

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2019

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.27724 OF 2004

V.Gnanamurthi

... Petitioner

Vs.

Superintendent of Police
District Police Office
Kancheepuram District
at Kancheepuram.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the orders of the respondent herein passed in his proceedings No.J1/PR.54/2003 dated 31.05.2004 and D.O.1351/2004, C.No.J1/PR.No.54/2003 dated 31.05.2004 of the respondent herein imposing a punishment of postponement of increment for two years with cumulative effect and quash the same and direct the respondent herein to repay the petitioner the monetary value of the punishment of withholding increments from his salary.

For Petitioner : Mr.K.Venkatramani
Senior Counsel for M/s.M.Muthappan

For Respondent : Ms.R.Janaki
Additional Government Pleader

O R D E R

While the petitioner was working as Head Constable at Maraimalai Nagar Police Station, Chengalpet Taluk, Kancheepuram District, a complaint was lodged on 15.03.2003 about an accident that took place within the jurisdiction of the said Police Station. On the basis of a complaint against the petitioner for improper and irregular conduct in registering the First Information Report a) belatedly after two days; b) for changing the offending vehicle and the accused; and c) for refusal to issue the copy of the First Information Report to defacto complainant and for the rude behaviour, departmental proceedings were initiated and a chare memo was issued. An enquiry was held

on the charges levelled against him. On 28.10.2003, the Enquiry Officer had held the charges proved, vide his report P.R.No.54 of 2003. The enquiry report was also furnished to the petitioner and the petitioner submitted his explanation on 18.11.2003. Thereafter, on 31.05.2004, the punishment order, which is impugned in this writ petition came to be passed by the respondent. Without availing the appeal remedy, the petitioner has approached this Court on the grounds of violation of principles of natural justice, for, it is a non-speaking order and the punishment of postponement of increment for two years with cumulative effect will have effect on future increments and pension and further, it was implemented on the very same day itself.

2. Denying the allegations, the respondent has filed a counter affidavit stating that by ample evidence, the gross neglect of duty in having investigating the case in Crime No.106 of 2003 on the file of Maraimalai Nagar Police Station for the offence under Section 279 IPC was clearly proved and that the petitioner had deliberately seized the license and refused to hand over the same to the complainant and misbehaved with him in an indecent manner. The punishment order was passed only after providing ample opportunity to the petitioner and after verifying the enquiry report as well as considering the explanation of the petitioner. There is no violation of principles of natural justice and the petitioner should have filed an appeal to the appellate authority, whereas, he moved this Court without exhausting the alternative remedy and on this ground alone, the writ petition is liable to be dismissed.

3. I have heard the submissions made on either side and perused the materials available on record.

4. On perusal of the charges, it is seen that the petitioner was charged with dereliction of duty, indecent behaviour and irregular conduct of investigation. An elaborate enquiry was conducted and the Enquiry Officer also had held the charges proved. The petitioner had submitted his objections to the Enquiry Officer's report, contending that the impugned order was passed in violation of principles of natural justice by not allowing him to examine the witnesses and enquiry was conducted only on one set of people of two vehicles involved in the accident. It was further objected that the necessary party, who owned the other vehicle, was not at all examined and the Enquiry Officer had proceeded with a predetermined mind to hold the charges proved. On consideration of these points, it is seen that even though the petitioner has given ample explanation and raised serious objection to the enquiry report and raised several points of discrepancies in the conduct of the enquiry, the impugned order does not at all address any of those

objections. The impugned order also does not disclose any reason as to the grounds on which the Disciplinary Authority has upheld the findings of the Enquiry Officer. But it simply states that the prosecution exhibits and the prosecution witnesses examined at the time of enquiry proves the charges levelled against the petitioner/delinquent. The order of punishment impugned here cannot be so bald and vague. It is well settled that the non-disclosure of reason in the impugned order of punishment will also amount to violation of principles of natural justice and the delinquent will be left clueless for attacking the punishment. In this case also, the impugned order does not disclose any reasons for justifying the punishment imposed on the petitioner. In that view of the matter, this Court considers that the impugned order is a non-speaking order and it is not sustainable in the eye of law. Even though there is an appeal remedy provided, when no reasons were adduced and when it is contrary to the principles of natural justice, the petitioner can very well maintain the writ petition against the impugned order, without exhausting the alternative remedy as it is obviously inefficacious. In fine, the impugned order and the enquiry proceedings does not stand the test of judicial scrutiny and hence, liable to be set aside.

