

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28.08.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.Nos.33122 to 33125 & 37119 of 2016

K.KarthickPetitioner in W.P.No.33122 of 2016
N.PalaniveluPetitioner in W.P.No.33123 of 2016
M.SriramPetitioner in W.P.No.33124 of 2016
M.DhanapalanPetitioner in W.P.No.33125 of 2016
M.ElangovanPetitioner in W.P.No.37119 of 2016

Vs

1. The Commissioner of Police,
Trichy City, Trichy
2. The Additional Director General of Police,
Law & Order, Tamil Nadu,
Chennai 600 004
3. The Director General of Police,
Tamil Nadu,
Chennai 600 004
.. Respondents in W.P.Nos.33122, 33123 & 33125 of 2016

1. The Commissioner of Police,
Trichy City, Trichy
2. The Additional Director General of Police,
Law & Order, Tamil Nadu,
Chennai 600 004
.. Respondents in W.P.No.33124 of 2016

1. The Additional Director General of Police,
Law & Order, Tamil Nadu,
Chennai 600 004
2. The Commissioner of Police,
City Police Office, Trichy City
.. Respondents in W.P.No.37119 of 2016

Prayer in W.P.No.33122 of 2016:- Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the first respondent in connection with the impugned order passed by him in C No.H1/PR34/2014 dt 9.11.2015 and confirmed by the second and third respondents in RC No.204539/APIV(1) / 2015 dated 02.04.2016 and RC No.94200/APIV(1)/2015 dated 07.07.2016 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

Prayer in W.P.No.33123 of 2016:- Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the first respondent in connection with the impugned order passed by him in C No.H1/PR35/2014 dt 9.11.2015 and confirmed by the second and third respondents in RC No.204541/APIV(1) / 2015 dated 03.04.2016 and RC No.086987/APIV(1)/2016 dated 07.07.2016 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

Prayer in W.P.No.33124 of 2016:- Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the first respondent in connection with the impugned order passed by him in C No.H1/PR33/2014 dt 9.11.2015 and confirmed by the second respondent in RC No.204538/APIV(1) / 2015 dated 02.04.2016 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

Prayer in W.P.No.33125 of 2016:- Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the first respondent in connection with the impugned order passed by him in C No.H1/PR36/2014 dt 9.11.2015 and confirmed by the second and third respondents in RC No.204540/APIV(1) / 2015 dated 02.04.2016 and RC No.086988/APIV(1)/2016 dated 07.07.2016 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

Prayer in W.P.No.37119 of 2016:- Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the impugned order passed by the first respondent herein in his proceedings RC No.204537/APIV(1) / 2015 dated 02.04.2016 and the order passed by the second respondent in his proceedings C.No.H1/PR.32/2014 dated 09.11.2015 and quash the same and

consequently direct the respondents herein to treat the period of out of employment as duty for all purposes within a time frame.

For Petitioner : Mr.K.Venkatraman,
in W.P.Nos. Senior Counsel,
33122 to 33125/16 for Mr.M.Muthappan
For Petitioner in WP.37119/16 :M/S.G.Bala and Daisy

For Respondents : Mrs.Thangavadhana Balakrishnan
in all W.P.'s Additional Government Pleader

COMMON ORDER

All these writ petitions involving similar question of law and facts and also punishment imposed in same disciplinary proceedings, are heard together and disposed of by this common order on consent of both the parties.

2. As it appears the petitioners are police personnel working under the Tamil Nadu Police Department, one of such petitioners was working as Sub Inspector of Police and others were working as Police Constables. A prisoner namely Mr.Tavamani, who was undergoing life imprisonment in Trichy Central Jail being escorted by the petitioners, was produced before Pune Sessions Court in the State of Maharashtra and after such production, while the prisoner was being brought back to Trichy Central Jail, escaped from their custody. However, for escape of the prisoner from the custody, departmental proceeding was conducted against them on the said charge. After conclusion of enquiry, the enquiry report was furnished to the petitioners to furnish their explanation and on receiving their explanation, it appears that the first respondent disciplinary Authority passed the impugned order of removal, holding the charge of misconduct to have been proved against them. The petitioners came to challenge the same by way of statutory appeal before the appellate Authority that is the second respondent Additional Director General of Police, which was also dismissed vide the impugned order dated 02.04.2016 and the review petition also was dismissed by the Director General of Police vide order dated 07.07.2016. The petitioners therefore came to file the writ petitions challenging the same to be illegal, arbitrary on the ground that no proper procedure of enquiry was followed and the finding of guilty recorded against them were without any convincing materials on record, so also the punishment to be shockingly disproportionate which the review authority having not taken note of and confirming the order, the same cannot be sustained and liable to be quashed.

3. Reply affidavit has been filed indicating the fact that after conducting due enquiry by giving appropriate opportunity to the petitioners and appreciating the materials in proper perspective, especially considering the gravity of the delinquency that is the petitioners had deliberately allowed the prisoners to escape inasmuch as by accepting the bribe from the prisoner and also allowing the prisoner to talk with the Advocate and the family members who were also travelling in the said train, allowed him to escape. Hence, the delinquency being serious in nature and as such for the said misconduct, the punishment cannot be said to be disproportionate. In such premises, the petitioners appear to have no case challenging the finding of the proven misconduct and also the punishment imposed inasmuch as the same cannot be said to be shockingly disproportionate, hence the same needs no interference. The writ petitions filed therefore are liable to be dismissed.

