

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.1420 of 2012

P.Arumugam

... Petitioner

Vs

1.The Inspector General and Commissioner of Police,  
Salem City Police, Salem.

2.The Deputy Commissioner of Police,  
Law & Order,  
Salem City Police, Salem.

.... 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 relating to the orders in (1) F.Order dated 20.11.2009 in P.R.No.15/H1/2009 of the second respondent (2) Pro.C.No.Appl.02/H1/2010 dated 07.08.2010 of the first respondent and (3) C.No.P.R.15/H1/2009 (C.P.No.22/2011) dated 18.01.2011, of the second respondent and to quash the same and to issue consequential directions to the respondents to regularise the period of suspension from 09.03.2009 to 01.05.2009 as duty for all purposes with consequential benefits.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.T.M.Pappiah,  
Special Government Pleader

O R D E R

Heard Mr.M.Ravi, learned counsel for the petitioner and Mr.T.M.Pappiah, learned Special 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 relating to the orders in (1) F.Order dated 20.11.2009 in P.R.No.15/H1/2009 of the second respondent (2) Pro.C.No.Appl.02/H1/2010 dated 07.08.2010 of the first respondent and (3) C.No.P.R.15/H1/2009 (C.P.No.22/2011) dated 18.01.2011, of the second respondent and to quash the same and to issue consequential directions to the respondents to

regularise the period of suspension from 09.03.2009 to 01.05.2009 as duty for all purposes with consequential benefits."

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

The petitioner was employed as Police Constable Grade I. He was placed under suspension by the second respondent on 09.03.2009. Thereafter, he was issued with the charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Service (D & A) Rules vide proceedings dated 01.04.2009. Two charges came to be framed against the petitioner, alleging abuse in filthy language by the petitioner against one Auto Rickshaw Driver M.Vadivel and forcible removal of an amount of Rs.270/- from the shirt pocket of the said Driver.

4. The petitioner has submitted his explanation on 10.04.2009, denying the charges. However, an enquiry was ordered to be conducted by the disciplinary authority. In the meanwhile, the suspension came to be revoked on 30.04.2009. On conclusion of the enquiry, the Enquiry Officer submitted a report holding both the charges proved. According to the petitioner, totally eight witnesses were examined in the departmental enquiry and out of eight witnesses, W.No.1 to 4 had turned hostile including the complainant. On the basis of the report of the Enquiry Officer, a final order was passed by the disciplinary authority on 20.11.2009, imposing the punishment of reduction in time scale of pay by three stages for three years with cumulative effect. An appeal was preferred against the order to the first respondent on 05.02.2010. The first respondent by proceedings dated 07.08.2010, rejected the same by a non-speaking order without considering the same on merits, holding that the appeal was time barred. The orders of the first and second respondents are put to challenge in the present writ petition.

5. The learned counsel for the petitioner would at the outset contend that the Enquiry Officer had come to a finding not on the basis of any worthy evidence available in the regular enquiry, but, on the basis of the statements obtained from the witnesses during the preliminary enquiry and when the main witnesses turned hostile, they were not subjected to any serious cross examination by the prosecution and the Enquiry Officer himself assumed the role of prosecutor and cross examined the witnesses by asking few questions. However, it ultimately appeared that no answers were elicited from the hostile witnesses against the petitioner. The other witnesses were examined in the departmental enquiry happened to be official witnesses who were not privy to the incidents which gave raise to the charge memo.

6. According to the learned counsel for the petitioner, the complainant itself has withdrawn his complaint and denied the

statement given by him earlier during the preliminary enquiry. In spite of the fact that the main witnesses had turned hostile, no efforts were made by the prosecution to establish the charges against the petitioner. Therefore, he would submit that the finding is not supported by any worthy evidence. The second respondent - disciplinary authority mechanically relied upon the enquiry report and passed the impugned order. The disciplinary authority did not appreciate the objections raised by the petitioner against the findings of the Enquiry Officer, but had chosen to impose the impugned penalty on the basis of the flawed findings.

7. The learned counsel for the petitioner would also submit that the appeal filed against the second respondent's order to the first respondent, was also not considered in terms of the rule position. The learned counsel would draw the attention of this Court to the rejection order of the appellate authority viz., the first respondent dated 07.08.2010. The appellate authority has merely rejected the appeal on the ground that the appeal was time barred. While rejecting the appeal on such ground, the appellate authority failed to take into consideration the valid objections raised by the petitioner in the appeal.

