



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) .No.1613 of 2018

and

W.M.P. (MD) .No.1698 of 2018

S.Athithan

...Petitioner

Vs.

1. The Deputy Inspector General of Prison,
Madurai-16.

2. The Superintendent of Prison,
Central Prison,
Palayankottai, Tirunelveli District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call records on the files of the second respondent pertaining to its proceeding bearing No.2573/ bgh.1/2016 dated 26.10.2016 and the consequential order of the first respondent proceeding bearing No.3678/ 192/2016 dated 30.05.2017 and to quash the same and consequently direct the respondent to provide all service and monitory benefit to the petitioner on par with this immediate juniors.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.M.Jeyakumar
Additional Government Pleader

ORDER

By consent of both the parties, the main Writ Petition is taken up for final disposal.

2.The petitioner is working as Grade-II Jail Warden. He was posted at Central Prison, Palayamkottai. He was duty on 31.03.2016 from 1.00 P.M to 6.00 P.M. The petitioner developed some physical un-easiness at around 04.00 p.m. When he was standing guard at the main gate, he immediately informed one Manamoothy, Assistant Jailor and left his duty spot. The



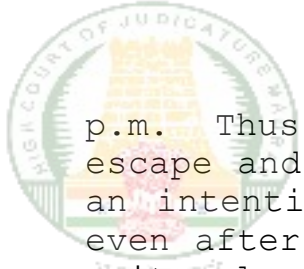
petitioner wanted to attend the call of nature. Since he was having a persistent diarrhoea he wanted to purchase tablets from a nearby pharmacy shop outside. He returned to duty later.

3. In the meanwhile, one life convict by name, Sudalaimuthu escaped at around 4.18 p.m. In this regard, the petitioner was suspended from service on 11.04.2016. He was issued with a charge memo dated 11.04.2016. The petitioner submitted his explanation on 02.05.2016. Enquiry was conducted. In the enquiry report dated 18.08.2016 findings were given to the effect that the charges were proved. The petitioner offered his explanation dated 01.09.2016. But without considering the same, the second respondent passed an order of Punishment dated 26.10.2016, reducing the scale of pay to the basic stage for five years with cumulative effect. Aggrieved by the same, the petitioner preferred an appeal before the first respondent.

4. The first respondent by the impugned order dated 30.05.2017, confirmed the order of Punishment passed by the original Authority. Questioning the same, the Writ Petition has been filed.

5. Heard the learned counsel on either side.

6. Certain facts are not in dispute. The petitioner no doubt was posted on guard duty at the main gate on 31.03.2016. It is beyond dispute that at around 04.00 p.m. he developed severe physical un-easiness. It is also not in dispute that he left the duty spot only after duly informing his immediate superior. The petitioner has enclosed deposition of Thiru.K.Palavesam, who is also a Grade-II Jail Warden. The said witness was cross-examined. During enquiry it was established that the petitioner herein left the duty spot only after informing Manamoothy, Assistant Jailor. Therefore, it cannot be the case of the Disciplinary Authority that the petitioner left the duty spot without informing anybody. The petitioner not only informed his immediate superior but proper substitute arrangements were also made. Therefore, if during the said period the life convict has escaped, it would be most unfair to fasten blame on the petitioner herein. Even though, the defence projected by the petitioner was more than established the Disciplinary Authority as well as the Enquiry Authority have chosen brush aside the same by insisting that the petitioner had feigned physical un-easiness and that there was some collusion between the petitioner and the escaped life convict. This Court has no hesitation to hold such a finding is perverse. The life convict Sudalaimuthu, admittedly escaped from the jail premises on 31.03.2016 at about 4:17 p.m. The said escapee was re-captured by the Prison Personnel after a few hours and that too near the Government Advocate, the said escapee was re-captured at 11.45



p.m. Thus there is a clear gap of 71/2 hours, between the time of escape and the time of recapture. If really the life convict had an intention to escape he would not loiter around the bus stand even after 71/2 hours. The prison and the bus stand are located quite close to each other.

7.The learned counsel on instructions would submit that the said life convict was found sleeping in the bus stand premises. He would also suggest that the said escapee was not mentally sound during the relevant time. This Court can take judicial notice of the fact that the life convict who exhibit good behaviour are permitted a certain amount of freedom. Therefore, it is possible that the said life convict casually walked out of the prison without any body noticing it. Taking into account the totality of circumstances this Court comes to the conclusion that there could not have been any collusion between the petitioner and the said escapee. It is a far fetched proposition. The petitioner cannot be found guilty of any misconduct. The said findings against the petitioner are perverse. The order impugned in the Writ Petition stands quashed. The petitioner will be entitled to all the consequential benefits.

8.The Writ Petition is allowed accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The Deputy Inspector General of Prison,
Madurai-16.
2. The Superintendent of Prison,
Central Prison,
Palayankottai, Tirunelveli District.

+ 1 cc TO Mr.S.C.Herold Singh , Advocate in SR No. 50812
+ 1 cc TO The Special Government Pleader in SR No. 51307

tsg

AE/VR/SAR1/09.07.2018/3P/5C