

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2018
CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.21332 of 2009

S.H.Alimudeen

... Petitioner

Vs

1.The Director-General of Police,
Chennai 600 004.

2.The Commissioner of Police,
City Police Office,
Coimbatore City, Coimbatore 641 018.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records pertaining to the order passed by the second respondent herein in his P.R.95/F1/05 dated 31.12.2005, imposing a punishment of postponement of increment for a period of three years with cumulative effect and the consequential order passed by the first respondent herein in his Rc.No.AP.I(1)/142000/2008 dated 06.08.2008, confirming the punishment and quash the same.

For Petitioner : Mr.Ravi Shanmugam

For Respondents : Mr.D.Venkatachalam,
Additional Government Pleader

O R D E R

Heard Mr.Ravi Shanmugam, learned counsel for the petitioner and Mr.D.Venkatachalam, learned Additional Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorari, to call for the records pertaining to the order passed by the second respondent herein in his P.R.95/F1/05 dated 31.12.2005, imposing a punishment of postponement of increment for a period of three years with cumulative effect and the consequential order passed by the first respondent herein in his Rc.No.AP.I(1)/142000/2008 dated 06.08.2008, confirming the punishment and quash the same."

3. The case of the petitioner is as follows:-

The petitioner was appointed as Grade-II Police Constable on 25.10.1984. He was promoted as Grade-I Police Constable on 19.09.1997. He was further promoted as Head Constable on 22.07.2002. While he was working as Head Constable, he was issued with the charge memo under Rule 3(b) of Tamil Nadu Police Subordinate Service (D&A) Rules. The charge memo contained two articles of charges which are reproduced hereunder:-

"Statement of charges framed against Thiru
S.H.Allimuddin, HC 338, Coimbatore city

Count No.I

Highly reprehensible and unbecoming act in having went hand in glove with Inspr.B-6, Peelamedu Crime PS and HC 595 in having made Gr.I PC 395 to forge the signature of complainant in B6 PS Cr. No.378/2004, under Section 379 IPC on 14.04.2004; registered the case and fabricated all the records and arranged the delivery of another vehicle to the complainant in this case.

Count No.II

Highly reprehensible and unbecoming conduct in having went hand in glove with Inspr. B-6 Crime and HC 595 in not returning the belongings of one Ravi @ Ravichandran, friend of accused concerned in B-6 Crime PS Cr.No.628/2004 who was illegally detained at B6 Crime PS from 22.06.2004 to 30.06.2004."

4. Not being satisfied with the explanation given by the petitioner to the charge memo, an enquiry was ordered and same was concluded. The Enquiry Officer submitted his report on 05.11.2005, holding that the first charge was proved and the second charge was not proved. The second respondent viz., the disciplinary authority, after obtaining explanation from the petitioner, accepted the findings of the Enquiry Officer and imposed the punishment of postponement of increment for a period of three years with cumulative effect vide his proceedings dated 03.12.2005.

5. The petitioner for some reason has not chosen to file an appeal against the order passed by the second respondent. However, has chosen to submit a mercy petition to the first respondent. The first respondent, vide his proceedings dated 06.08.2008, rejected the mercy petition thereby confirming the order of penalty passed by the second respondent. The orders of the first and second respondents are put to challenge in the present writ petition.

6. The learned counsel for the petitioner at the outset would submit that this is a case of insufficient evidence as none of the prosecution witnesses deposed in the departmental enquiry, have specifically stated in regard to the involvement of the petitioner in respect of the first charge. According to

the learned counsel, in the final paragraph of the enquiry report, the Enquiry Officer himself has observed that the misconduct had happened with the knowledge of the delinquent petitioner and therefore, the charge was found to be established. The learned counsel would therefore submit that in the absence of direct evidence against the petitioner, even the first charge cannot be said to be proved.

7. On the basis of the said findings, the disciplinary authority has passed an order on 03.12.2005. The disciplinary authority viz., the second respondent had in fact adverted to the evidence which was made available before the enquiry and referred to the evidence of P.W.3, wherein the said witness deposed that it was only at the instance of the petitioner, the complaint was written in the name of one Mr. Mohammed Sudir and forged signature like him and this has also been corroborated by the statement of P.W.1. There appears to be some evidence against the petitioner and therefore, it cannot be said that it is a case of no evidence and the petitioner can have the benefit of doubt.

