

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.14798 of 2012

K.Chidambaram

... Petitioner

Vs

1.The Director General of Police/
Inspector General of Prisons,
Chennai 600 008.

2.The Deputy Inspector General of Prisons,
Chennai 600 008.

3.The Superintendent,
Central Prison, Vellore,
Vellore District.

... 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 impugned order of the first respondent in proceedings No.39163/EW2/2011 dated 16.11.2011 confirming the order passed by the second respondent in proceedings No.1221/Mu.U/2011 dated 02.09.2011 and the order passed by the third respondent in No.10190/Po-1/2010 dated 05.04.2011 and quash the said orders and direct the respondents to reinstate the petitioner in service with all consequential benefits.

For Petitioner : Mr.P.Rajendran

For Respondents : Mr.J.Pothiraj,
Special Government Pleader

O R D E R

Heard Mr.P.Rajendran, learned counsel for the petitioner and Mr.J.Pothiraj, 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 impugned order of the first respondent in proceedings No.39163/EW2/2011

dated 16.11.2011 confirming the order passed by the second respondent in proceedings No.1221/Mu.U/2011 dated 02.09.2011 and the order passed by the third respondent in No.10190/Po-1/2010 dated 05.04.2011 and quash the said orders and direct the respondents to reinstate the petitioner in service with all consequential benefits."

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

The petitioner was appointed as Grade II Warder on 22.08.2005 and had been discharging his duties to the best of his ability. In 2010, the petitioner was placed under suspension by proceedings of the third respondent dated 18.10.2010 on the basis of the allegation that at the time of entering the main gate of the prison, the petitioner was found in possession of one Mobile Phone with dual SIM card facility with battery in his handbag and thereby he attempted to smuggle the same inside the prison.

4. Thereafter, a charge memo was issued for the said allegation on 09.11.2010 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. An explanation was submitted on 24.11.2010, denying the charges. However, not satisfied with the explanation, an enquiry was conducted and on behalf of the prosecution, three witnesses were examined. The petitioner had examined himself on the defence side. Apart from him, one more person was also examined on behalf of the defence side. Thereafter, an enquiry report was submitted on 15.03.2011, holding the charges proved. A copy of the enquiry report was furnished to the petitioner and an explanation was also offered as against the findings of the Enquiry Officer on 29.03.2011. In reply to the Enquiry Officer's finding, the petitioner had contended that the enquiry was not properly conducted in terms of the regulations, since the Enquiry Officer himself acted as prosecutor and cross-examined the witnesses and also cross-examined the petitioner. Therefore, the Enquiry Officer exceeded his power. In such circumstances, the report holding the charge proved, cannot be relied upon as the same is biased or perverse.

5. The third respondent notwithstanding the legitimate objection raised by the petitioner, by his proceedings dated 05.04.2011, imposed the penalty of dismissal from service on the petitioner. Against the order of dismissal, an appeal was preferred to the second respondent on 11.04.2011. However, by a non-speaking order, the appeal was rejected by the second respondent by proceedings dated 02.09.2011. Thereafter, a revision was filed to the Additional Director General of Police/Inspector General of Prisons, the first respondent herein, on 03.10.2011. The first respondent once again by a non-speaking order, rejected the revision petition by proceedings dated 16.11.2011. The orders of the respondents are put to

challenge in the present writ petition.

6. The learned counsel for the petitioner would at the outset submit that the enquiry conducted against the petitioner stood vitiated on the sole ground that the Enquiry Officer himself had acted as prosecutor and cross-examined not only the petitioner but also the prosecution witnesses. The Enquiry Officer in fact had put leading questions to the witnesses and elicited answers against the petitioner. On the basis of such sham and farcical enquiry, the Enquiry Officer submitted his report holding the charges as proved.

7. Unfortunately, the disciplinary authority, the third respondent herein without appreciating the infirmities pointed out in the conduct of the enquiry, accepted the findings as it is and imposed the harsh penalty of dismissal from service against the petitioner. More unfortunately, both the appellate authority and the revisional authority viz., the second and the first respondents herein, without appreciating the lacuna in the conduct of the enquiry and the finding rendered thereon, had confirmed the order of penalty by the disciplinary authority. Therefore, he would submit that the impugned orders passed by the respondents cannot be countenanced both in law and on facts and the same are liable to be interfered with by this Court.

8. Even otherwise, the learned counsel for the petitioner would submit that in revision petition filed before the first respondent, the petitioner had pleaded a lenient punishment instead of dismissal from service. But, unfortunately, even that was not considered by the first respondent and the revision petition came to be rejected mechanically.

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

10. The learned Special Government Pleader appearing for the respondents would submit that it was a very serious charge against the petitioner, he having attempted to smuggle Mobile phone into the prison in order to help the convicts for their nefarious activities. The contention raised on behalf of the petitioner that the Enquiry Officer had acted as prosecutor will not hold good in the present case, since the petitioner admitted in having in his possession of Mobile phone with dual SIM card on the day when he attended duty. In such view of the matter, whether the enquiry officer had acted as prosecutor or not, did not make any difference in regard to the conclusion of the Enquiry Officer. In such view of the matter, the imposition of penalty by the disciplinary authority and confirmation of the

same by the appellate authority and the revisional authority, cannot be faulted with. According to the learned Special Government Pleader, in view of the gravity of charge, the imposition of penalty of dismissal from service is appropriate and cannot be held to be excessive and harsh.