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

9. Even in the counter affidavit, it is admitted that the main witnesses had turned hostile, however, the Enquiry Officer had relied on the statements recorded by those witnesses during the preliminary enquiry. It appears even from the counter affidavit that the Enquiry Officer had rendered the finding on the strength of the statements given by the main witnesses during the preliminary enquiry. As contended by the learned counsel for the petitioner that the other witnesses who deposed in support of the prosecution were official witnesses who were not privy to the alleged incident which happened on the day which gave rise to the charge memo. In any case, it appears that the complainant himself has turned hostile and withdrawn his statement recorded during the preliminary enquiry.

10. This Court while considering the submissions of the learned counsel appearing for either side, has to see that whether the findings of the Enquiry Officer can be countenanced in law and on facts. In the instant case, it appears that although the main witnesses have turned hostile, they were not subjected to proper cross examination by the prosecution in order to elicit any worthwhile piece of evidence in establishing the charges. On the other hand, the Enquiry Officer assumed the

role of prosecution and asked few questions to the hostile witnesses, but, even then, he was not able to elicit any answer in support of the prosecution.

11. The order of the disciplinary authority on the basis of the invalid findings of the Enquiry Officer, cannot therefore be countenanced in law. In fact, the learned counsel for the petitioner would also rely on the decision of this Court, in the case of K.Ramalingam Vs. Superintendent of Police, reported in (2009) 7MLJ 578, the learned Judge as he then was of this Court has clearly held in the said decision that no reliance could be placed on the statement made by the witnesses during the preliminary enquiry which was not substantiated during the regular enquiry. The learned Judge has held that in such situation, the charges cannot said to be validly proved. The ratio laid down in the said case squarely applies to the present case, wherein, the reliance was placed only on the statement obtained from the preliminary enquiry. Although it appears that other witnesses have corroborated in the regular enquiry, but, that evidence alone cannot said to be valid for establishing the charges framed against the petitioner.

12. The learned counsel would also draw the attention of this Court to the Circular issued by the Director General of Police dated 25.04.2007, in which, the Department was directed that the charges are not to be held proved only on the basis of the statement given during the preliminary enquiry and such charges ought to be proved only on the statement during regular or oral enquiry. Therefore, the enquiry findings as rendered by the Enquiry Officer in the instant case is contrary to the said Circular. Even on this ground, the findings of the Enquiry Officer has to be interfered with.

13. Despite the various lacunae as pointed out above in the findings rendered by the Enquiry Officer, the disciplinary authority has mechanically proceeded to impose the impugned penalty on the petitioner. At this, the disciplinary authority ought to have ordered re-enquiry into the matter, in view of the fact that the important witnesses became hostile. However, the disciplinary authority has chosen to rely on such invalid findings for imposing the impugned penalty on the petitioner, further, the appellate authority has rejected the appeal only on the ground of delay and did not choose to address the appeal on merits.

14. The learned Special Government Pleader would submit that since the appeal has not been disposed of on merits, this Court may remit the matter to the appellate authority for consideration of the appeal on merits and in accordance with law. However, this Court finds that the penalty was imposed on the petitioner in 2009 and the order of the appellate authority

dated 7.08.2010 and at this distance of time, no practical purpose would be served to direct the appellate authority to apply his mind. In any event, the Circular issued by the Director General of Police as aforementioned, cannot be disputed by the Department. Moreover, the fact remains that the enquiry finding is substantially based on the statement obtained during the preliminary enquiry. Therefore, that position cannot be undone when the matter is remitted back to the appellate authority. Therefore, this Court finds that no purpose would be served in sending the matter back to the appellate authority, as on date.

15. For the above said reasons, this Court is of the considered view that the impugned punishment imposed by the disciplinary authority viz., the second respondent herein vide proceedings dated 20.11.2009, is on the basis of the invalid findings rendered by the Enquiry Officer and therefore, such punishment cannot be sustained in law. Therefore, both the orders of the disciplinary authority as well as the appellate authority vide proceedings in P.R.No.15/H1/2009, dated 20.11.2009 and Pro.C.No.Appl.02/H1/2010, dated 07.08.2010, are hereby set aside.

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

Sd/-  
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

gsk

To

1.The Inspector General and Commissioner of Police,  
Salem City Police, Salem.

2.The Deputy Commissioner of Police,  
Law & Order,  
Salem City Police, Salem.

+ 1 cc to Mr.M.Ravi Advocate,SR.16428  
+ 1 cc to The Govt.Pleader, SR.16707

W.P.No.1420 of 2012

nr 03/04/2018