8. Moreover, the sufficiency or insufficiency of evidence has to be appreciated on the basis of facts and circumstances of each case and in this case, there is some evidence to establish the first charge against the petitioner. The same Enquiry Officer has exonerated the petitioner from the second charge, since there was absolutely no evidence placed before the Enquiry Officer for establishing the said charge against him.

9. The learned counsel for the petitioner would submit that the punishment however imposed on the petitioner with cumulative effect will have very serious consequences, since, that will affect the substantial monetary benefits that are due and payable to the petitioner during his service and also after his service in his pension, throughout his life time. The petitioner had rendered more than 39 years of meritorious service and had received 46 rewards and also he had received Chief Minister's Medal for maintaining an unblemished service in 2004. The past service of the petitioner had been outstanding and the same was blemishless and therefore, the imposition of penalty of postponement of increment for a period of three years with cumulative effect appears to be rather disproportionate to the gravity of the misconduct alleged, particularly, in view of the findings rendered by the Enquiry Officer himself that the entire instance had taken place in the presence of the petitioner, but, there was no indictment by the Enquiry Officer about his active involvement in the act of misconduct.

10. Upon notice, learned Additional Government Pleader appearing for the respondents, entered appearance and filed a

detailed counter affidavit. The learned Additional Government Pleader reiterated the averments contained in the counter affidavit.

11. While resisting the claim of the petitioner for grant of any relief by this Court, nevertheless, the respondents have fairly admitted about the meritorious service rendered by the petitioner for nearly 39 years in paragraph No.11 of the counter affidavit which is reproduced below:-

"11. It is submitted that the contention of the applicant in para 2 is correct. The applicant was appointed as Gr.II.PC on 25.10.1984 FN. The applicant was further promoted as Gr.I.PC. on 19.09.1997 and as head constable on 22.07.2002. The applicant has received about 46 rewards and the applicant had not been awarded with any punishment except the punishment of PR.95/2004. The applicant was also given the Hon'ble Chief Minister's Medal for maintaining an unblemished service in the year 2004."

12. Having considered the rival submissions of the learned counsels and having perused the materials and pleadings placed on record, this Court is in agreement with the submissions made by the learned counsel for the petitioner that in the facts and circumstances of the case, the punishment imposed on the petitioner was disproportionate to the gravity of misconduct alleged against the petitioner. Moreover, as rightly contended by the learned counsel for the petitioner that there was no sufficient evidence made available in the enquiry for establishing the charge against the petitioner fully.

13. In any event, on the basis of the slender piece of evidence, the Enquiry Officer concluded the first charge was established, but, however, found the second charge was not established. On the basis of such findings, the disciplinary authority imposed the penalty by referring to the statement made during the enquiry by P.W.1 and P.W.2. Since that was the only evidence available directly connecting the petitioner to the act of misconduct. However, unfortunately, in this case, the disciplinary authority has not taken into consideration the meritorious service rendered by the petitioner and also the Medal received by the petitioner from the Chief Minister for maintaining unblemished record of service in 2004. While imposing the punishment, the authority must also take into consideration the past conduct of the petitioner in order to arrive at the quantum of penalty to be imposed in such cases.

14. As rightly contended by the learned counsel for the petitioner that the petitioner herein has rendered meritorious service and having received nearly 46 rewards during his career,

this has also been very fairly admitted by the respondents in paragraph No.11, which is extracted supra. That being the case, the imposition of penalty with cumulative effect will have far reaching monetary implications for the petitioner during his career as well as after his retirement, throughout his life. Such being the case, this Court is of the considered view that it is a fit case that the punishment requires to be interfered with as being excessive and disproportionate.

15. For the above said reasons, this Court modifies the penalty of postponement of increment for a period of three years with cumulative effect into postponement of increment for a period of three years without cumulative effect. The second respondent is directed to pass appropriate orders by altering the penalty as one of postponement of increment for a period of three years without cumulative effect. On such modification of the penalty, the petitioner shall be entitled to all other attendant benefits as admissible to him. The second respondent is directed to pass appropriate orders as indicated above, within a period of eight weeks from the date of receipt of a copy of this order.

16. With the above direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Director-General of Police,
Chennai 600 004.

2.The Commissioner of Police,
City Police Office,
Coimbatore City, Coimbatore 641 018.

+1cc to Mr.Ravi Shanmugam, Advocate, S.R.No.21190

+1cc to the Government Pleader, S.R.No.21415

W.P.No.21332 of 2009

RV (CO)
RRK (03/04/2018)