

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.02.2019
Pronounced on : 22.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos. 17677 & 18824 of 2013

M.Manikanta Prasad

... Petitioner
(in both WPs)

Vs

1.Government of Tamil Nadu,
rep. by its Principal Secretary to Government,
Home (Prisons-I) Department,
Fort St. George,
Chennai - 600 009.

2.The Additional Director General of Police and
Inspector - General of Prisons,
Egmore, Chennai - 600 008.

3.The Accountant General (A&E),
Tamil Nadu, Teynampet, Chennai-600 086.

... Respondents
(in both WPs)

Prayer in WP.No. 17677 of 2013: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarid Mandamus, calling for records relating to GO (D) 432 Home (Prisons I) Department dated 18.06.2013, quash the same and consequently direct the respondents herein to quash the entire disciplinary proceedings initiated against the petitioner herein as non-est in the eye of law. To consequently direct the respondents herein to grant promotions to the petitioner in the posts of Regional Probation Officer from 1998 and Chief Probation Superintendent from 2005 and fix the pay and consequential service, monetary and attendant benefits in the promoted posts and pay the arrears within a short period which may be fixed by this Court. To consequently direct the respondents herein to issue an order permitting the petitioner to retire from service on reaching the age of superannuation on 28.02.2007. To consequently direct the respondents herein to pay pension to the petitioner from 01.03.2007 and continue to pay

the same every month and to pay the arrears of pension and other retirement benefits 01.03.2007 within a short date.

Prayer in WP.No. 18824 of 2013: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the 3rd respondent herein to supply the Annual Statement of Accounts in respect of the Petitioner's General Provident Fund account number 3327/Jails for the period from the year 2004-2005 to till date and continue to supply the same every month and to direct the 2nd respondent herein to release the entire sum outstanding to the credit of the petitioner's General provident Fund account number 3327/Jails.

For Petitioner : Mr.K.S.Govindaparasad

For Respondents: Mr.Akhil Akbar Ali
Government Advocate for R1 & R2

Mr.V.Vijay Shankar for R3
(for both the writ petitions)

O R D E R

The instant writ petitions are filed against the charge memo initiated against the writ petitioner u/s 17(b) dated 07.09.1995 issued by the Chief Probation Superintendent and seeking a direction to direct the respondents to grant promotions in the post of Regional Probation Officer from 1998 and Chief Probation Superintendent from 2005 and to fix the pay and consequential service, monetary, attendant benefits and arrears in the promoted posts. The writ petitioner had filed another writ petition seeking direction to direct the 2nd respondent to release the entire sum outstanding to the credit of the writ petitioner's General Provident Fund Account Number 3327/Jails.

2. The petitioner was appointed as a Probation Officer in Tamil Nadu Prisons Department. He worked as a Probation Officer at various place. The petitioner was served with a charge memo dated 07.09.1995, under Rule 17(b) of The Tamil Nadu Civil Services (Discipline and Appeal) Rules for the following charges.

"1. Charge-1: Having demanded and accepted a bribe of Rs.150/- on 15.05.1990 from one Thiru Kannan, for sending a favourable report to the Court concerned to release the accused Lilly Pushpam.

2. Charge-2: Having demanded and accepted a bribe of Rs.150/- on 15.05.1990 from one Tr.Kannan, for

sending a favourable report to the Court concerned for releasing the accused Kannan.

3. Charge -3: Having demanded Rs.300/- as bribe from one accused Murugan @ Palani on 22.04.1991 and sent a false report to the Court concerned as the accused had refused to give the bribe.

Charge-4: Having demanded Rs.2500/- as bribe from one Tmt.Manamalli on 20.04.1991 for sending a favourable report to the Court for her husband accused Suyambu and sent a misleading report to the Court as she had refused to give bribe."

3. Departmental enquiry was conducted and the Enquiry Officer by his report dated 04.07.1997 held that all charges have not been proved.

4. The Inspector General of Police being the Disciplinary Authority disagreed with the findings of the Enquiry Officer and held that the charges have been proved. Show-cause notice was issued to petitioner to submit his explanation as to why punishment should not be imposed on him. The copy of the enquiry report was also enclosed with the show-cause notice giving reasons as to why the Disciplinary Authority is disagreeing with the findings of the Enquiry Officer.

