



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 07.02.2018

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.23041 of 2015

and

M.P. (MD)No.1 of 2015

R.Ramasubbu

. . .Petitioner

-Vs-

1. The Additional Director General of Polioce (L & O)
Tamil Nadu, Chennai-4.

2. The Deputy Inspector General of Police,
Madurai Range, Madurai.

3. The Superintendent of Police,
Virudhunagar District,
Virudhunagar.

. . .Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings in C.No.178949/AP2(3)/2015 dated 08.09.2015 and quash the same as illegal.

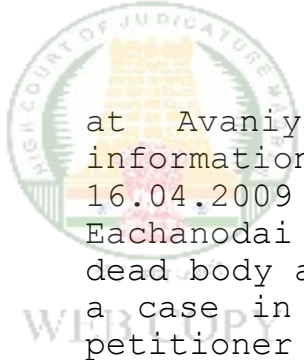
For petitioner : Mr.Mr.Ajmal Khan,
Senior Counsel
M/s Ajmal Associates.

For respondents : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

ORDER

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

2.The petitioner was appointed in the Police Department on 28.09.1997 as Sub Inspector of Police. He was promoted as Inspector of Police on 18.08.1999. When he was working as Inspector of Police



at Avaniyapuram Police Station, Madurai in the year 2009, information was received from the Village Administrative Officer on 16.04.2009 that one Pandiyarajan of Villapuram was lying dead in Eachanodai Road, Madurai and that a two wheeler was found near the dead body and that there were tyre marks. The petitioner registered a case in Crime No.130 of 2009 under Section 304 (A) IPC. The petitioner was transferred from the said police station on 22.07.2009. The said case was altered into one of murder and an alteration report was filed on 30.07.2011 before the learned Judicial Magistrate No.VI, Madurai. This was followed by issuance of a charge memo dated 26.11.2012 against the petitioner.

3.The charge memo read that the writ petitioner did not conduct the investigation honestly in the matter and that he had received a sum of Rs.50,000/- as illegal gratification from the accused, so as to screen the real nature of occurrence. In other words, charge was that a case of murder was converted into one of accident. Enquiry was conducted and the petitioner herein was given due opportunity. The enquiry officer concluded that the charge of acceptance of illegal gratification was not proved. But the other part of the charge was held as proved. The disciplinary authority by order dated 09.04.2015 accepted the enquiry report and imposed the punishment of compulsory retirement from service. Aggrieved by the same, the petitioner herein preferred an appeal before the appellate authority. The appellate authority by an order dated 08.09.2015, confirmed the order passed by the disciplinary authority and rejected the appeal. Assailing the same, this writ petition has been filed.

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

5.The learned senior counsel appearing for the petitioner submitted that the findings in the enquiry report rest entirely on the deposition of Pandiselvi, wife of the deceased Pandiyarajan. But then the very same witness did not support the prosecution case before the trial Court. The stand taken up by the wife of the deceased during the enquiry and the one taken before the trial Court are in complete variance with each other.

6.The learned senior counsel would also point out that the allegations of acceptance of illegal gratification was held to be not proved by the enquiry authority and that the said findings have been accepted by the disciplinary authority as well as the appellate authority. This leaves only with the first portion of the charge, which could be described as one of perfunctory investigation. The first contention is that for the charge of perfunctory investigation, imposition of compulsory retirement from service would be grossly disproportionate.

7.Per Contra the learned Additional Government Pleader appearing for the respondents sought to sustain the orders impugned



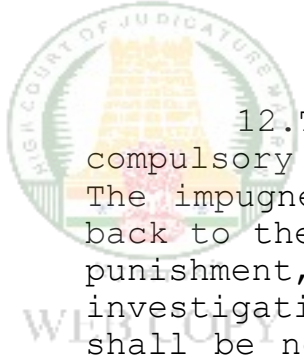
in this Writ Petition.

8. The occurrence in question took place on 16.04.2009. It is not in dispute that F.I.R. was registered immediately thereafter. The informant is the concerned Village Administrative Officer. A reading of the contents of the information lodged by the said Village Administrative Officer would indicate that a death had occurred. There is nothing in the information to suggest that it was a case of unnatural death. The petitioner had taken expeditious steps to conduct inquest. The inquest was held on the same date. The Panchayathars were examined. The inquest report signed by the petitioner contains the opinions of the Panchayathars, which is to the effect that the cause of death appeared to be unnatural or even murder. If the petitioner had any motive to screen the real nature of the occurrence, he would definitely not have prepared such an inquest report.

9. It is also admitted that the petitioner was working as Inspector in the said station only for a period of three months thereafter. On 22.07.2009 the petitioner had been transferred from the said station. The petitioner had certainly not done anything, so as to close the investigation or derail it. No material is on record to that effect. As rightly contended by the learned senior counsel appearing for the petitioner, at best the petitioner could be held to be guilty of inaction. The statements of the Panchayathars and the wife of the deceased have also been recorded under Section 161 of Cr.P.C. and there is nothing therein to warrant of filing of an alteration report.

10. In fact such alteration report was ultimately filed only on 30.07.2011 more than two years thereafter. In the meanwhile, it is submitted that there were two police inspectors, who served in the very same police station.

11. As already pointed out, the enquiry officer rendered the findings adverse to the petitioner herein solely on the strength of the statement made by the wife of the deceased during the disciplinary enquiry. The very same witness turned completely hostile and took a total contradictory stand before the criminal Court. This Court exercising its jurisdiction under Article 226 of the Constitution of India cannot lose sight of this subsequent development. It is true that the disciplinary authorities will have to go by the material on record. But when the final order is put to challenge before this Court and certain subsequent development had taken place in the meanwhile, this will be justified in taking the same into account. The disciplinary authorities themselves have come to the conclusion that the petitioner is not guilty of any moral turpitude. The second part of the charge is specifically held as not proved even during the disciplinary proceedings. This leaves only with the first part of the charge which is "perfunctory investigation".



12. This Court is therefore of the view that the punishment of compulsory retirement is shockingly and grossly disproportionate. The impugned order is therefore set aside. The matter is remitted back to the file of the second respondent to impose any other lesser punishment, considering the nature of charge, namely, perfunctory investigation. This Writ Petition is allowed accordingly. There shall be no order as to costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Additional Director General of Police (L & O)
Tamil Nadu, Chennai-4.
2. The Deputy Inspector General of Police,
Madurai Range, Madurai.
3. The Superintendent of Police,
Virudhunagar District,
Virudhunagar.

+1cc to The Special Government Pleader in SR.NO. 47197
+1cc to M/S.Ajmal Associates Advocate in SR.NO. 47166

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MV:SKN-RSK:SAR2:01/03/2018/4P/6C

W.P. (MD) .No.23041 of 2015

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