

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.10.2018  
Coram

The Hon'ble Mr.Justice Satrughana Pujahari

Writ Petition No.5803 of 2017  
and  
W.M.P.Nos.6212 to 6214 of 2017

S.Gnanasekarapandian

...Petitioner

Vs.

1.The Addl. Director General of Police  
(Law & Order),  
Chennai - 600 004

2. The Commissioner of Police,  
Thirunelveli City,  
Palayamkottai - 627 002

3. The Enquiry Officer /  
The Asst. Commissioner of Police,  
Law and Order,  
Palayamkottai - 627 002

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records culminated in the first respondent's impugned order of compulsory retirement in Ref.R.C.No.11383/AP.2(1)/2009, dated 01.12.2016 and quash the same, and consequently direct the respondents to reinstate the petitioner in service with all consequential monetary, promotional and service benefits.

For Petitioner : Mr.R.Prabhakaran

For Respondents : Mr.V.Kathirvelu,  
Special Government Pleader

O R D E R

The petitioner in this writ petition has challenged the punishment of compulsory retirement imposed on him vide impugned order dated 01.12.2006 passed by the first respondent in exercise of its suo moto review power under the Tamil Nadu

Police and Subordinate Service(Discipline and Appeal) Rules. According to the petitioner, the aforesaid order being contrary to facts and law cannot be sustained.

2. As it appears the petitioner who happens to be a Head Constable was indicted in a criminal case with the charge of murdering one of his colleagues namely Sivaraman on 27.03.2006 night inasmuch as said Sivaraman was found dead in mysterious circumstances with multiple injuries while in the company of the present petitioner. Besides the same, the petitioner also proceeded departmentally on charges of five counts. It appears that the criminal prosecution against the petitioner ended in acquittal. In the departmental proceeding also the enquiry officer did not held him guilty of charges of causing death of his colleague and other charges but held the charge against the petitioner on the fifth count that is not reporting such a death of his colleague who died in a mysterious circumstances immediately and as such guilty of negligence, which amounts to a misconduct. The aforesaid finding of the enquiry officer was accepted by the disciplinary authority and the petitioner being held of guilty of the said charge was imposed with the punishment of reduction in rank for two stages in one year by the second respondent, after obtaining the response of the petitioner on such finding of the enquiry officer. The petitioner did not prefer any appeal against the same. However, a suo moto review was taken by the authority that is respondent No.1 and the petitioner was visited with the punishment of compulsory retirement inasmuch as according to the respondent, the punishment imposed was too lenient one. Challenging the same, the petitioner had filed Writ Appeal vide W.P.No.16128 of 2009, which was allowed for the reasons indicated therein with a further direction to the first respondent to address the suo moto review proceeding in accordance with the law and the observations made in the writ petition. It appears that thereafter the first respondent taking into consideration the facts and circumstances of the case, held the charge on the fifth count which has been proved, is serious in nature inasmuch as the petitioner did not report the death of the colleague who died in suspicious circumstances to his superior and as such the punishment imposed on the petitioner by the disciplinary authority is a lenient one, hence, enhanced the same to one of compulsory retirement vide the impugned order.

3. The petitioner in this writ petition has challenged the finding that charge against the petitioner to have been proved to be illegal and arbitrary being contrary to facts and law, more particularly the proportionality of the enhanced punishment to the delinquency proved. According to the petitioner since he had intimated the incident immediately to his official superior namely Inspector Senthilkumar who was the Head of the team in

which the petitioner and other police personnel were there from the hospital itself and the death of the deceased was an accidental one, the disciplinary authority as such holding him negligence was without any foundation. Hence, even if the petitioner had not preferred any appeal against the same, the first respondent could not have ignored the aforesaid fact while exercising the suo moto power of review on the finding of the disciplinary proceeding and held the fifth charge was properly proved but the punishment was lenient one and as such enhanced the same to one of compulsory retirement. The said punishment is therefore being shockingly disproportionate considering the nature of delinquency stated to have been proved, the same is liable to be quashed. Accordingly prayer has been made to set aside the finding of the disciplinary authority holding the petitioner guilty of charge on the fifth count and consequently quash the punishment imposed. In alternative, it has also been prayed that the enhanced punishment imposed on the aforesaid charge is quite disproportionate considering the nature of the delinquency and as such the same is liable to be quashed.