5. The petitioner gave his explanation. The Disciplinary Authority by an order dated 17.04.1998 rejected the explanation given by the petitioner and awarded a punishment of removal from service. The petitioner filed an appeal before the first respondent / The Principal Secretary to Government, Home (Prisons-I) Department, Government of Tamil Nadu. The Appellate Authority by an order dated 22.05.1998 ***came to the conclusion** that the order of the Disciplinary Authority, imposing that punishment of removal from service is vitiated, because the petitioner was not heard by the Disciplinary Authority before passing the order dated 22.05.1998. The Appellate Authority relied on the advice of the Tamil Nadu Public Service Commission that the order of the Disciplinary Authority should be set aside because the petitioner was not heard before the order dated 22.05.1998 was passed. The Tamil Nadu Public Service Commission opined that the case must be sent back to the Disciplinary Authority to hear the petitioner. The Appellate Authority, therefore, set aside the order of removal from service passed by the Disciplinary Authority, i.e., the Inspector General of Police (Prisons) and remanded the matter back to the Disciplinary Authority to start the disciplinary proceeding from the stage where flaw crept in as advised by the Tamil Nadu Public Service Commission.

6. On remand, the Inspector General of Police (Prisons) afforded an opportunity to the petitioner and once again awarded punishment of removal from service by an order dated 01.02.2001. The petitioner filed an appeal to the first respondent herein being the Principal Secretary to Government, Home (Prisons-I) Department, Government of Tamil Nadu. The Appellate Authority rejected the appeal by an order dated 29.05.2002.

7. The petitioner thereafter, filed a writ petition in this Court being WP.No.4243 of 2006. This Court allowed the writ petition on the ground that the order of Appellate Authority rejecting the appeal is completely a non-speaking order and does not deal with the contentions raised by the petitioner. This Court felt that if the Disciplinary Authority has ***disagreed** with the findings of the Enquiry Officer, then it was all the more necessary for the Appellate Authority to consider the grounds raised by the petitioner and record independent reasons as to why it was agreeing with the findings of the Disciplinary Authority. This Court therefore, remanded the matter back to the Appellate Authority once again to consider the matter afresh. On remand once again, Appellate Authority has reiterated its findings given by it earlier.

8. Heard the counsel for the parties.

9. The main contention raised by the counsel of the petitioner is that the impugned order dated 18.06.2013 passed by the Appellate Authority once again suffers the same vice as pointed out by this Hon'ble High Court in its order dated 04.07.2012 in WP.No.4243 of 2006. The relevant paragraphs of both the orders dated 29.05.2002 and 18.06.2013 are extracted hereunder:- "3. In the reference 3rd cited the TNPSC gave the following opinion.

The Appellant has stated the same explanation in his Appeal. The Appellant has not stated any new reasons contradicting the deviation of the IGP on the enquiry report. When a person is serving as a Probation Officer in a Government Office, he himself not adhering to the Rules and accepting bribes for giving conduct certificate for the convict prisoner, is it possible to get something good from such a conduct officer. It is not preferable for such a person with such an intention to serve in the Government office. Hence, the TNPSC has opined the Government that appeal may be rejected as without substance and may be rejected accordingly.

4. The records relating to the appeal of Thiru M.Manikanta Prasad, Probation Officer, along with the

opinion of the TNPSC was independently considered by the Government. The Government decided to accept the opinion of the TNPSC to reject the appeal of Thiru M.Manikanta Prasad, Probation Officer, Accordingly, Government order rejection of the appeal of Thiru.M.Manikanta Prasad, Probation Officer."

To enquire and recommend the credibility of the surety of Tvl Muthuraj and Anthony, residents of Ettamadaï in the Bail application of the accused Tmt.Lilly Pushpam to the Judicial Magistrate No.2, Nagercoil he demanded and accepted a bribe of Rs.350/- on 20.04.1990 from Thiru V.Muthuraj.

Explanation of the delinquent Officer

Tvl Anthony, Muthuraj who offered surety to the remand prisoner Pushpam did not meet me.

