

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.9589 of 2015

Palanimuthu

... Petitioner

Vs

1.The Deputy Inspector General of Police,
Trichy Range,
Trichy.

2.The Director General of Police,
Tamil Nadu, Chennai-4.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in connection with the impugned order passed by him in RO No.261/2008 C No.B1/13147/2001 dated 18.12.2008 and confirmed by the 2nd respondent in RC No.107380/Con.V(2)/2013 dated 10.03.2015 and quash the same and direct the respondents to modify the punishment into one of compulsory retirement from service and settle his retirement benefits within a reasonable time.

For Petitioner : Mr.K.Venkata Ramani (SC) for
Mr.M.Muthappan

For Respondents : Mrs.Rose Kamalam,
Additional Government Pleader

ORDER

Heard Mr.K.Venkata Ramani, learned senior counsel for the petitioner and Mrs.Rose Kamalam, learned Additional Government Pleader appearing for the respondents.

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

"To issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in connection with the impugned order passed by him in RO No.261/2008 C No.B1/13147/2001 dated 18.12.2008 and confirmed by the 2nd respondent in RC No.107380/Con.V(2)/2013 dated 10.03.2015 and quash the same and direct the respondents to modify the punishment into

one of compulsory retirement from service and settle his retirement benefits within a reasonable time."

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

The petitioner was recruited as Grade II Police Constable in the Tamil Nadu Police Force on 12.08.1974. he was promoted as Grade I Police Constable in the year 1985 and further promoted as Head Constable in 1994. The petitioner thereafter participated in range promotion board conducted in 2000 and on being successful in the selection, he was promoted as Sub-Inspector of Police in January 2001. In 2001, the petitioner was implicated in a criminal case under the provisions of Prevention of Corruption Act and he was therefore placed under suspension on 29.11.2001, but, subsequently, reinstated in service on 06.02.2002 in pursuance of the orders passed by the then Tamil Nadu Administrative Tribunal.

4. The petitioner was also issued with the charge memo simultaneously for departmental action under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, containing as many as nine charges. In respect of his misconduct which attracted the provisions of Prevention of Corruption Act, he was arrested. An enquiry was conducted and on conclusion of the enquiry, it was held that the charges 1 to 5 and 7 were not proved, but, the charges 6, 8 and 9 were proved. Thereafter, he was imposed with the punishment of reduction in time scale of pay by two stages for one year without cumulative effect by order dated 18.04.2006.

5. In the meanwhile, as the petitioner was due for retirement on attaining the age of superannuation on 31.08.2007, he was once again placed under suspension and was not allowed to retire from service by two separate proceedings. As far as the criminal case is concerned, the learned trial Judge has held the charge proved against the petitioner and imposed a punishment of rigorous imprisonment for a period of two years under Section 7 of the Prevention of Corruption Act and also to pay a fine of Rs.3,000/- and for other offence under the Prevention of Corruption Act to undergo rigorous imprisonment of three years and to pay a fine of Rs.2,000/-.

6. A criminal appeal was preferred before this Court in C.A.No.343 of 2008. In view of the conviction by the Criminal Court, a show cause notice was issued to the petitioner by the first respondent on 06.05.2008 as to why he should not be imposed with the punishment under Rule 2(j) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules and ultimately by order dated 14.7.2008, the petitioner was dismissed from service on the basis of the conviction recorded by the Trial Court. The petitioner earlier preferred a writ

petition in W.P.No.12582 of 2008, challenging the show cause notice issued to him on 06.05.2008 and the said writ petition was disposed of after holding the show cause notice as invalid, in view of the indication of punishment in the show cause notice. Thereafter, another show cause notice was issued on 12.11.2008, in pursuance of the directions of this Court and obtaining reply from the petitioner, the order was issued on 18.12.2008, once again dismissing the petitioner from service with effect from 31.08.2007.

7. In the meanwhile, it appears that the petitioner's earlier conviction was confirmed in Criminal Appeal filed before this Court. However, the punishment was reduced, as against which, a Special Leave Petition was filed. However, the same was rejected on 21.08.2012. A review application filed before the Hon'ble Supreme Court of India was also rejected on 11.12.2012 and thus, the matter reached the final meaning that the order of conviction by the Trial Court attained the finality.

8. After the disposal of the Special Leave Petition by the Hon'ble Supreme Court of India and the Criminal Appeal by this Court, the petitioner had submitted a statutory appeal and mercy petition to the second respondent on 15.06.2013, praying for modification of penalty of dismissal from service on the ground that the punishment imposed was excessive and disproportionate. However, the mercy petition was rejected and the punishment of dismissal from service was confirmed. The order of the first respondent dismissing the petitioner from service on 18.12.2008 and the order of dismissal from service was confirmed by the second respondent by rejecting the mercy petition dated 10.03.2015, are put to challenge in the present writ petition.

9. Upon notice, learned Additional Government Pleader appearing for the respondents, entered appearance and filed a detailed counter affidavit.