4. During the course of hearing, the learned counsel for the petitioners, however submits that the petitioners are aware of their limitation to challenge the finding of the fact with regard to the delinquency and as such, they did not challenge the finding that the delinquency has been proved except the fact that the delinquency is a deliberate one inasmuch as there was no charge for the same and also punishment imposed. According to the petitioners, being no charge to the fact that the petitioners allowed the prisoner to escape from their custody by their deliberate act by accepting bribe, the enquiry officer could not have held the same that the petitioners have contributed for escapement of the prisoner deliberately and the disciplinary Authority also should not have accepted the same. The appellate Authority and the revisional Authority having not appreciated the finding in this regard is without any substance. While confirming the penalty of removal imposed on the writ petitioners, there was perversity in the recording of finding of guilt with the aforesaid observation. The materials on record clearly indicating the case of negligence of bonafide dereliction of duty while bringing the prisoner back into the prison, therefore the imposition of punishment of removal being disproportionate and is liable to be quashed and substituted by any other minor punishment. Reliance in this regard has been placed on decision of this Court rendered in the case of V.Subramanian Vs. State of Tamil Nadu rep.by the Deputy Inspector General of Police, Dindigul Range, Dindigul and another, in W.P.(MD)Nos.4813 & 4890 of 2009 on 10.02.2011.

5. It appears that this Court in the aforesaid decision, in similar facts and situations, placing reliance on the authority of the Supreme Court with regard to the proportionality of punishment, have held as follows:

"31. The Supreme Court in B.C.Chaturvedi v. Union of India [1995(6) SCC 749], indicated that in normal cases, when it is found that the punishment imposed by the authority is disproportionately excessive so as to shock the judicial conscience, the Court has to remit the matter to the administrator for awarding appropriate punishment. It was also held that in appropriate cases, the Court can modify the punishment by moulding the relief. The observation reads thus:

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

32. The Supreme Court in V.Ramana v. A.P.SRTC [2005(7) SCC 338], after conducting a survey of earlier decided cases, regarding the jurisdiction of the Court to interfere with the decision of the disciplinary/appellate authority in the matter of punishment, observed that in normal circumstances, it would be appropriate to direct the disciplinary authority to re-consider the punishment instead of modifying the punishment by the Court. The Supreme Court said:

"11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the

administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed."

33. The Supreme Court in *Commr. of Police v. Syed Hussain* [2006(3) SCC 173] observed that the doctrine of proportionality has to be applied in appropriate cases. The observation reads thus:

"13. It is, therefore, beyond any doubt or dispute that the doctrine of proportionality has to be applied in appropriate cases as the depth of judicial review will depend on the facts and circumstances of each case."

34. Therefore, on a careful consideration of the entire factual matrix, I am of the considered opinion that the punishment was shockingly disproportionate and as such, the same requires re-consideration by the appellate authority.

35. There is no question of awarding the maximum punishment of removal from service, in view of the peculiar facts of this case. The petitioners have produced a proceeding of the appellate authority relating to PC.447 R.Pavadaisamy, who was originally awarded with punishment of removal of service, which was subsequently modified into that of postponement of increment for two years, which shall operate to postpone future increments for two years.

36. Since I am of the opinion that the subject case does not justify the imposition of maximum punishment, it is open to the appellate authority to impose appropriate punishment, keeping in view the background facts including the failure on the part of the Superior

officials to indicate the notorious character of the convict in the passport and their failure to adhere to the mandatory provisions of the Tamil Nadu Police Standing Orders in the matter of escorting high risk prisoners. Such exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order."

6. The learned counsel for the respondents however submits that since in this case the confession of the prisoner who escaped indicates that he had bribed the petitioners in order to make good his escape and the petitioners also accordingly did not handcuff him in the train and allowed his family to travel with his relatives and advocates and also to talk with the advocate, the aforesaid speaks that the petitioners' conduct in allowing the prisoner to escape was deliberate one. The same is more so for the reasons though in the passport of the prisoner, having been indicated that the prisoner has tendency to escape, it cannot be said that the petitioners were not aware of the aforesaid fact and the escapement of the prisoner is the outcome of their act of negligence and callousness. Since the materials on record categorically indicate that the conduct of the petitioners was designed to allow the prisoner to escape, therefore in no circumstances it can be said to be the outcome of callousness and negligence of the petitioners, rather the same is deliberate one. Hence, the petitioners have no case inasmuch as the delinquency is deliberate one. Therefore, the punishment can very well be said to be commensurate and not shockingly disproportionate one. Hence these writ petitions filed by the petitioners, are devoid of merits and liable to be dismissed.

7. Before going into the contentions raised by the learned counsel for the parties, it would be apposite to have a look on the charges framed in this case. The aforesaid charge memo appears to be in English version never indicates any fact that the petitioners by their deliberate act allowed the prisoner to escape. Nothing is also there indicating the fact that for such deliberate act of the petitioners they had also been proceeded along with the prisoner for such escape.