I have met them at Ettamadaï and enquired only in the light of they being credible surety.

It is a lie that i demanded bribe and they offered money. The surety obtained the ear ring studs of the remand prisoner under the guise of my demand in order to cheat on the remand prisoner Lilly Pushpam.

On obtaining the court's enquiry orders on 19.04.1990 evening, I enquired the credibility of sureties at Ettamadaï at 15 km distance on 20.04.1990 and submitted my report on the same day. The remand prisoner was released on bail on 20.04.1990 evening itself.

In between the time the surety Muthuraj, meeting the remand prisoner at the Sub Jail, obtaining her ear ringh studs, pledging it and bribing in between the time is not possible. It is not known how anybody can demand money from the person offering surety sympathizing with the remand prisoner.

Further, it is not known how a remand female prisoner in a sub-jail was allowed to keep her jewel. Furthermore the person pledging the jewel on that day has not submitted any receipt or any other evidence of the said pledge. It is a lie that they met the remand prisoner in tthe sub-jail.

Hence this charge was wantonly foisted against me based on imagination.

The findings of the enquiry officer

Giving and acceptance of bribe is an illegal act. Only when the incident is caught red handed it can be proved. But it is not so in the above incident. After a lapse of two years Thiru Muthuraj claiming to have given an amount to Thiru Manikanta Prasad, Probation Officer is not acceptable. Therefore as stated in the charge 1 Thiru M. Manikanta Prasad demanded and accepted bribe to release of Mrs. Lilly Pushpam on

surety of Mr.Muthuraj on accepting a bribe of Rs.350 has not been proved on the basis of Government side evidence.

The Government side witness depositions has not proved the charge or receiving bribe by the delinquent officer. Hence this charge is not proved beyond any doubt.

The reasons for deviation on the findings of the enquiry officer by the disciplinary officer

In so far as the charge No.1 is concerned the Government side witness No.7 one Muthuraj has deposed that on 20.04.1990 he has given a bribe amount Rs.350/- The Government side witness No.8 Thiru Anthony also confirmed the same. The Government side witness No.6 Tmt.Lilly Pushpam also confirmed that only on pledging her ear ring studs for Rs.350/- and had given the same to the delinquent officer through Thiru Muthuraj. Further in the records of the court and police station, entries were made regarding the ear ring studs of the convict Tmt.Lillipushpam and the records of the ear ring studs having been returned to her on 18.04.1990 before she was brought to the court was recordically proved. Thereby Tmt.Lillipushpam handing her ear ring to Thiru.Muthuraj for pledging the same and Thiru.Muthuraj bribing the delinquent officer on 20.04.1990 has been proved.

Charge:2: Having demanded and accepted a bribe of Rs.150/- on 15.05.1990 from remand prisoner Thiru Kannan for recommending under Probation Act for his release case in C.A.No.301/89 before the Judicial Magistrate No.2, Nagercoil.

Explanation of the delinquent officer

It is a lie that I demanded money to release remand prisoner Kannan son or Ramaiya.

The enquiry order dated 07.05.1990 was enquired on 15.05.1990 by me and on the same date a report was submitted.

The petition alleging demand of money was first sent to vigilance and Anti corruption department. the remand prisoner who had preferred a complaint to the Vigilance and Anti Corruption department against me after several months after his release could have complained on the same day of demand of bribe and arrest me. But the reason why preferring a complain against me after several months after his release is not known.

Hence this charge was wantonly foisted against me based on imagination.

The findings of the enquiry officer

Thiru Kannan who claims to have given bribe to Thiru M.Manikanta Prasad, Probation Officer did not prefer any complaint to Vigilance and Anti corruption department that day itself. Giving and acceptance of bribe is an illegal act. Only when the incident is caught red handed it can be proved. But it is not so in the above incident. After a lapse of two years Thiru Kannan complaining to the Vigilance and Anti Corruption Department to have given an amount to Thiru Manikanta Prasad, probation Officer is not acceptable. Hence, the delinquent officer Thiru M.Manikanta Prasad demanded and accepted bribe for giving favourable report to release Thiru Kannan on accepting a bribe of Rs.150 has not been proved on the basis of Government side evidence. It is to be noted that there is no other witness to prove that he accepted a bribe of Rs.150. The Government side witness depositions has not proved the charge of receiving bribe by the delinquent officer. Hence this charge is not proved beyond any doubt and there arises a situation that the benefit of doubt has to be passed on to the delinquent officer.

