

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.07.2019

Delivered on: 06.08.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

Writ Petition No.4901 of 2019

&

W.M.P.Nos.5583 and 5584 of 2019

K.M.Sankaran

...Petitioner

Vs.

1.State of Tamil Nadu,
Chief Secretary to Government,
(Home, Police-II) Department,
The Secretariat, Chennai-9

2.The Director General of Police,
Dr.Radhakrishnan Road, Mylapore,
Chennai-600 004

3.The Superintendent of Police,
Vellore District

...Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of certiorarified mandamus calling for the records and quashing the impugned order of the 1st respondent dated 10.01.2019 vide G.O.(2D) No.08 (Home Police-II Department), and confirming the order of the 2nd respondent vide Rc.No.131828/Con II(2)/2017, dated 08.04.2018, passed in PR No.61/2017 awarding the punishment of censure on the petitioner and consequently direct the respondents to promote the petitioner as Additional Superintendent of Police (ADSP) for the year 2018-19 together with all attendant benefits within time frame.

For Petitioner : Mr.K.Ravi Anantha Padmanabhan

For Respondents : Mr.J.Pothiraj, Spl.G.P.

ORDER

The petitioner joined the Police Department in the year 1987 as a direct recruit Sub-Inspector of Police. He was promoted as Inspector in 1999. He was further promoted as Deputy Superintendent of Police in 2012. According to the petitioner, he has been discharging his duties diligently without any blemish throughout his career. The petitioner was also awarded Chief Minister's Medal in 2015-16 for his meritorious service.

2.While the petitioner was working as Deputy Superintendent of Police in Gudiyatham Sub Division, Vellore District, on 06.01.2017, there was an alleged occurrence said to have taken place, resulting in the death of a quarry worker one Amavasai. The incident happened within the jurisdiction of Gudiyatham Police Station, where one Mr.Subbiah was the Inspector of police. Unfortunately, the said Inspector of Police did not bring to the knowledge of the petitioner about the alleged occurrence, which resulted in the death of a quarry worker.

3.While the matter stood thus, the issue of death became the controversy in view of inaction on the part of the Police officials concerned in not taking any action like investigation into the death of the quarry worker. In fact, the Additional Deputy Superintendent of Police was ordered to conduct an enquiry, by the petitioner's superior, in order to find out as to who was responsible for negligence and dereliction of duty in not conducting proper investigation into the alleged occurrence. In fact a complaint was given by one person about the incident on 21.03.2017 and the same was forwarded to the petitioner for his comments. The petitioner sent a reply on 30.03.2017, stating that he was not aware of any such incident, since the Police personnel, including the Inspector of police handling the Gudiyatham Police Station, had completely suppressed the alleged incident and withheld the information about the incident from the knowledge of the petitioner herein.

4.Thereafter, the petitioner was directed to give his explanation, by issuance of show cause notice, dated 20.09.2017, under Section 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules 1955. Only at that point of time the petitioner came to know about the alleged incident happened within the police limits of Gudiyatham Police Station. The petitioner, in the meanwhile, has also been transferred to

different Station, on 02.04.2017. However, no charge memo was issued either to the Inspector of Police, who was actually in-charge of the Police Station or the Sub-Inspector of police. In response to the charge-memo, the petitioner submitted his detailed explanation on 10.11.2017 to the charge memorandum stating that there was no negligence on his part and also no lack of supervision, as made out in the charge-memorandum. He submitted that he has given 16 advisories to the Inspector of Police, Gudiyattam, viz., Subbiah, for his acts of negligence in discharge of his duties as Inspector of Police. Repeatedly, he was warning the Inspector about the lack of devotion to duty and despite the same, the Inspector failed to investigate the alleged incident of death of a quarry worker and not informed the petitioner about the alleged occurrence. However, not satisfied with the explanation, the Disciplinary Authority imposed the penalty of 'censure', on 08.04.2018 and against which, an appeal was filed to the first respondent on 18.05.2018. By G.O.(2D) No.8, the first respondent rejected the appeal on 10.01.2019. Challenging the punishment of 'censure', the petitioner is before this Court.

