

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.20897 of 2006

And

M.P.Nos.1 of 2006 and 1 of 2009

T.Jaya

... Petitioner

Vs.

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

2.The Deputy Inspector General of Police,
Armed Police, Chennai - 10.

3.The Commandant
TSP XI Battalion,
Rajapalayam.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus call for records in R.C.No. 166893/AP 3 (1)/2005 dated 25.09.2005 of the first respondent herein and quash the same and that this Hon'ble Court may be pleased to direct the first respondent to include petitioner name in the promoted list of Sub Inspectors in C.No.A.1/31356/02 dated 13.01.2003.

For Petitioner : Mr.P.Subramanian

For Respondents : Mr.K.Ravikumar for R1 to R3
Additional Government Pleader

O R D E R

The petitioner has filed this writ petition seeking issuance of Certiorarified Mandamus calling for records in R.C.No.166893/AP 3 (1)/ 2005 dated 25.09.2005 of the first respondent and to quash the same and to direct the first respondent to include the name of the petitioner in the promoted list of Sub Inspectors in C.No.A.1/31356/02 dated 13.01.2003.

2.The case of the petitioner is that the petitioner joined the services as Grade II P.C. On 27.05.1988 and was promoted as Naik on 20.01.1994 and further promoted as Havildhar on 24.05.1994. The petitioner has received many awards including Manaser NSG Commando Shield on 09.03.1999. Whiles, the petitioner was issued with a charge memo dated 03.07.2002 alleging that on 24.06.2001, at about 18.26 hours, the petitioner rang up from a public call office at Coimbatore having no.0422 807734 to the Mobile No.98422 27555, which is in the custody of one Pitchai Muthu, his superior Officer and abused him in filthy language.

3.It is the further case of the petitioner that thereafter enquiry was conducted from 14.09.2001 to 25.03.2003 by 11 superior Officers

at 11 different stages and final order was passed on 23.08.2003 stating that the petitioner's guilt on the offence has been proved since the petitioner has not completely rejected the charge. The petitioner was imposed with the punishment of reduction in time scale of pay by one year and the period of reduction shall not operate to further increments by the Enquiry Officer. Aggrieved by the same, the petitioner preferred appeal before the Inspector General of Police and the said appeal was dismissed on 16.10.2003. Challenging the same, the petitioner filed Review Petition before the first respondent and the same was also dismissed on 25.09.2005.

4.It is the further case of the petitioner that the petitioner was asked to attend promotion test for Sub Inspector of Police and was given a Police Pass Port to attend the test on 11.01.2003. At the proceedings dated 13.01.2003, the petitioner attended the proceedings but was not able to participate in the test. However, his name was not found in any of the list i.e., list of passed police personnel, list of failed police personnel, list of persons ineligible due to punishment or list of absentees. Aggrieved by the same and also by the punishment imposed on the petitioner, the petitioner has filed this petition.

5.The respondents have filed counter affidavit stating that the petitioner was dealt with on a charge under Rule 3 (b) of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, for highly indisciplinary conduct in having abused in filthy language over phone No.0422807734 to cell phone No.9842227555 of Thiru.Pitchaimuthu, the Deputy Commandant, TSP IV Battalion on 24.06.2001 at 18.26 hrs.

6.The counter further aver that the review petition of the petitioner dated 03.08.2005 was treated as mercy petition and orders passed under Rule 15(A) (1) (ii) of TNPSS (D&A) Rules, 1955 by the Director General of Police, Chennai rejecting the mercy petition and the reasons therefor have been specified in para-6 of the proceedings of the Director General of Police in Rc.No.166893/AP. 3(1)/2005 dated 25.09.2005. The aforesaid punishment was awarded by the disciplinary authority only after taking lenient view and as such the appellate and reviewing authorities upheld the order of punishment.

7.The learned counsel appearing for the petitioner would submit that nine prosecution witnesses were examined and the crucial witnesses are P.W.3 - Renugadevi, P.W.4 - Sagayamary and P.W.5 - Bayammal. Though P.W.3 and P.W.4 initially stated that they were available at the scene of occurrence, subsequently, they turned hostile. In the disciplinary proceedings there are contrary evidence between the statement of Sagayamary and Renugadevi. Sagayamary in cross examination categorically stated that she left the place at 5.30. p.m. However the phone call was made from the telephone booth at 6.30 p.m. when that being so, Sagayamary was not available at the scene of occurrence and plea of P.W.3 and P.W.4 are unsustainable. There is gross violation of principles of natural justice in the manner of enquiry conducted against the petitioner. Accordingly, he prayed for allowing the writ petition.

8.The learned Additional Government Pleader appearing for the respondents submitted that the Disciplinary Authority after conducting proper enquiry only imposed the minor punishment of reduction in time scale of pay by one year and the period of reduction shall not operate to further increments by the Enquiry Officer. Thereafter, the Appellate Authority and the Reviewing Authority confirmed the punishment imposed by the Disciplinary Authority. When the three fact finding Authorities arrived at a same conclusion and imposed the minor punishment, it may not be interfered by this Court under Article 226 of the Constitution of India. Accordingly, he prayed for dismissal of the writ petition.

