

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.30968 of 2007 and MP No.1 of 2007

J.Anthony Doss

.. Petitioner

Vs.

1. State of Tamil Nadu
Rep by its Secretary,
Home (Prison-2) Department,
Secretariat, Chennai 600 009.
2. The Inspector General of Prison,
Chennai - 600 002.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, to call and quash the order dated 09.05.2007 passed by the 1st respondent and consequently, to direct the Respondents to reinstate the petitioner with continuity of service, backwages, seniority and all other attendant benefits.

For Petitioner : Mr.A.R.Suresh

For Respondents: Mr.A.Zakir Hussain
Government Advocate

O R D E R

The instant writ petition has been filed challenging the dismissal order passed by the 1st respondent dated 09.05.2007 and consequently, seeking for a direction to the respondents to reinstate the petitioner with continuity of service, back wages, Seniority and all other attendant benefits.

2. The petitioner was working as a Grade II Warden in the Sub-Jail, Ooty. While he was in duty on 10.07.2006, five prisoners escaped from the Sub jail, Ooty. Departmental proceedings were initiated against the petitioner under Section 17(b) of Tamil Nadu Civil Service Discipline and Appeal Rules. Enquiry was conducted by the Superintendent of Prisons, Coimbatore. The Enquiry Officer, by an order dated 21.05.1997 found that charges have been proved. The petitioner was

dismissed from service. There were five persons, who were in charge of the sub-jail viz., 1. Tr.Bhojan, 2. Tr.A.Udaya Kumar, 3. Tr.Anandraj, 4 T.Sekaran and the petitioner. They were holding the post of warden Grade II. All were charged and were given the same punishment and dismissed from service. Appeals were filed before the Appellate Authority by delinquency. The Appellate Authority by an order dated 16.03.1998, reduced the punishment from dismissal of service to one of stoppage of increment for five years with cumulative effect. Except Bhojan and the petitioner, all others accepted the punishment. Bhojan and the petitioner filed a revision petition before the Inspector General of Police and the Inspector General of Police, by proceedings dated 13.10.1998 enhanced the punishment to one of dismissal from service. Challenging the said order, the petitioner preferred an Appeal in O.A.No.8506 of 1998 before the Tamil Nadu Administrative Tribunal. On abolition of the Tribunal, the O.A was transferred to this Court and was renumbered as WP No.25629 of 2005. This Court by an order dated 07.02.2006 disposed of the writ petition with liberty to the petitioner to file an appeal before the 1st respondent. The 1st respondent was also directed to dispose of the same, within three months. The 1st respondent vide order dated 09.05.2007 confirmed the order passed by the 2nd respondent. Challenging the same, this instant writ petition has been filed.

3. It is pertinent to mention here that the writ petition filed by Bhojan against the order dated 29.10.1998 passed by the Inspector General of Police came up for hearing on 24.11.2009 in WP. No.39203 of 2006. This Court by the said order, set aside the enhancing punishment by observing as under :-

" 5. In the present case, though several points were urged on behalf of the petitioner, the main plea of the petitioner appears to be that the revisional authority has not taken into consideration the merits of the petitioner's case that he cannot be connected to the delinquency considering the time when he was relieved from duty. The authority has failed to take into consideration the prima facie case and the petitioner's plea for leniency with regard to the imposition of the punishment of dismissal from service. In any event, it is submitted the fact that no reason whatsoever has been given in the impugned order by the revisional authority, would go to show that the first respondent did not consider the prima facie case and the oral and documentary evidence which will establish without appreciating the merits of the petitioner plea of no knowledge and non involvement. Further, the punishment imposed is improper and disproportionate.

6. On going through the order, it is seen that there is no reason whatsoever to support the order of rejection of the revision petition. The order of the authority does not indicate that there was application of mind on various points raised by the petitioner and there is no reason recorded to show that the merits of the petitioner's case has been considered and rejected. The narration of events as presented by the Department has been recorded and the authority has merely concluded by passing the order rejecting the Review petition stating that he finds no merits in the revision. Such an order cannot be stated to be a reasoned order. It shows total non application of mind. In such view of the matter, an order, bereft of reasons, cannot be sustained and has to be set aside.

7. In the result, the writ petition is allowed and the order of the first respondent in No.55068/B2(4)/98 dated 29.10.1998 is set aside and the matter is remanded back to the same authority for fresh consideration on its own merits within a reasonable time."

4. The learned counsel for the petitioner states that since Bhojan and the petitioner are identically situated and facing the same charges arising out of the same incident, there should be parity between the petitioner and the Bhojan. The learned counsel for the petitioner further submitted that the findings rendered by this Court in WP No.39203 of 2006 would apply equally to the petitioner also. He would further state that the petitioner and Bhojan have become worse off by filing the revision petition. Others who accepted the punishment of the Appellate Authority are better off as they have suffered the punishment of stoppage of increment by five years with cumulative effect. The learned counsel would further submit that once the order of the Revisional Authority order was set aside for other co-employee, the same should also be applicable to the petitioner also.

5. The learned Government Advocate would state that in the case of Bhojan, this Court allowed the writ petition while for the petitioner, this Court directed the petitioner to file an appeal. Since the Government has endorsed the order of the Revisional Authority, this Court should not interfere with the order under Article 226 of Constitution of India. The contention raised by the learned counsel Government Advocate cannot be accepted. It is well settled that when two persons charged for the same incident and the charge against the two persons are identical in nature, there should be parity in punishment in treatment in terms of punishment imposed. It is a well settled principle. In view of the above fact, the

impugned order of the 1st respondent in No.2D 280 dated 09.05.2007, is hereby set aside and the matter is remanded back to the same authority i.e Revisional Authority for consideration of the case of the petitioner, keeping the rule of parity in mind and also the fact that the petitioner has also attained the age of superannuation and his case is identical, in all respects of Mr.Bhojan.

6. Accordingly, this writ petition is allowed. Consequently, the connected miscellaneous petition is closed.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

rka

To

1. The Secretary,
State of Tamil Nadu
Home (Prison-2) Department,
Secretariat, Chennai 600 009.

2. The Inspector General of Prison,
Chennai - 600 002.

+1 CC to Mr.A.R.Suresh, Advocate sr 84428

+1 CC to The Govt. Pleader sr 85089.

W.P.No.30968 of 2007

सत्यमेव जयते

NRL (CO)

SP (04/12/2019)

WEB COPY