IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.8315 of 2009

B.Jayakumar .. Petitioner

Vs.

1.The Principal Secretary to Government
Home (SC) Department
Fort. St. George, Chennai-9.

2.The Director General of Police
Chennai-4.

3.Deputy Inspector General of Police
Thanjavur Range, Thanjavur. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings G.O. (2D) No.721, Home (SC) Department, dated 23.12.2008, quash the same and consequently direct the respondents to allow the petitioner to retire from service with effect from 31.05.2006 together with all service, monetary and pensionary benefits.

For Petitioner : Mr.K.Venkataramani
Senior Counsel
for M/s.G.Bala and Daisy

For Respondents : Mr.R.S.Selvam
Government Advocate

ORDER

Writ Petition is filed for issuance of a writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings G.O. (2D) No.721, Home (SC) Department, dated 23.12.2008, quash the same and consequently direct the respondents to allow the petitioner to retire from service with effect from 31.05.2006 together with all service, monetary and pensionary benefits.

2(i). According to the petitioner, he was directly recruited as Sub-Inspector of Police on 01.04.1970, promoted as Inspector of Police on 16.04.1982 and further promoted as Deputy Superintendent of Police on 19.01.2000. The petitioner has received more than 75 rewards for his efficient service. While he was working as Deputy Superintendent of Police, he was served with a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, dated 01.07.2005 in P.R.No.23/2005 containing five charges alleging that he demanded and accepted illegal gratification from wine shops at Mannarkudi during the period from 05.07.2001 to 25.03.2002. The petitioner was suspended from service on 04.10.2005.

2(ii). According to the petitioner, the charges levelled against him are at the instigation of a member of a political party as the petitioner conducted raid in the wine shops, in which the said person has close nexus. The petitioner submitted that all the charges are vague and denied the said charges.

2(iii). The petitioner was transferred to New Delhi. While he was working in New Delhi, charge memo was issued. The petitioner sought for copies of 12 documents relied on by the respondents. The 3rd respondent refused to furnish document No.1 on the ground that the same is confidential. The said document is nothing but the weekly diaries of the petitioner for the relevant period i.e., from 05.07.2001 to 25.03.2002, which cannot be considered confidential. Further, even though the 3rd respondent agreed to furnish two reports sent by the petitioner against the complainant, the same were not furnished to the petitioner till the completion of disciplinary proceedings. According to the petitioner, the charges levelled against him were not proved in the domestic enquiry. The Enquiry Officer did not consider the evidence of D.W.2 and other defence witnesses.

3. The learned Senior Counsel appearing for the petitioner contended that there was an inordinate delay in issuing charge memo, commencement of disciplinary proceedings and conclusion of the disciplinary proceedings. In the domestic enquiry, the prosecution witnesses have also admitted that the petitioner conducted regular raids in the wine shops. There is correction in the date of enquiry report and signature of the Enquiry Officer. This shows that the domestic enquiry was not conducted in a fair and proper manner. The report of the Enquiry Officer is biased. In the meantime, the petitioner has attained superannuation on 31.05.2006. The 1st respondent by G.O.(2D) No.334, dated 29.05.2006, has not permitted the petitioner to retire from service and retained him under suspension. The petitioner submitted detailed explanation to the 1st respondent to exonerate him from all the five charges. The 1st respondent

sought for opinion from the Tamil Nadu Public Service Commission. The Tamil Nadu Public Service Commission has given opinion that the demand and acceptance of illegal gratification of charges 1 to 4 are not proved. The Tamil Nadu Public Service Commission has opined that first four charges do not specify the charges of illegal gratification and fifth charge specifically states that illegal gratification was intended to allow one Balakannan to run the bar illegally and keep the wine shop open beyond 11.00 p.m. In the domestic enquiry, the Enquiry Officer has held that the charges 1 to 4 are proved and fifth charge is not proved. In view of the opinion of the Tamil Nadu Public Service Commission, the charges framed against the petitioner are not proved and all the charges are false. The 1st respondent without application of mind imposed capital punishment of dismissal from service by the impugned order and prayed for quashing the same.

3(a).In support of his contention, the learned Senior Counsel relied on the following judgment of this Court reported in (2018) 8 MLJ 129 (K.N.Ramesh Babu v. Additional Director General of Police (Law and Order), Chennai-4 and another):

> "9. Of course, in a departmental proceedings, what is required is only preponderance of probabilities to prove the charges and strict rule of evidence is not applicable. But, at the same time, the evidence adduced on the side of the Department should have least quality even to infer the probabilities. Merely because strict rule of evidence is not applicable in the departmental proceedings, it cannot be said that the evidence, which is in perfunctory nature of evidence, can be relied and guilt can be presumed even without any legal evidence. The legal evidence is something which has probative value and admissible in evidence. Similarly, reliability of evidence has also to be taken into consideration.
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> 10.It is the main case of the delinquent in this case that he was trapped in the departmental proceedings by the advocate who appeared for one of the accused. When the serious allegation of corruption is made by the party, who has also suffered at the hands of the delinquent by filing an F.I.R. against him, such allegations made by the affected person have to be seen very seriously, since always there is an element of bias and motive attached with such allegations. Therefore, the evidence adduced on the department side, when carefully seen, particularly, the delinquent officer has taken action as per law and

filed an F.I.R. against one of the witnesses, such witness statements require corroboration. Thus, it cannot be said that only preponderance of probabilities alone is sufficient in those cases. ”

4(i). The 3rd respondent filed counter affidavit and denied the various allegations made by the petitioner. The learned Government Advocate appearing for the respondents contended that enquiry was conducted in a fair and proper manner and the petitioner was given ample opportunity to putforth his case. Document No.1 was confidential one and hence, the petitioner is not entitled to have the copy of the same. The witnesses examined by the 3rd respondent in the domestic enquiry clearly deposed that the petitioner has demanded and accepted illegal gratification for running the bar illegally and to open the shop beyond the time limit and on holidays. The Tamil Nadu Public Service Commission has given a final opinion that the charges levelled against the petitioner were proved. The proven charges are grave in nature i.e., demanding and accepting illegal gratification by the Police Officer and therefore, punishment of dismissal is proportionate to the proven charges.