5.The learned counsel for the petitioner would at the outset submit that the charge against the petitioner, viz., lack of supervision over his subordinate officials cannot be countenanced both on facts and in law for the reason that as many as 16 times, during the relevant time, the petitioner has issued advisories/letters to the Inspector Subbiah to be diligent in his work and also warned him of being negligent and careless in discharge of his duties.

6.The learned counsel would draw the attention of this Court to various letters issued in this regard by the petitioner. In fact, the petitioner, by his report dated 10.02.2016, addressed a letter to the Superintendent of Police, to take action against the Inspector of police Mr.Subbiah, as he was inactive, not cooperative and negligent in his duties. Therefore, the allegation that the petitioner lacked supervision in supervising his subordinate, is contrary to records and therefore, the punishment of 'censure' issued on the basis of such allegation is unsustainable in law.

7.The learned counsel for the petitioner would also submit that moreover, the ADSP, who was directed to conduct an enquiry into the alleged occurrence, has submitted a report on 19.05.2017, in which, the petitioner was found to be not negligent at all nor was he involved in the incident. In fact, the report of the ADSP has given a clean chit to the petitioner

on the basis of on-field enquiry conducted by him. The report in fact says that there was no complicity on the part of the petitioner in not carrying out proper investigation in the matter. Unfortunately, despite the clean chit given in the report, the Disciplinary Authority has imposed the penalty of 'censure' on the petitioner.

8.The learned counsel would submit that because of the punishment of 'censure', which was imposed on 08.04.2018, the petitioner's promotion to the post of Additional Superintendent of Police(ADSP), was also withheld, since the panel for such promotion was to be drawn on the first June of 2018 and the petitioner's name could not be included in view of the currency of the penalty of censure for a period of one year. The petitioner has lost a valuable opportunity of being promoted to the higher post and if that is taken into account, the punishment of 'censure' is not a simple minor punishment, which can be ignored, but it is in fact a major punishment, affecting the right of the petitioner to be considered and promoted to the next higher grade of Additional Superintendent of Police.

9.After notice, Mr.J.Pothiraj, the learned Special Government Pleader entered appearance and a detailed counter affidavit has been filed on behalf of the third respondent.

10.The learned special Government Pleader would submit that the petitioner has committed a negligent act of misconduct in being slack in supervision of his subordinates and failed to direct the Inspector of Police, Gudiyatham, for registering the case on the accident of a quarry worker at Private quarry at Thattapparai Village, Gudiyatham Taluk, on 06.01.2017. The Disciplinary Authority found that the charges were established and since the petitioner was proceeded against under minor penalty proceedings, he was ultimately imposed with the penalty of 'censure' by taking into consideration the report of the ADSP. According to the learned Special Government Pleader, the penalty of 'censure' is the most minor of all minor penalties and therefore, the petitioner cannot have any legitimate cause for complaining in regard to the quantum of penalty imposed on him. It is also denied that the Inspector of Police was not proceeded with, as the counter affidavit would state that the Inspector of Police was also dealt with under Rule 3(a) of the Tamil Nadu Police Subordinate Services (Disciplinary and Appeal) Rules, 1955 and he was also ultimately imposed with the punishment of 'censure'. Therefore, he would submit that the punishment imposed on the petitioner being extremely minor, the same is not required to be interfered with by this Court. The

lack of supervision is a subjective satisfaction of the Disciplinary Authority and the Disciplinary Authority has applied his mind, which was also confirmed by the appellate authority, unless such application of mind is found to be perverse, the impugned orders do not call for interference.

11. After the conclusion of the arguments, this Court, in order to ascertain the past record of the petitioner, directed the learned Special government Pleader to find out as to whether the petitioner in his long career in the Police Department, has come under a cloud in the past. After due verification, this Court was informed that the petitioner has, in fact, enjoyed unblemished record of service throughout and the punishment imposed on him, viz., 'censure', on 08.04.2018 is the first punishment inflicted on him.

12. From the records it could be seen that the petitioner is to retire in June 2020 and the punishment of 'censure' imposed on him, if seen in isolation, may not have any adverse career impact, but in this case, unfortunately, the punishment of censure was imposed at the time when the petitioner had come within the zone of consideration for promotion to the post of Additional Superintendent of Police for the year 2018-19. In view of the imposition of penalty of censure, a valuable right of the petitioner to be considered for promotion to the next higher post was lost and therefore, the punishment of censure cannot be viewed simply as if it is only a minor penalty and therefore, the punishment, which was imposed for the alleged acts of misconduct committed by the petitioner, warrants no intervention of this Court.

