



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2018

CORAM:

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**THE HONOURABLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

W.A.[MD].No.576 of 2018
in
WP (MD) No.13647 of 2014

N.Samidurai [died]

1.Rani

2.Shika

3.Ajai Kannan

4.Maha

5.Ramu

: Appellants /Petitioners

Vs.

1.The Principal Secretary to Government,
The State of Tamil Nadu,
St.George Fort, Chennai.

2.The Director General of Police,
Mylapore, Chennai.

3.The Superintendent of Police,
Sivagangai District.

4.The Superintendent of Police,
Ramanathapuram, Ramanathapuram District.

: Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 15.02.2017 made in W.P.(MD).No.13647 of 2014, on the file of this Court.

Prayer in WP (MD). 13647/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the compulsory retirement order in G.O.2(D) , No.272 dated 1.8.2014, on the file of the 1st respondent herein and to quash the same as illegal and further direct the respondents to reinstate the petitioner in service with all back wages .



For Appellants

: Mr.M.Saravanakumar for
Mr.K.K.Ramakrishnan

For Respondent

: Mr.VR.Shanmuganathan
Special Government Pleader

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JUDGMENT

[Judgment of the Court was delivered by The Hon'ble Chief Justice]

This appeal filed by Mrs.Rani, wife of N.Samidurai, the original writ petitioner, [since deceased], is against a Judgment and order dated 15.02.2017 passed by the learned Single Bench, dismissing the Writ Petition filed by N.Samidurai [since deceased], challenging *inter alia* an order of punishment of compulsory retirement imposed on him. While the writ petition was pending N.Samidurai died. After the death of N.Samidurai, his widow, Mrs.Rani and his other heirs got themselves substituted as writ petitioners in his place.

2. N.Samidurai [since deceased] was recruited as Grade II Police Constable and joined service on 17th January 1986. It is stated that from the date of his joining, he had an unblemished service record with no adverse remarks against him.

3. However, a charge sheet was issued against N.Samidurai [since deceased], on 22nd April 2011, alleging misconduct in relation to a criminal case being Crime No.61 of 1997, under Sections 376, 302 and 201 of the Indian Penal Code, in which one Mr.Krishnamoorthy was named accused. The said Krishnamoorthy was alleged to have raped and murdered a girl 'X'. After Krishnamoorthy pleaded guilty, he was sentenced *inter alia* to imprisonment for eight years. After his release, Krishnamoorthy found out that the victim 'X' was alive. Thereafter, he complained that he had been forced to make a confession, as he had been tortured.

4. In this context, it may perhaps also pertinent to note that the petitioner for the first time complained of being forced to make a confession by being tortured after his release. Irrespective of whether the victim X was dead or alive, Krishnamoorthy, if forced to make a confession, could have retracted his confession.

5. The charges against N.Samidurai were in nutshell as follows:

- (1) Conduct of police officer in concocting evidence to victimize innocent persons Karmegam, Krishnamurthy and Palani by detaining them under illegal custody from 25.01.1998 to 31.01.1998 at Ramanathapuram Bazaar P.S. torturing them and recording their confessional statements and wrongly implicating them in S.P.Pattinam P.S. Crime No.61 of 1997 under Section 376, 302 and 201 of I.P.C.

- (2) Reprehensible conduct in having detained one S.Ramachandran, son of Srinivasan of Machuvadi illegally



in Ramanathapuram Bazaar P.S. from 25.01.1998 to 05.02.1998 torturing them by beating and compelling him to disclose the facts of the case in S.P.Pattinam P.S. Crime No.61 of 1997 under Section 376, 302 and 201 of I.P.C. in which he was in no way connected and thereby violating his Human Rights.

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6. It is not in dispute that the said N.Samidurai [since deceased] was not the Investigating Officer. There could be no question of his recording any statements, by fortune or otherwise. Nor could there be any question of his wrongly implicating anyone. He was not a witness in the case. The first charge was *ex facie* unsustainable. N.Samidurai [since deceased] was not even posted in the Ramanathapuram Police Station which was investigating the crime case, but, was posted in the Armed Reserve Force. He could not have detained any one in the Police Station.

