule 3(a) and not suspended, and further, he got promotion as Deputy Superintendent of Police, but, the petitioner was singled out, placed under suspension and dealt with under Rule 3(b), thereby, depriving the promotion of the petitioner, which had also caused huge recurring monetary loss by way of punishment i.e., reduction of pay, reduction of pensionary benefits etc., thus, different yardsticks have been used by the respondents.

8. The respondents had filed a detailed counter, denying all the allegations raised in the affidavit in support of this Writ Petition, stating that the petitioner herein, Thiru.P.Subramanian, the Sub Inspector of Police, was in charge of Nambiyur Police Station from 25.01.2002 to 18.12.2002 and he was also the Station House Officer of Nambiyur Police Station. On 09.11.2002 around 02.30 hours,

two known culprits entered into the house of one Thiru.Subbaiyan of Kottupulampalayam, and had cut and removed the gold thalikodi weighing 9.5 sovereigns from his wife Tmt.Sulochana and assaulted Thiru.Subbaiyan, who came for her rescue, and caused severe injuries on him. Immediately, Thiru.Subbaiyan, was taken to Government Hospital, Gobi for treatment, from where he was referred to Government Hospital, Erode. Since he did not possess sufficient money, he was taken back home. Thereafter, since he gradually developed more pain, he got admitted in Seethalakshmi Hospital, Gobi and underwent treatment till 11.11.2002. After the said incident, the wife of Thiru,.Subbaiyan, had given an oral complaint at Nambiyur Police Station and the Sub Inspector of Police had registered a case in Crime No.299/2002 under Sections 457 and 380 of Indian Penal Code, 1860 (Central Act XLV of 1860) instead of 394 IPC and investigated the same. While that being so, on 16.11.2002, the Superintendent of Police, Erode District, had received an information from the public regarding the above incident and thereafter, the Superintendent of Police, Erode, had visited the scene of crime and had conducted an enquiry. During the enquiry, the Superintendent of Police, had came to know about the said robbery and registration of case by the local police only under Sections 457 & 380 IPC. Thereafter, the Superintendent of Police, had instructed the Inspector of Police, Nambiyur Circle to alter the section of law of the case into 394 IPC. Accordingly, the Inspector of Police altered the Section on 16.11.2002 and continued the investigation.

9. The respondents would further contend that the Additional Superintendent of Police, Prohibition Enforcement, Erode District, who was instructed to conduct a preliminary enquiry on the above incident, recorded statement from the witnesses, including the Sub Inspector and according to the written statement filed by the Sub Inspector of Police, the Additional Superintendent of Police, had visited the scene of crime at 12.30 hours on 10.11.2002, examined the witnesses and went to the Government Hospital, Gobi to examine Subbaiyan, where he was informed that Subbaiyan was referred to Government Hospital, Erode. Thereafter, he could not examine Thiru.Subbaiyan at Government Hospital, Erode, as he was not available there. The Sub Inspector of Police had also given a statement that Thiru.Subbaiyan's whereabouts was not known till 16.11.2002 and the same cannot be accepted as Thiru.Subbaiyan has stated that while he was under treatment, the Sub Inspector of Police, had visited him. Hence, even though, the Sub Inspector of Police, was aware of the facts that Thiru.Subbaiyan was assaulted by the culprits, he had failed to alter the case into 394 IPC with an ulterior motive.

10. It is further contended by the respondents that as a responsible officer, the Sub Inspector of Police, the petitioner herein ought to have informed about the incident to the higher officials without hiding any facts, but, he has not intimated the same and hence, he was placed under suspension in C.No.12790/D1/2002, (Range order No.317/2002) dated 17.12.2002 by the Deputy Inspector General of Police, Coimbatore. That apart, charges were framed against him under Rule 3(b) of the Tamil Nadu Police Sub Ordinate Services (Discipline and Appeal) Rules, 1955 in PR.No.J1/92/2002 and he was awarded a punishment of "Reduction in time scale of pay one stage for one year with cumulative effect" by the Director General of Police, Chennai. Aggrieved by the said order, the petitioner has filed an appeal to the Government, and the Government has rejected the same in G.O.(2D)No.624 Home (Pol IV A) Department, dated 25.09.2007.