4. Reply affidavit has been filed indicating therein that the fifth charge against the petitioner having been proved but the first respondent considering the facts and situations including the punishment by the Disciplinary Authority on the petitioner in exercise of Rule 15 A (I) (III) of the Tamil Nadu Police and Subordinate Services(Discipline and Appeal) Rules, 1955 and after giving due opportunity to the petitioner having held for the fifth charge the punishment imposed was too lenient and authority being best judge for imposition of such punishment taking note of the delinquency, such enhanced punishment imposed in the facts and situations cannot be said to be disproportionate. Hence, this Court should be loath in interfering with the same. Therefore, the writ petition filed by the petitioner is devoid of merit and accordingly be dismissed.

5. During the course of hearing, as it appears counsel for the petitioner challenges the very finding of the enquiry officer holding the petitioner guilty of the charge of negligence inasmuch as he allegedly did not report the death of his colleague who died on unnatural death in a suspicious circumstances though then he was in his company. According to the counsel for the petitioner submits that the petitioner was not in the company of the deceased colleague when he died as such question of his suppressing the same does not arise. From the hospital immediately intimated the matter to the team leader that is the Sub Inspector of Police, hence the finding recorded in this regard being contrary to facts and based on surmises and conjecture cannot be sustained, otherwise also he submits for such negligence the enhanced punishment imposed on the

petitioner is shockingly disproportionate and as such the impugned order of the first respondent for enhancing the punishment imposed by the disciplinary authority, cannot be sustained.

6. The learned counsel for the Government respondent however submits such contention of the petitioner is without any substance inasmuch as the petitioner had not challenged the finding of the enquiry officer holding him guilty of the charge which has been accepted by the disciplinary Authority after giving the appropriate opportunity of hearing and also the punishment imposed. Therefore, in the absence of the same, when in the suo moto review only the punishment has been enhanced, he now cannot challenge the same on the ground that the very delinquency said to have been proved against him was without any substance. Controverting the submission on the question of proportionality of punishment imposed, it is submitted that since the petitioner did not report the matter immediately to his authority though his colleague stated to have died in a suspicious circumstances in his company while on duty, the petitioner is guilty of serious misconduct and as such the punishment of compulsory retirement cannot be said to be disproportionate much less a shockingly disproportionate one. Hence, this Court should loath in interfering with the punishment imposed in exercise of writ jurisdiction.

7. Before addressing the contention of the parties, this Court is well aware of its limitations to interfere with the finding of fact recorded in a disciplinary proceeding. The law in this regard has since been well settled that this Court in exercise of power under Article 226 of the Constitution of India should not interfere with the finding of fact recorded in the disciplinary proceeding unless the finding is perverse one that is based on no evidence on record and recorded on surmises and conjecture. Considering the aforesaid when nothing has been brought to the notice of this Court indicating the fact that the petitioner had reported the death of his colleague immediately, his superior, it can very well be said that the finding in this regard recorded by the enquiry officer which has been accepted by the disciplinary authority that the petitioner is guilty of negligence of not reporting the same to his immediate authority soon after the same came to his knowledge and as such guilty of negligence needs no interference of this Court.

8. Now coming to the question of contention with regard to proportionality of enhanced punishment imposed by the first respondent in exercise of its power under the suo moto review, it would be apposite to mention here that the Hon'ble Supreme Court in the case of B.C.Chaturvedi Vs. Union of India reported in 1995 (6) SCC 749, wherein it is indicated that when it is

found that the punishment by the Authority is disproportionately excessive so as to shock the judicial conscience, the Court has to remit back the matter to the Administrator for awarding appropriate punishment. However, in appropriate cases, the Court can also modify the punishment by moulding the relief. The aforesaid observation of the Apex Court, in paragraph 18, reads as 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."