4(ii). The learned Government Advocate further contended that the prosecution witnesses have deposed that the petitioner used to raid wine shops and seize the bottles. P.W.1 in his evidence has deposed that the petitioner returned 50% of the bottles seized after receiving a sum of Rs.5,000/- from the owner of Sri Ganesh Wine Shop. The Enquiry Officer considering all the evidence of prosecution and defence witnesses, has given a report that the charges 1 to 4 levelled against the petitioner were proved. The delay in issuing charge memo and concluding disciplinary proceedings will not absolve the petitioner from the proven charges. The 1st respondent has considered all the materials on record with regard to charges, enquiry proceedings and enquiry report properly and passed the impugned order of dismissal. The petitioner is not entitled for the relief sought for in the writ petition and prayed for dismissal of the writ petition.

5. Heard the learned Senior Counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents and perused the materials available on record.

6. From the materials available on record, it is seen that the 3rd respondent has framed charges against the petitioner based on the complaint given by a member of a political party, who was examined as P.W.1. In the domestic enquiry, P.W.1 has deposed that he did not personally know that the petitioner demanded and accepted illegal gratification from wine shop

owners. P.W.1 received complaint from the public and based on the said complaint, he has given a complaint against the petitioner. This clearly shows that the complaint given by P.W.1 is based on hearsay and the hearsay evidence was not proved in the domestic enquiry. The witnesses examined by the 3rd respondent have deposed that they did not pay the illegal gratification directly to the petitioner except P.W.5, who has deposed that he paid illegal gratification to the petitioner directly for two times. The prosecution witnesses deposed that they have paid illegal gratification to the petitioner through one Veerapan, who was examined by the petitioner as D.W.2. D.W.2 categorically denied that he paid illegal gratification to the petitioner either for himself or on behalf of other wine shop owners. P.W.1 has deposed that the petitioner used to raid the wine shops regularly, he seized the bottles from Sri Ganesh Wine Shop and returned 50% of the bottles seized after receiving a sum of Rs.5,000/-. The owner of Sri Ganesh Wine Shop viz., Ashokan was examined as P.W.3 and in the chief-examination, he admitted that after the raid, his employee Gowthaman was prosecuted and P.W.3 paid fine. It is the case of the prosecution witnesses that they paid illegal gratification to the petitioner through Veerappan, who is also one of the wine shop owners. The said Veerappan was examined by the petitioner as D.W.2, who has categorically denied that he paid any illegal gratification to the petitioner. The Enquiry Officer without properly appreciating the evidence let in by the prosecution as well as by the petitioner erroneously held that first four charges levelled against the petitioner were proved and the fifth charge was not proved. The 1st respondent sought the opinion from the Tamil Nadu Public Service Commission with regard to proposed punishment. The Tamil Nadu Public Service Commission considering the materials available on record, has given opinion that the charges 1 to 4 levelled against the petitioner do not specify the charges of illegal gratification. The charges do not disclose for what purpose the illegal gratification was demanded and accepted. It is contrary to the finding of the Enquiry Officer, where the Enquiry Officer held that the charges 1 to 4 were proved and fifth charge was not proved. Curiously, the Tamil Nadu Public Service Commission has given opinion that fifth charge levelled against the petitioner states that illegal gratification was intended to allow one Balakannan to run the bar illegally and keep the wine shop open beyond 11.00 p.m. The Enquiry Officer gave report that the charges 1 to 4 were proved and the fifth charge was not proved, while Public Service Commission gave opinion that charges 1 to 4 are not proved and fifth charge was proved.

7. Considering all the materials available on record in its entirety, I hold that the respondents have failed to prove the charges levelled against the petitioner and finding of the

Enquiry Officer is perverse. The Tamil Nadu Public Service Commission having given opinion that the charges 1 to 4 do not specify the purpose of illegal gratification, erred in concurring with the 1st respondent with regard to punishment sought to be imposed on the petitioner. It is admitted fact that petitioner conducted raids in the wine shops of prosecution witnesses and criminal cases had been lodged. In such circumstance, the ratio in the judgment of the Division Bench reported in (2018) 8 MLJ 129 (K.N.Ramesh Babu v. Additional Director General of Police (Law and Order), Chennai-4 and another) is squarely applicable. The Enquiry Officer without there being any evidence to prove the charges levelled against the petitioner, erroneously held that the charge 1 to 4 were proved. The said finding is perverse. The dismissal order passed based on the said report is liable to be set aside and is hereby set aside.

8. For the above reason, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal Secretary to Government
Home (SC) Department
Fort. St. George, Chennai-9.

2.The Director General of Police
Chennai-4.

3.The Deputy Inspector General of Police
Thanjavur Range, Thanjavur.

+1 cc to M/s.G.Bala & Daisy,Advocate Sr.No. 60428
+1 cc to The Government Pleader Sr.No.60681

AKM/13.09.19/6P-6C/