11. The respondents would further contend that as per police standing order No.555 Volume - I, a case of robbery had took place and hence, the First Information Report should be sent to the concerned Superintendent of Police, immediately, after the said incident, but, the Sub Inspector of Police has failed to report the same. However, challenging the punishment awarded by the Director General of Police and the orders of the Government, he has filed this W.P.No.8178 of 2008 before this Court. As per the affidavit filed by the petitioner, Thiru.P.Subramanian, the Sub Inspector of Police, had been serving in Nambiyur Police Station from 25.01.2002 to 18.12.2002 and he was also the Station house officer. On 16.11.2002, the Superintendent of police, Erode, had received an information from the public that a case of robbery had took place in the house of one Thiru.Subbaiyan of Kottupullampalayam Village in Nambiyur Police Station limits in the early hours of 10.11.2002. Immediately, the Superintendent of Police, visited the scene of crime on 16.11.2002 and enquired the public, complainant and family members of Subbaiyan about the said incident. On enquiry, the Superintendent of Police, had come to the knowledge that a case of robbery was reported to be occurred in the house of one Subbaiyan and the local police have registered the case in Nambiyur Police Station in Crime No.299/2002 under Sections 457 and 380 IPC by minimizing the gravity of offence with ulterior motive. In the enquiry, it was further reveled that the accused had scaled over tiled roof house and entered into the room and overpowered complainant sulochana and her husband subbaiyan. Thereafter, the accused had assaulted Subbaiyan indiscriminately, fractured his leg and snatched away 9.1/2 sovereign "Gold thalikodi" from the neck of his wife Tmt.Sulochana and escaped from the scene.

12. The respondents would also contend that on the findings of the enquiry, immediately, the Superintendent of Police, had issued a memo in C.No.117/SP-Camp/Erode/2002, dated 16.11.2002 to the Inspector of Police, Nambiyur circle to alter the section of law into 394 IPC and had also directed the Additional Superintendent of Police, Prohibition Enforcement Wing, Erode, to conduct an enquiry and to submit a report in this regard. Thereafter, the Additional Superintendent of Police, Prohibition Enforcement Wing, Erode, had conducted an enquiry and submitted a report, wherein, on the complaint given by Tmt.Sulochana on 10.11.2002, the petitioner herein, had registered a case in Nambiyur Police Station, in Crime No.299/2002 under Section 457, 380 IPC instead of 394 IPC with an ulterior motive and willfully suppressed the real facts that Thiru.Subbaiyan, the husband of the complainant, was assaulted by the accused and hospitalized for treatment. Further, the petitioner had also failed to inform the real facts and to send First Information Report to the Superintendent of Police. Thereafter, the enquiry officer had sent a representation along with the statement of witnesses to the Deputy Inspector General of Police, Coimbatore, in Superintendent of Police's Letter No.117/Camp/2002, dated 30.11.2002. The Deputy Inspector General of Police, Coimbatore Range in R.O.No.317/2002 (12790/D1/2002) dated 17.12.2002, had ordered to place the petitioner herein under suspension from service and had also instructed to frame charges under 3(b) of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, against the petitioner. Further, by his order in R.O.324/2002 (C.No.D1/12790/2002) dated 30.12.2002, he had directed to release the petitioner from suspension and to post him in Nilgiris District.

13. The respondents would further contend that on 31.12.2002, the charge under rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955, were framed against the petitioner Thiru P.Subramanian, in P.R.No.92/2002 by the Deputy Inspector General of Police, Coimbatore, for the delinquencies committed by him and it was served to the petitioner on 03.02.2003 through the Superintendent of Police, Nilgiris District.