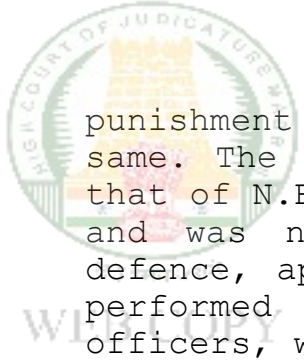
7. Pursuant to the aforesaid charge sheet, enquiry proceedings commenced. In the enquiry, the said Krishnamoorthy stated that the Superintendent of Police Thiru.Kannappan; Inspector of Police Thiru.Madhavan; Sub-Inspector of Police Thiru.Baskaran and the Head Constable Thiru.Dasaratharasan jointly tortured him. He also stated that number of persons of the Armed Force assaulted him, but he did not name N.Samidurai. There was no specific allegation made by Krishnamoorthy naming N.Samidurai.

8. The Enquiry Officer, however, arrived at the finding against N.Samidurai on the principle of preponderance of probabilities even though there was no specific allegation against him. The main allegations of torture were against the Superintendent of Police Mr.Kannappan, Inspector of Police Mr.Madhavan, Sub-Inspector of Police Mr.Baskaran and Head Constable Mr.Dasaratharasan. The enquiry report is *ex facie* vitiated by perversity.

9. A charge sheet was also issued to Mr.N.Baskaran, who was also held guilty in enquiry and given the same punishment of compulsory retirement. However, upon review, the punishment of compulsory retirement was converted into punishment of withholding of increment for three years with cumulative effect.

10. It appears that the charges framed *inter alia* against N.Baskaran, Deputy Superintendent of Police, were identical to the charges against N.Samidurai [since deceased]. N.Samidurai [since deceased] filed a writ petition challenging *inter alia* the punishment of compulsory retirement imposed upon him. While the Writ Petition was pending, he died and as such, he could not file any review.

11. On the face of the materials on record, it is patently clear that the said N.Samidurai [since deceased], though much lower in rank, was in a sense similarly circumstanced as N.Baskaran, whose



punishment was reduced upon review, in that, the charges were the same. The position of N.Samidurai [since deceased] was better than that of N.Baskaran, because, he belonged to the Armed Reserve Force, and was not directly connected with the investigation and his defence, apart from the denial of acts of torture, was that he had performed his duties under the instructions of the superior officers, which he was lawfully bound to obey.

12. Since N.Samidurai has died, no useful purpose would be served in directing his heirs to file review. This Court would perhaps have set aside the punishment and considering the inferential findings of some human right violation, remitted the matter to the disciplinary authority for reconsideration. However, having regard to the special circumstances of the case, where the charges as framed against N.Samidurai [since deceased] were *ex facie* unsustainable, the findings in the enquiry relating to the charges are unsupported by evidence and perverse, the Police Constable concerned has died and the widow is before us and in view of our finding that the concerned Constable was in a better position than the Investigating Officer N.Baskaran, whose punishment has been reduced, we deem it appropriate that the punishment of N.Samidurai may be commuted to stoppage of increments for three years, as in the case of N.Baskaran and the terminal benefits and the family pension of the widow may be computed and released accordingly. The High Court deciding the application under Article 226 of the Constitution of India has a jurisdiction to modify a punishment/penalty awarded to a Government servant in disciplinary proceedings by moulding the relief as held by the Honourable Supreme Court in *B.C.Chaturvedi v. Union of India* reported in (1995) 6 Supreme Court Cases 749.

13. The Judgment and order under appeal is set aside and the the appeal is disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CSII)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Principal Secretary to Government,
The State of Tamil Nadu, St.George Fort, Chennai.
- 2.The Director General of Police, Mylapore, Chennai.
- 3.The Superintendent of Police, Sivagangai District.
- 4.The Superintendent of Police,
Ramanathapuram, Ramanathapuram District.

+1cc to Mr.K.K.Ramakrishnan, Advocate, SR.No.59879

+1cc to The Special Government Pleader, SR.No.60161

NB/RSB

RL/7C/4P/KK/SAR1/16/4/2018

JUDGMENT MADE IN
W.A. [MD].No.576 of 2018