The reasons for deviation on the findings of the enquiry officer by the disciplinary officer The fact about delinquent officer's demand and receipt of bribe amount was witnessed by P.W.2 Kannan alone as a solitary witness. However it is observed from the PW3 and PW4 depositions that Kannan handed his wrist watch to Thiru Muthukumar and obtained the amount. The enquiry officer holding the charge as not proved on the fact that Thiru Muthukumar being a solitary witness is not acceptable. Hence Charge-II is proved.

Charge : 3: Having demanded Rs.300/- as bribe from one accused Murugan @ Palani on 22.04.1991 and sent a negative report in CC.No.56/91 under Probation of Offenders Act making him ineligible for release before the Judicial Magistrate no.3, nagercoil as the accused had refused to give the bribe.

Explanation of the delinquent officer

It is not true that I demanded money to release remand prisoner Murugan @ Palani.

I do not remember the facial identity of the remand prisoner or the other persons mentioned in the enquiry report.

It was alleged that I demanded money on 11.04.1991 when I made enquiries and I have enquired again on 22.04.1991 and submitted my report. The petition alleging demand of money could have informed

Vigilance and Anti Corruption Department in the 11 days gap through his relative. But the reason why preferring a complaint against me after several months after his release is not know.

The findings of the enquiry officer

In this charge if any bribe is given to Thiru M.Manikanta Prasad, probation Officer, complaint could have been given to Vigilance and Anti Corruption Department and subjected to their enquiry. But it did not happen so in the above incidence. Thiru Murugan @ Palani after his release did not meet the Probation Officer within 14 days as required under the surety rules. If the rules have been violated in this case Thiru M.Manikanta prasad, probation Officer who have been charge sheeted could have sent his further report in the matter to the Police. But he had not done like that and it is therefore it is doubtful that whether he had demanded any money. Further it is also not known whether on account of nonpayment of money demanded he had sent a negative report. But from the court records it is seen that the delinquent officer had sent a negative report on the remand prisoner. Hence, the delinquent officer Thiru M.Manikanta Prasad demanded and accepted bribe for giving negative report in the matter has not been proved beyond any doubt on the basis of Government side evidence.

The reasons for deviation on the findings of the enquiry officer by the disciplinary officer.

In this charge the demand of bribe from Thiru Subramaniyapillai (Government side witness No.4) for sending a favourable report to the court for the release of his son Murugan who is the Government side witness No.3. The conduct of delinquent officer in having sent an adverse report against PW3 Murugan indicates that it was done with a motive. The motive is that the failure of PW3 to gratify the demand of delinquent officer to give Rs.300/- The fact that PW3 filed an affidavit before the court concerned on 29.04.1991 revealing therein delinquent officer's demand on illegal gratifications from him and his having refused to pay the same spoken to by PW3, PW2 and also borne out by the court record namely affidavit. In view of those materials, the findings of the Enquiry Officer is not acceptable

Charge 4: having demanded Rs.2500/- as bribe from one Tmt.Manamalli wife of the accused Suyambu on 21.04.1991 for sending a favourable report in C.C. No.690 / 89 before the Judicial Magistrate No.1, Nagercoil and having sent a false report recommending

for conviction as the accused had refused to give bribe.

Explanation of the delinquent officer

The remand prisoner Suyambu son of Kanthasamy is a lecturer in a Technical College. I enquired about him on 22.04.1991 and submitted my report on the same day. There was no time lag to demand and await receipt of Rs.2,500/- from him.

Demand of amount from a post graduate teacher would have paved way for his complaint to vigilance and Anti-corruption department. The background of how he had preferred a complaint to Vigilance and Anti Corruption Department well after my negative report and conclusion of the case, is not known.