5. In view of the above discussions, the impugned order in proceedings No.J1/PR.54/2003 dated 31.05.2004 and D.O.1351/2004, C.No.J1/PR.No.54/2003 dated 31.05.2004 passed by the respondent is set aside.

6. It is the usual procedure to remand the matter for continuation of enquiry and for decision afresh. But at this distance of time getting the vehicle owners of both sides and producing the witnesses will be a himalayan task. The proceedings will be unnecessarily protracted. The enquiry though not according to principles of natural justice, reveals that some of the witnesses were examined and the respondents do have marked some documentary evidence for proving the charge. Hence, the delinquent cannot be permitted to go scot free. The petitioner was 54 years at the time of institution of the writ petition and in normal course, he must have retired from service. Therefore, I am not inclined to remit the matter, as it will not serve any useful purpose.

7. Considering the length of service of the petitioner for 33 years in the Department, for one such incident, the punishment of postponement of increment for two years with cumulative effect imposed on the petitioner, appears to be disproportionate. Therefore, I am inclined to modify the punishment into one of postponement of increment for two years without cumulative effect.

8. The writ petition is partly allowed. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

TK

To

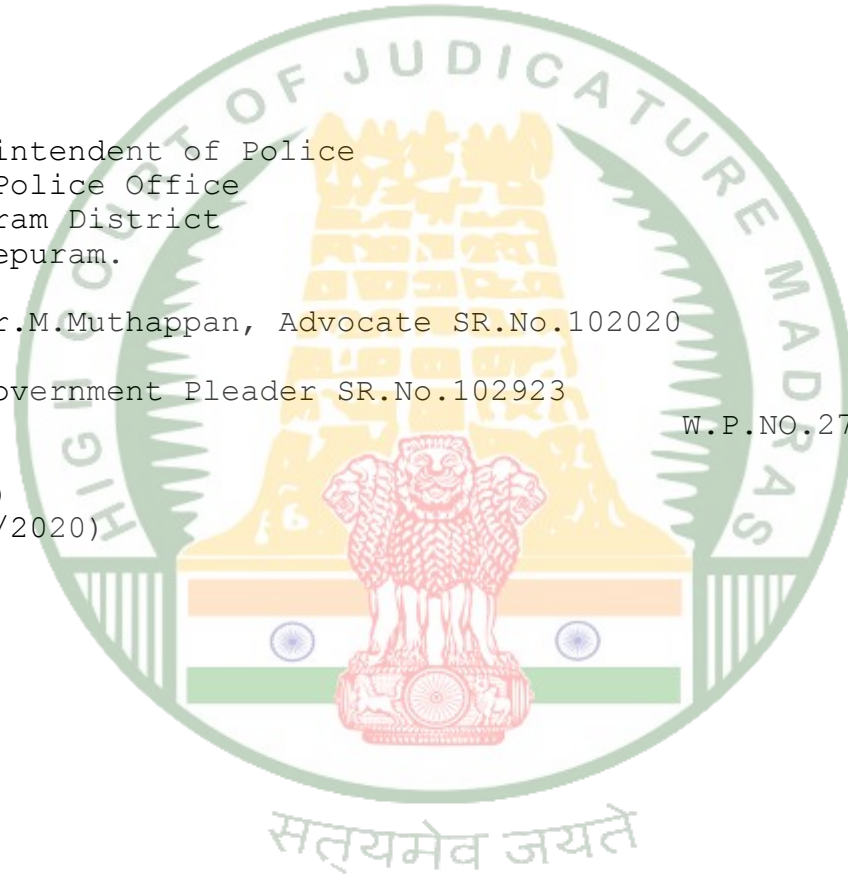
The Superintendent of Police
District Police Office
Kancheepuram District
at Kancheepuram.

+1cc to Mr.M.Muthappan, Advocate SR.No.102020

+1cc to Government Pleader SR.No.102923

W.P.NO.27724 OF 2004

VSN II (CO)
GMY (03/02/2020)



WEB COPY