10. The point in issue to be considered in this writ petition is whether this Court can interfere with the order of penalty of dismissal from service in the teeth of the fact that the petitioner was a convicted person under the provisions of Prevention of Corruption Act and the conviction by the Trial Court has been confirmed upto the Hon'ble Supreme Court of India. Although an attempt has been made by the learned senior counsel for the petitioner that the proceedings under the provisions of Prevention of Corruption Act and subsequent conviction by the Criminal Court, cannot be a bar for this Court to interfere with the quantum of penalty, since the offence committed by the petitioner does not attract the concept of moral turpitude and therefore, the extreme punishment of dismissal from service can held to be excessive and harsh.

11. This Court is unable to appreciate such specious piece of arguments advanced by the learned senior counsel for the petitioner that the offence relating to corruption is not of moral turpitude. Such arguments are nothing, but a desperate attempt to convince this Court in regard to the magnitude of the penalty imposed in order to call for its interference. In fact, the learned senior counsel has relied on a decision of the learned Division Bench of this Court in the case of M.Lakshmanan Vs. ICICI Bank Employees' Union, reported in 2011 (1) CTC 80, in fact the said decision is against the petitioner which describes the expression "moral turpitude" as anything contrary to honesty, modesty and good morals. If corruption is not a moral turpitude, this Court does not think what else can be termed as Turpitude apart from certain other offences of Indian Penal Code, like cheating, rape etc.

12. In fact, the service regulations which govern service conditions of Central Government employees, particularly, in the Central Civil Services (Classification, Control and Appeal) Rules (hereinafter referred to as CCS CCA Rules) which provide that in every case of acceptance of any illegal gratification, the punishment to be imposed is either removal from service or dismissal from service. Unless in exceptional circumstances, a departure can be made with special reasons to be recorded in writing. The central Rule 11 providing major penalty proceeding is extracted hereunder:-

"PENALTIES AND DISCIPLINARY AUTHORITIES

11. Penalties

Major Penalties--

(v) save as provided for in Clause (iii) (a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(vi) reduction to lower time-scale of pay, grade, post or Service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time-scale of pay, grade, post or Service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period--

(a) The period of reduction to time-scale of pay, grade, post or service shall operate to postpone future increments of his pay, and if so, to what extent; and

(b) The Government servant shall regain his original seniority in the higher time-scale of pay, grade, post or service.

(vii) Compulsory retirement;

(viii) Removal from service which shall not be a disqualification for future employment under the Government;

(ix) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government:

Provided that, in every case in which the charge of possession of assets disproportionate to known sources of income or the charge of acceptance from any person of any gratification, other than legal remuneration as a motive or reward for doing or forbearing to do any official act is established the penalty mentioned in Clause (viii) or Clause (ix) shall be imposed:

Provided further that in any exceptional case and for special reason recorded in writing, any other penalty may be imposed."

13. The above rule would disclose that in the matters of corruption, a stern view is to be taken, since the incidents of corruption are proliferating in alarming proportion in public employment. Therefore, a deterrent punishment ought to be the order of the day to curb or curtail the abominable menace of corruption. Today, the tentacles of corruption have permeated to all levels and are eating into the vitals of the State. If such omnipotent corruption is not checked and eradicated, practically the State will be left with nothing for the future generation to understand what is honesty, which is the very essence of civilised human existence. What is being witnessed today is an alarming rise of corruption cases in public employment and the corruption is almost being elevated to the status of institutional necessity. Corruption, which was once an exception to a civilised existence, has now become a rule and over a passage of time, at this rate, corruption would grow like a Frankenstein's monster and would annihilate the substratum of virtuous existence. Unless, the monstrosity of ubiquitous corruption is handled with iron hand, it will eventually lead to a situation where the entire citizenry will be forced to participate in the game of corruption. The space for probity in public employment will be consumed in its entirety by the depraved officialdom. The society will ultimately degenerate into unwholesome dystopian existence, in future.

14. Since this Court is of the considered view that the proved corruption cannot be condoned under any circumstances and therefore dismissal order cannot even be remotely held to be

disproportionate. On the other hand, as found in the CCS CCA Rules, governing the service conditions of the Central Government Servants, as a matter of imposing punishment for dishonesty, it can only be either removal or dismissal from service. While holding as such, the writ petition is hereby dismissed as being devoid of merits.

15. While disposing of the writ petition, it is suggested to the Government of Tamil Nadu to bring in suitable amendment to the disciplinary rules with a similar provision as provided for in, in CCS CCA Rules under major penalty chapter incorporating only removal and dismissal from service in proved corruption cases subject to of course, in exceptional cases with strong reasons need to be recorded in writing by the disciplinary authority for imposing any other penalty. In case of disciplinary or criminal action initiated against the employee of the State under the provisions of the Prevention of Corruption Act, only imposition of stringent penalty as envisaged in the service rules, can there be any likelihood of reduction of any acts of misconduct, attracting the provisions of the Prevention of Corruption Act.

16. Registry is directed to forward a copy of the order to the Chief Secretary of the State to take forward suggestions of this Court in order to make suitable amendment in disciplinary rules governing the State Government employees.

17. With the above observation, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Deputy Inspector General of Police,
Trichy Range,
Trichy.

2.The Director General of Police,
Tamil Nadu, Chennai-4.

COPY TO

The Chief Secretary to Govt.
Fort St. George, Chennai 9.

+1cc to Mr.M.MUTHAPPAN, Advocate, S.R.No.39614
+1cc to the Government Pleader, S.R.No.39156

W.P.No.9589 of 2015

KJ (CO)
TR(07/08/2018)



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