8. Therefore, I am convinced of the fact that charge memo was issued to the petitioners indicating therein that by their callousness act, they allowed the prisoner to escape from their custody. Even though the aforesaid finding has been recorded that it was a deliberate act considering the statement of the prisoner that he bribed the petitioners but he was not examined as a witness in the disciplinary proceeding. Without examination of the prisoner on his statement recorded during the investigation of the case with regard to his escapement from the

lawful custody, this Court is of the view that the finding that the same is outcome of deliberate act by the disciplinary Authority, to be without any substance. The aforesaid aspect has also not been taken note of by the appellate Authority and the review Authority while confirming the penalty imposed. Therefore the finding in this regard on the delinquency appears to this Court to be perverse being based on no materials on record as well as without any specific charge.

9. However so far as the escapement from the custody being not in dispute and also from the circumstances the petitioners not disputed that the same was out of their negligence, moreso when there was endorsement in the passport that the prisoner was having a tendency to escape from the custody, still no required care was bestowed, delinquency as specified in the charge memo appears to have been proved.

10. Now coming to the question of proportionality of the punishment imposed, especially in the facts and circumstances of the case, that is when there is no convincing materials on record that the escapement of the prisoner from the custody of the petitioners was due to deliberate contribution of the writ petitioners and the petitioners had intentionally contributed in such escapement, this Court, placing reliance on the decision of V.Subramanian (supra), is of the view that the punishment of removal of petitioners from service for the proven delinquency appears to be shockingly disproportionate. Therefore, this Court, while not interfering with the proven delinquency, remit back the matter to the disciplinary authority to revisit the punishment of removal imposed on the petitioners by any other punishment, within a period of four weeks from the date of receipt of a copy of this order.

11. With the aforesaid order, these writ petitions stand disposed of. However, in the circumstances there shall be no order as to costs.

सत्यमेव जयते
Sd/-

Assistant Registrar (CS-)

//True Copy//

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Sub Assistant Registrar

To

1. The Commissioner of Police,
Trichy City, Trichy

2. The Additional Director General of Police,
Law & Order, Tamil Nadu,
Chennai 600 004

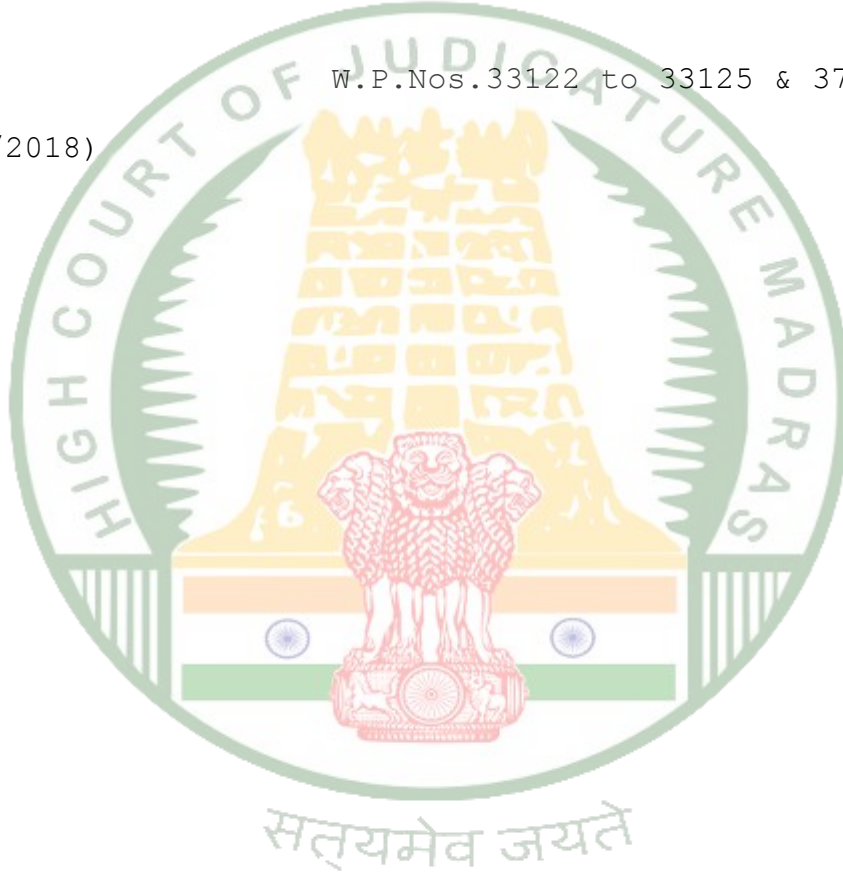
3. The Director General of Police,
Tamil Nadu,
Chennai 600 004

+4cc to Mr.Muthappan, Advocate, sr.59121 to 59124

+1cc to Mr.G.Bala & Daisy, Advocate, sr.59485

W.P.Nos.33122 to 33125 & 37119 of 2016

GSP(23/10/2018)



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