11. This Court has considered the rival submissions of the learned counsel on both sides and perused the materials and pleadings placed on record. From the enquiry proceedings, it is found that the Enquiry Officer had acted as prosecutor by cross-examining not only the petitioner, but, also the prosecution witnesses. Therefore, the findings rendered by the Enquiry Officer on the basis of the defective enquiry proceedings cannot be relied upon by the disciplinary authority and other higher authorities for the purpose of imposition of penalty to the petitioner. However, from the materials, what emerges is that practically the petitioner had admitted in having in possession of Mobile phone with dual SIM card with battery and he had attempted to take the said Mobile phone with battery to the prison on the day in question. Although some kind of explanation has been given by the petitioner for his action, according to this Court, the same did not carry much conviction.

12. Be that as it may, there appears to be some force in the arguments advanced on behalf of the petitioner that the enquiry was not properly conducted and which probably might have resulted in negation of correct appreciation of evidence which was available for the petitioner. In any event, this Court considering the overall circumstances of the case, is of the considered view that the punishment which was imposed on the petitioner i.e., dismissal from service, is shockingly disproportionate to the gravity of misconduct alleged against the petitioner. In fact, as rightly contended by the learned counsel for the petitioner that when the petitioner had pleaded for lenient view to be taken in the matter before the revisional authority, the same was not considered in proper perspective and the revision petition came to be mechanically rejected by the first respondent on 16.11.2011.

13. This Court apart from holding the punishment as disproportionate, was not satisfied with the conduct of the enquiry against the petitioner which in the opinion of this Court, is a flawed enquiry and therefore, the findings cannot be entirely relied on for the purpose of imposition of penalty, that too, penalty of dismissal from service on the petitioner. In any event, since there is an admission of fact by the petitioner that there appears to be criminal negligence of duty on the part of the petitioner, for which, a suitable punishment has to be imposed.

14. In the entirety of circumstances, this Court is of the considered view that the penalty of dismissal from service has to be moderated and therefore, the impugned order of the first respondent in proceedings No.39163/EW2/2011 dated 16.11.2011 and the order passed by the second respondent in proceedings No.1221/Mu.U/2011 dated 02.09.2011 and the order passed by the third respondent in No.10190/Po-1/2010 dated 05.04.2011, are hereby set aside. The matter is remanded back to the third respondent to moderate the penalty and impose any other punishment on the petitioner other than dismissal, removal and compulsory retirement on the petitioner. The modified penalty to be imposed on the petitioner shall take effect from the date of original order of dismissal from service.

15. Consequently, the petitioner is directed to be reinstated in service and it is made clear that the petitioner is not entitled to any back wages during the period of his non-employment. But however, entitled to all other notional benefits as admissible to the petitioner on the penalty being moderated. The third 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(CS VII)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

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To

1.The Director General of Police/
Inspector General of Prisons,
Chennai 600 008.

2.The Deputy Inspector General of Prisons,
Chennai 600 008.

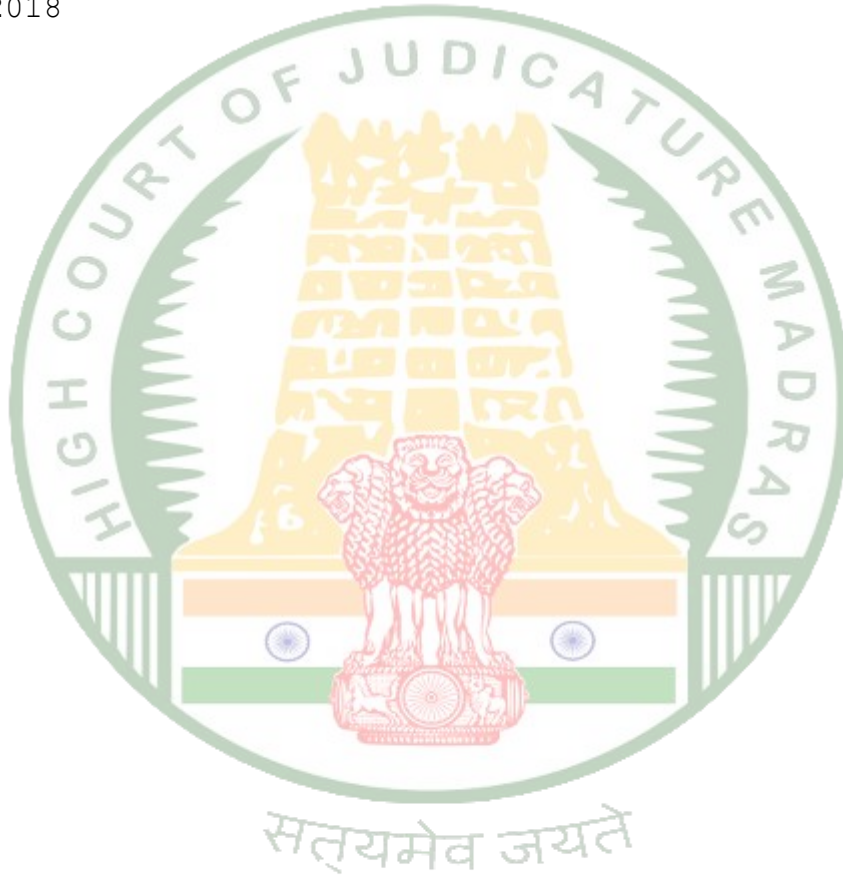
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3.The Superintendent,
Central Prison, Vellore,
Vellore Distict.

+lcc to Mr.P.Rajendran, Advocate sr.no.43519
+lcc to Government Pleader sr.no.44042

W.P.No.14798 of 2012

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