9.Heard the arguments advanced on either side and perused the materials available on record.

10.The undisputed facts are that the petitioner was issued with a charge memo dated 03.07.2002 alleging that on 24.06.2001, at about 18.26 hours, the petitioner rang up from a public call office at Coimbatore having no.0422 807734 to the Mobile No.98422 27555 of his superior Officer and abused him in filthy language. Thereby, the said Pitchai Muthu made complaint before the Disciplinary Authority. During enquiry, the prosecution

examined nine witnesses and the petitioner examined two witnesses.

11.The Disciplinary Authority took consideration of the statement of P.W.3 - Renugadevi, P.W.4 - Sagayamary who initially admitted that the petitioner after making phone call left the telephone booth and Krishnasamy - Sub Inspector of Police in the presence of P.W.1 - Prithviraj and P.W.2 - Gnanavel made enquiry and recorded their statements. In that statement P.W.3 and P.W.4 admitted that Bayammal was present at the scene of occurrence. After making call, the petitioner left the place and the same was deposed before the Enquiry Officer. Based on the statements of P.W.3 and P.W.4 and taking into consideration the petitioner's past service, the Disciplinary Authority himself exercised the discretionary power and awarded a lesser punishment and the same was confirmed by the Appellate Authority and the Reviewing Authority.

12.This Court feels that interfering with the decision of the fact finding authorities in a routine manner is not permissible under Article 226 of the Constitution of India unless their findings shake the conscience of this Court or if the Disciplinary Authority had proceeded the matter in an arbitrary manner or if the order of punishment is perverse in nature. Hence, this Court is not inclined to interfere with the order of punishment.

13.The writ petition is accordingly dismissed. No costs. Consequently, the connected miscellaneous petitions are also closed.

s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

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To

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

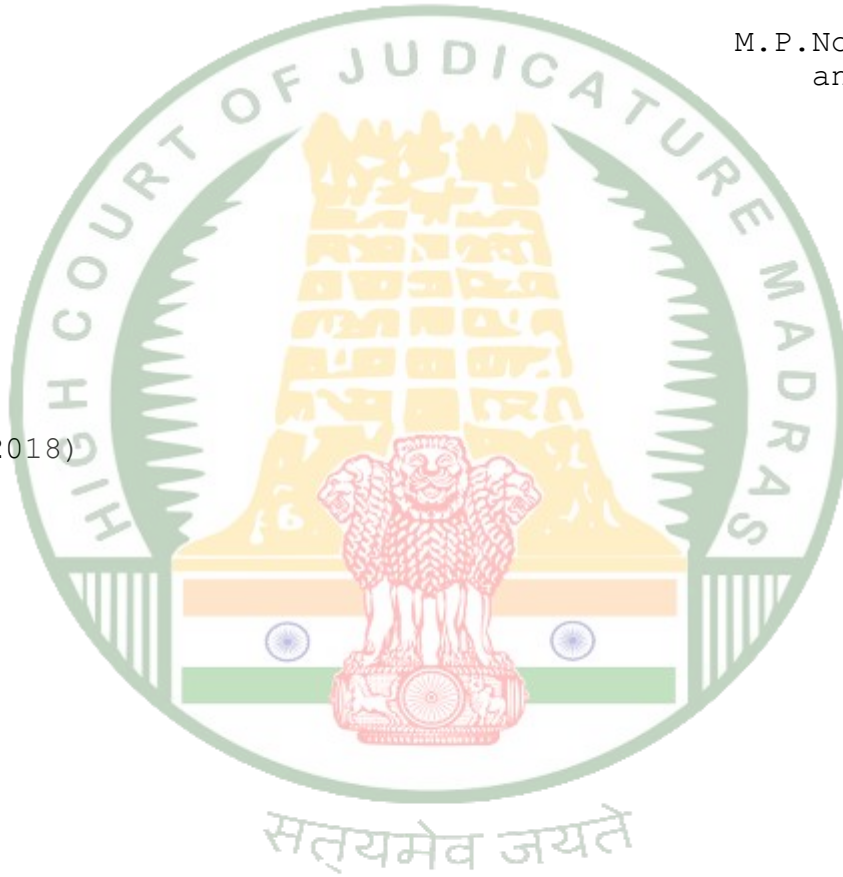
2.The Deputy Inspector General of Police,
Armed Police, Chennai - 10.

3.The Commandent
TSP XI Battalion,
Rajapalayam.

+1 CC to Mr.P.Subramanian, Advocate sr 44352.
+1 CC to Govt. Pleader sr 45307.

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M.P.Nos.1 of 2006
and 1 of 2009

NM (CO)
SP (03/08/2018)



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