The findings of the enquiry officer

It is observed that based on the remarks made by the affected persons on Thiru Suyambu a favourable report was sent. Since a negative report was sent it is doubted whether Thiru M.Manikanta Prasad would have demanded amount.

Since the Government side witness has not deposed about the demand and acceptance of bribe the charge is not proved beyond any doubt. As far as the charge is concerned there is no direct evidence of demand of bribe. Similarly no corroborative evidence in this regard was presented. Further at the time of allegation of demand of amount no complaint was made. Only after a lapse of two years action was initiated by the Vigilance and Anti Corruption Department. Following which he was charged. hence after a lapse of time since the charge was not proved beyond any doubt by the Government side witness recordically it is possible to come to a conclusion that the charge was not proved beyond any doubt.

The reasons for deviation on the findings of the enquiry officer by the disciplinary officer.

On the aspect of delinquent Officers demanding Rs.2,500/- for recommending the case of husband of Manamalli under Probation of Offenders Act on 20.04.1991, and the refusal thereof, the next date 21.04.1991 demanding R.2500/- from remand prisoner Suyambu directly and the refusal of him re evidenced in their deposition. The testimony of PW2 Suyambu is corroborated by PW3 Manamalli and also by PW6 who had deposed that delinquent officer has approached him and requested him to receive some illegal gratification from PW Suyambu and pay the same to delinquent officer for sending a favourable report. The affidavit filed by the neighbours and colleagues before the Court also indicate that PW2 has no bad

acntecedents and the fact that the delinquent officer has sent an adverse report since delinquent officer's demand of bribe was not satisfied. These circumstances indicates that the delinquent officer has wantonly sent an adverse report since his demand for bribe was not satisfied by PW2. The enquiry officer himself has stated that the delinquent officer would have demanded bribe as alleged in the charge. Just because there is no evidence to prove the acceptance of bribe by the delinquent officer the demand cannot be ignored. The observation of the Enquiry Officer that there was no complaint preferred by PW2 against the delinquent officer in respect of the delinquent officer's demand of bribe is also not correct in view of the affidavit filed in the court. It contains allegations regarding delinquent officer's demand for bribe and therefore the findings of the Enquiry Officer deserved to be set aside. Hence the Charge -IV is held as proved. Further explanation of the delinquent officer on the reasons for deviation on the findings of the enquiry officer by the disciplinary officer. All the charges framed against him is far form truth and it is all falsely framed one, which was preplanned and framed to settle score with him. Further the reason behind the charges are that somehow punishment has to be meted out and intension of finding reasons for the same and the findings of the honest and efficient enquiry officer and the doubtfulness on the part of the disciplinary authority has been clearly exposed that the charges are false and taking action based on it is against natural justice.

3. The delinquent officer has stated that the disciplinary authority had somehow punish him is alone is the reason for the deviation on the findings of the enquiry officer by the disciplinary officer. The delinquent officer has not put forth any new grounds against the deviation on the findings of the enquiry officer by the disciplinary officer in his appeal.

There is no reason why the disciplinary authority intended somehow to punish him. In the above circumstances the Government decided to accept the reason for the deviation on the findings of the enquiry officer by the disciplinary officer and there is no reason to "interfere" with the punishment of "Removal from service" awarded in the IGP proceedings. Hence, the Government decided to reject

the appeal made to Government by the delinquent officer in the reference third cited"

10. A reading of the above said two orders would show that the same defect as pointed by this Court in its order 04.07.2012 in WP.No.4243 of 2006 continues. Other than recording the reasons of the Disciplinary Authority as to why it is deviating the proceedings of the Enquiry Officer, that is no independent application of mind by the ***Disciplinary** Authority as to why it is preferring the decision of the Appellate Authority and why it is discarding the reason of the Enquiry Officer.

