

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

Writ Petition No.4639 of 2017

N.C.Pitchan

... Petitioner

vs.

1. The Secretary to Government,
Home Department,
Fort St.George,
Chennai.

2. The Director General of Police
(Police Department),
Chennai - 600 004.

3. The Superintendent of Police,
District Police Office,
Krishnagiri.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the first respondent herein in his proceedings G.O.(2D)No.106, Home (Police VI) Department dated 19.02.2016 and quash the same and consequently direct the first respondent herein to reconsider the petitioner's representation dated 08.04.2014 in the light of the order of the second respondent in Rc.No.294638/AP.II(2)/2002 dated 11.11.2002 with regard to cancellation of punishment as done in the case of Mr.Thangavelu, Grade I PC 564 on merits and in accordance with law, within a time frame as deem and fit by this Hon'ble Court.

For Petitioner : Ms.Daisy
for M/s. G.Bala and Daisy

For Respondents : Mr.I.Sathish,
Additional Government Pleader.

O R D E R

The petitioner is aggrieved against the order of the first respondent made in G.O.(2D) No.106, Home Department, dated

19.02.2016. Consequently, the petitioner seeks for a direction to the first respondent to reconsider the petitioner's representation dated 08.04.2014 in the light of the order of the second respondent dated 11.11.22002, cancelling the punishment in the case of one Thangavelu, Grade-I PC 564.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

3. It is seen that the petitioner, who was working as a Head Constable was issued with a charge under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 on the ground that he failed to watch illicit activities of bootleggers and to collect and furnish information to the superior officers about the sale of illicit arrack by the accused persons concerned in Shoolagiri Police Station in Cr.No.563/1998 to 568/1998, which resulted in the death of 46 persons and hospitalization of 156 persons after consuming poisonous brew between 22.08.1998 to 25.08.1998. It is further seen that in pursuant to the departmental enquiry, the petitioner was imposed with the punishment of reduction in time scale of pay by three stages for a period of three years without cumulative effect. It is further seen that such punishment was subsequently modified as postponement of next increment for a period of one year without cumulative effect. The petitioner thereafter preferred a representation to the Government requesting to cancel the above punishment based on an order passed in the case of one Thangavelu, Grade-I Police Constable who also got involved in the very same occurrence. The petitioner sought to rely on the communication sent by the Superintendent of Police, Dharmapuri to the Director General of Police, showing the punishments awarded to various persons, out of whom, it is seen that the punishment awarded to the said Thangavelu, viz., pay reduction by two stages for two years, was cancelled by the Director General of Police through proceedings dated 11.11.2002. Therefore, the learned counsel for the petitioner contended that the first respondent can reconsider the claim of the petitioner by taking note of the above said fact namely, cancellation of punishment given in respect of Thangavelu, Grade-I Police Constable. The petitioner claims that when the punishment imposed on similarly situated person is cancelled in toto, sustaining the punishment awarded to the petitioner alone, is discriminatory.

4. This Court, at this stage, is not expressing any view on the merits of the claim made by the petitioner as it is for the first respondent to consider the said claim and pass fresh orders. Since the petitioner claims that the cancellation of punishment given to the said Thangavelu was also arising out of the same set of facts, this Court is of the view that the first respondent can consider the said claim made by the petitioner

and pass fresh order. It is further seen that the present impugned order was passed on 19.02.2016, whereas the communication sent by the Superintendent of Police to the Director General of Police was on 01.07.2015 referring to the order made in respect of the said Thangavelu cancelling the punishment order dated 11.11.2002. Therefore, this Court is of the view that the first respondent shall consider the said aspect and pass fresh order. Accordingly, the Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the first respondent to pass fresh order after considering the above aspect. Such exercise shall be done by the first respondent within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Secretary to Government,
Home Department,
Fort St.George,
Chennai.
2. The Director General of Police
(Police Department),
Chennai - 600 004.
3. The Superintendent of Police,
District Police Office,
Krishnagiri.

+1cc to Mr.G.Bala & Daisy, Advocate, S.R.No. 81532
+1cc to the Government Pleader, S.R.No. 81737

W.P.No.4639 of 2017

CP(CO)
GN(14/12/2018)