14. It is further contended by the respondents that even though the petitioner had submitted his explanation on 17.08.2004 for the above delinquencies, the Deputy Superintendent of Police, Erode Town, was appointed as Enquiry Officer to inquire into the charges. After conducting the enquiry, the Enquiry officer, submitted his report on 05.10.2004 proving the charges leveled against the petitioner. A copy of the said report was also served to the

petitioner, to which, the petitioner had submitted his explanation on 15.06.2005. Thereafter, all the records were sent to the Director General of Police, Chennai through the Deputy Inspector General of Police, Combatore on 29.12.2004. By proceedings in Rc.No.AP.I(1)/53/017939/2005-1, dated 25.09.2005, the Director General of Police, Chennai, had imposed the punishment of "Reduction in time scale of pay by one stage for one year with cumulative effect" on the petitioner and accordingly, the punishment was implemented.

15. The respondents would further contend that as against the said punishment, the petitioner had filed an appeal to the Government and the Government, after examining the same carefully and independently, by order in G.O.(2D) No.624 Home (Pol.IVA) Department dated 25.09.2007, had rejected the appeal petition on the ground that the petitioner had not adduced any valid reasons for considering the same. Thereafter, the punishment imposed on the petitioner, was completed only on 25.09.2006 and hence, his name was not considered for inclusion in "C" list of Sub-Inspector of Police (category I).

16. Heard the learned counsel for the petitioner and the learned counsel for the respondents, and perused the materials available on record.

17. Any police officer, who is in the uniform service, has to maintain the law and order and also to follow the same. But, the petitioner herein, the Sub Inspector of police, being a Station House Officer, ought to have registered the case under proper section after a thorough investigation in a fair manner, but, he has failed to do the same. Further, he minimised the gravity of offence in a robbery case. The petitioner has also failed to send the First Information Report to the Superintendent of Police, Erode, on 10.11.2002 as per PSO 555 Volume-I, hence, he was dealt with a charge under Rule 3(a) of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955, and he was imposed the punishment of postponement of increment for one year without cumulative effect in the proceedings of the Director General of Police, Chennai in Rc.No.AP.I(1)/53/017939/2005 dated 25.09.2005.

18. Even though, the petitioner has recorded the statement and registered the case under different milder sections when it attracts grave offence, he has suppressed the facts and he had not reported the case to the higher officials. Hence, a proper enquiry was conducted by the Enquiry Officer and all the charges have been proved, after examination of all the witnesses. Further, the statement of the petitioner that if the contents of the complaint

attracted a case of robbery, he would have registered the case under Section 394 IPC and he would have submitted FIR to the higher officials, was not accepted, because, there was a failure on the part of the petitioner while investigating the matter, which action would clearly prove that he had already pre-decided to minimise the gravity of offence for reasons known to him and therefore, he has not chosen to investigate it further. The said act by the petitioner cannot be accepted by this Court and hence, this Court is not inclined to interfere with the order passed by the respondent.

19. In view of the above facts, it is categorically clear that only based on the punishment awarded, the petitioner's name was not considered for promotion as Inspector of Police (Category I) and the ignorance shown by the petitioner was not accepted by the respondents.

20. Under these circumstances, this Court is not inclined to quash the proceedings of the 2nd respondent dated 25.09.2005 in Pro.R.C.No.AP.I(1)/53/017939/2005-1 and subsequent proceedings of the 1st respondent dated 25.09.2007 in G.O.(2D)No.624.. Accordingly, the Writ Petition fails and it is dismissed. No Costs.
raja

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Government of Tamil Nadu,
Home (Police IVA) Dept.,
Fort St. George,
Chennai - 600 009.
2. The Director General of Police,
Chennai - 600 004.
3. The Deputy Inspector General of Police,
Coimbatore Range, Coimbatore.

+1CC TO M/S.R.THAMARASELVAN Advocate SR.NO. 51643

+1CC TO GOVERNMENT PLEADER SR.NO. 51422

Pre-delivery order in
W.P.No.8178 of 2008

AK(CO),
ASK(10/08/2018)