11. The matter was remand back to the Appellate Authority for an independent application of mind on the materials, for the reason that the Disciplinary Authority has chosen to deviate from the findings of the Enquiry Officer. In view of the conflicting findings of the Enquiry Officer and the Disciplinary Authority, it is incumbent on the Appellate Authority to give reasons as to why it is preferring one finding over the other. In the absence of any reasons given by the Appellate Authority as to why it is preferring the opinion of the Appellate Authority over the findings of the Enquiry Officer. The petitioner is handicapped from filing an appropriate petition in the High Court challenging the findings of the Appellate Authority. The order of the Appellate Authority is therefore, has to be called as on sans reasons. In view of the same, the order of the Appellate Authority is ***once** again set aside and the matter remanded back to the Appellate Authority for a fresh decision in accordance with law within 2 months from the receipt of certified copy of the order. In view of the judgment in ***W.P.No.17677 of 2013**, no orders are required in ***W.P.No.18824 of 2013** at this stage. The writ petitioner is permitted to approach the Government for the reliefs claimed in the writ petition.

12. The writ petitions stands disposed of in above mentioned terms. It is made clear that the petitioner is not entitled to any back wages, either before the Authority or before this Court. No Costs.

Sd/-

Assistant Registrar(CO)

***Corrected as per the order of this court
dated 08/03/19 made in WP.NO.17677 & 18824/13**

Sd\-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

Pkn

To

1. The Principal Secretary to Government,
Government of Tamil Nadu,
Home (Prisons-I) Department,
Fort St. George, Chennai - 600 009.

**To be Substituted to
the order already
despatched on
06/03/2019**

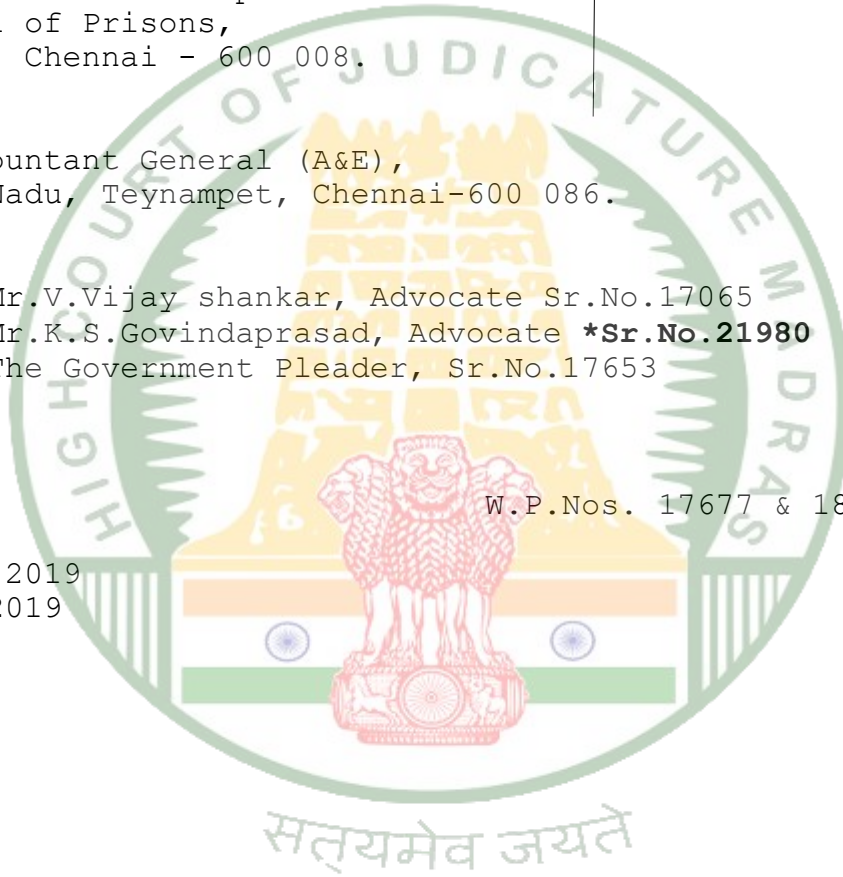
2. The Additional Director General
of Police and Inspector
- General of Prisons,
Egmore, Chennai - 600 008.

3. The Accountant General (A&E),
Tamil Nadu, Teynampet, Chennai-600 086.

+1 cc to Mr.V.Vijay shankar, Advocate Sr.No.17065
+1 cc to Mr.K.S.Govindaprasad, Advocate ***Sr.No.21980**
+1 cc to The Government Pleader, Sr.No.17653

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