13. From the records and documents, which are made available to this Court, it could be seen that the petitioner has in fact sent several letters warning the Inspector of Police, Subbiah about his improper conduct in discharge of his duties and in fact, addressed letters to the Superiors to transfer him to any other station for effective running of Gudiyatham Police Station. From the materials as produced, it can be categorically concluded that the petitioner has taken earnest efforts to warn the Inspector of Police periodically prior to the occurrence of death of a quarry worker in January 2017. The series of letters addressed by him would unequivocally establish that the petitioner did not suffer from any lack of supervision or any slackness in monitoring the performance of his subordinates. Therefore, the charges alleged against the petitioner have no factual legs to stand on. Even otherwise, in respect of the incident in question, a detailed enquiry was

conducted by an official and the official in his report dated 19.05.2017 has given a clean chit to the petitioner. Unfortunately in the teeth of such report, exonerating the petitioner from his involvement or complicity in suppressing alleged incident, which took place on 06.01.2017, the impugned punishment by the Disciplinary Authority appears to be improper and cannot be sustained in law. The disciplinary authority has also not taken into account that the petitioner was due for next promotion in June 2018 to the next higher post of Additional Superintendent of Police (ADSP) for the year 2018-19. The punishment of 'censure', coupled with the fact that the petitioner was denied his due promotion to the next higher grade, particularly, on the eve of his retirement, has changed the complexion of the punishment i.e. from minor penalty into one of major penalty. It is needless to mention that the consequence of minor penalty of censure was the denial of promotion to the petitioner to the next higher grade of Additional Superintendent of Police. Such consequence has grave adverse effect on the service career of the petitioner, which will have impact till his life time. Therefore, such grave consequence, which was ordered to befall on the petitioner wittingly or unwittingly must stem from serious acts of misconduct on the part of the petitioner and not on the basis of the present charges, which are unfounded.

14. In any event, from the materials as disclosed in the writ petition and perused by this Court, the petitioner cannot be faulted for not taking note of the alleged occurrence, which took place on 06.01.2017, since the incident was not brought to the knowledge of the petitioner by the Inspector of Police, Gudiyatham Police Station and also the Sub-Inspector of Police. The ignorance pleaded by the petitioner in regard to the incident is also supported by the enquiry report submitted by the Additional District Superintendent of Police, dated 19.05.2017. Therefore, this Court has no hesitation in accepting the contention put forth on behalf of the petitioner that the charges as framed against the petitioner cannot be countenanced both on facts and in law. Therefore, the punishment, which was imposed on the petitioner, cannot stand the test of judicial scrutiny. The Disciplinary Authority has failed to consider all the records in proper perspective before rejecting the representation of the petitioner against the charge-memo issued to him. From the records, this Court has no hesitation in holding that the impugned order passed by the Disciplinary Authority, as confirmed by the appellate authority, suffer from non application of mind and therefore, the same are liable to be interfered with.

15. In view of the above, the impugned order of the 1st respondent, dated 10.01.2019, vide G.O.(2D) No.08 (Police-2) Department, and the order of the 2nd respondent vide Rc.No.131828/Con.II(2)/2017, dated 08.04.2018, are hereby set aside and consequently the respondents are directed to consider and grant promotion to the petitioner to the post of Additional Superintendent of Police (ADSP) for the year 2018-19, if otherwise is suitable for promotion, with all attendant benefits. The respondents are directed to comply with the direction of this Court within a period of four weeks from the date of receipt of a copy of this order.

In the result, the writ petition stands allowed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Secretary to Government,
(Home, Police-II) Department,
The Secretariat, Chennai-9.

2. The Director General of Police,
Dr. Radhakrishnan Road, Mylapore,
Chennai-600 004.

3. The Superintendent of Police,
Vellore District.

+1cc to Mr. K. Ravi Anandtha Padmanaban, Advocate Sr.67171

W.P.No.4901 of 2019

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srg 17/09/2019