9. In the case of V.Ramana Vs. A.P.SRTC reported in 2005 (7) SCC 338, going through the decided cases rendered in this regard, the Supreme Court in paragraphs 11 and 12 have held as follows:

"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."

10. Keeping in mind the aforesaid law laid down when the question of proportionality of the sentence imposed in this case is addressed, it appears to this Court that there is no finding that the petitioner deliberately did not intimate the unusual death of his colleague to his immediate superior even the same was within his knowledge. Therefore such delinquency of non reporting with regard to the unnatural death of the colleague, which could not be established to be foul play in the criminal trial, cannot be said to be a delinquency so grave warranting punishment of compulsory retirement from service. In such premises, the punishment imposed by the first respondent compulsorily retiring the petitioner from service enhancing the sentence imposed, appears to be shockingly disproportionate to the delinquency proved as such the same stands quashed. Consequently, the order of the punishment imposed by the disciplinary Authority stands restored to file.

11. With the aforesaid order, this writ petition stands disposed of being partly allowed. Consequently connected miscellaneous petitions are closed. However, in the circumstances, there shall be no order as to costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Addl. Director General of Police  
(Law & Order),  
Chennai - 600 004

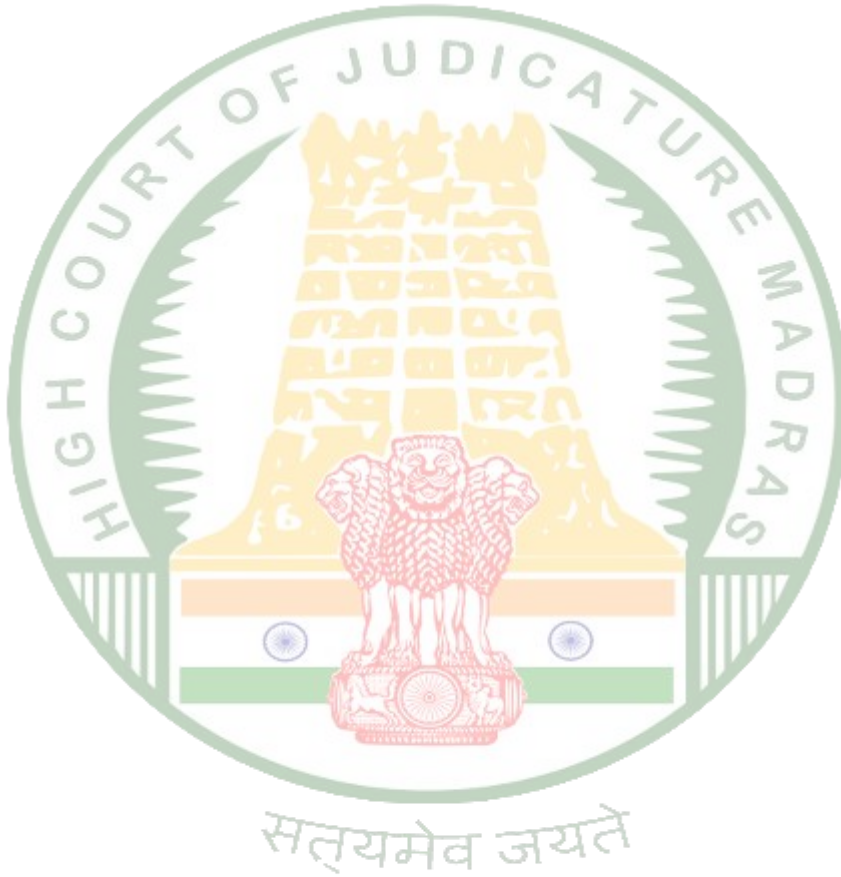
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The Asst. Commissioner of Police,  
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Palayamkottai - 627 002

+1cc to Mr.R.Prabhakaran, Advocate, S.R.No.74033

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RSV(CO)  
GSP(15/11/2018)



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