

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.01.2019
Pronounced on : 25.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No. 30998 of 2013

K.Pandi

... Petitioner

Vs

1. The Principal Secretary to Government,
Home (Pol.IV) Department.
Secretariat, Chennai - 9.
 2. The Director General of Police,
Dr.Radhakrishnan Salai, Mylapore,
Chennai - 4.
 3. The Superintendent of Police,
Ramanathapuram,
Ramanathapuram District.
 4. The Tribunal for Disciplinary Proceeding Officer,
Ramanathapuram District.
 5. The Inspector of Police,
Vigilance and Anti Corruption Wing,
Ramanathapuram.
- Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned proceedings of the 1st respondent in his proceedings in G.O.(3D) No.38, Home Police IV Department, dated 12.06.2008 and quash the same and consequently to direct the respondents 1 to 3 to give the suitable promotion to the petitioner with all attendants benefits.

For Petitioner : Mrs.N.R.Jasmine Padma

For Respondents: Mr.B.Anand, Govt. Advocate
for R1 to R3 and R5
No appearance for R4

O R D E R

The instant writ petition is for a Certiorarified Mandamus calling for the records of proceedings dated 12.06.2008 passed by the first respondent herein in G.O.(3D) No.38, Home Police IV Department and to quash the same and consequently to give a suitable promotion to the petitioner with all attendants benefits.

2.The facts and briefs are as under:-

A charge memo was given to the petitioner while working as a Grade-1, Police Constable, 717/RM, Prohibition Enforcement Wing office, Paramakudi. The imputation of charges are read as under:-

" While you (AO 2) were working as Gr.I.P.C 717/RM P.E.W Office, Paramakudi actuated by corrupt motive and in abuse of your official position and authority, at about 08.30 a.m. On 05.12.2000 at P.E.W Office in Paramakudi you have shared the common intention with Thiru.S.Balasubramanian demanded and obtained Rs.2000/- from Tr.D.Packaraj as illegal gratification other than legal remuneration, on the pretext of accepting the said money on behalf of A.O 1 Palanisamy kept it for a while in your pocket and then handed over the same to A.O 3 Thiru. Blasubramanian. Later the A.O 3 with intention to cause disappearance of evidence stated falsehood that he did not receive that money then with the same intention he ran out of the P.E.W Office threw away the tainted amount into the scrap materials found heaped near the said office building and refused to offer any explanation for the shortage of Rs.200/-* from the tainted money of Rs.2000/- and thus violated Rules 24 of Tamil Nadu Subordinate Police Officers Conduct Rules 1964."

3. The Enquiry Officer after conducting the enquiry gave a report on 27.12.2002 where the Enquiry Officer found that the charges against him has not been proved. However, the Disciplinary Authority disagreed with the findings of the Enquiry Officer. The reason given by the Disciplinary Authority deviating reads as under:-

" The Tribunal has commented that the prosecution failed to prove as to who was that 33 year Police Constable. The prosecution has proved through the evidence of PW.1, PW.10 and Ex.P.9 (General Diary of P.E.Wing, Paramakudi). PW.1 had deposed that on enquiry he came to know the name of this 33 year old P.C. As Nagarajan. He has been examined by PW.10. Investigating Officer and his statement has been

recorded. The statement recorded by the Investigating Officer is no tin support of the prosecution and hence he was not examined. But his presence in the Police Station on 25.11.2000 is proved by the entry dated 25.11.2000 in Ex.P.9. He himself did not demand any bribe form P.W.1. The Tribunal has not stated as to how the non-examination of this Nagarajan makes the evidence of other witnesses unbelievable. Hence it is not correct to say that the prosecution failed to prove the identity of the 33 year old Constable who is not a material witness.

The Tribunal has disbelieved the prosecution evidence because of the contradictory statements of PW.1 and PW.2 regarding how they got the amount of Rs.2000/- the bribe amount. Even if there is contradiction it does not affect the prosecution evidence regarding the acceptance of tainted money by AO 2 and AO 3 and their recovery.

The Tribunal has commented upon the contradictory statement given by PW.1, PW.2. In their cross examination regarding date of complaint given before the Vigilance Unit. PW.1 has stated in the Chief Examination that on 28.11.2000 at about 03.15 P.M. he along with Umesh Ansari went to the Vigilance Office which is corroborated by the evidence of PW.4 and PW.7 and Ex.P.1 and P.29. PW 2 is an illiterate witness and so he might have forgotten the dates.

In coming to the conclusion, the Tribunal has taken into consideration the antecedents of PW-2 and his family. The merits of the allegations against the Accused officers have to be decided on the basis of the evidence available in the case. The law does not say that the evidence of persons having criminal antecedents has to be rejected. The Tribunal has failed to consider that the allegation mentioned in the 2nd charge against accused officer 1 ha been proved by Ex.P-7, P-9, P-14, P-31, P-32 documents maintained in the P.E.W, Paramakudi.

The Tribunal has stated that no proper preliminary enquiry regarding the antecedents of the complainant and the Accused Officers was done. It is not known how this affects the evidence. There is no legal requirement to conduct a preliminary enquiry. There is no such provision either in the Cr.Pc or in the Prevention of Corruption Act. It is only a guideline given to the Investigating Officers. The Investigating Officers make confidential enquiries and

the Police Constable deputed for the purpose cannot be examined for the Tribunal.

The Accused Officers themselves have not made any allegation that PW-10 (Investigation Officer) was present during the trap proceedings and it has caused prejudice to them. In fact the Accused Officers have suggested to PW3 karunanithi that "if A.D.S.P. not came" In the absence of such a plea on the side of the Accused Officers the Tribunal cannot consider this point against prosecution. The A.Os have not put any question to PW-10(Investigation Officer) in this regard.

The statements of some witnesses are typed and the statements of other witnesses are handwritten. According to the Tribunal it raises doubts. The A.Os have not seriously challenged this aspect. Further it is not discussed in the report in what way they give room for suspicion. The Tribunal has not given due weight and importance to prosecution evidence and has come to the conclusion which cannot at all be sustained."

4. The petitioner was called upon to submit his representation against as to why punishment should not be imposed against him. The petitioner gave his representation. The Government by the impugned order dated 12.06.2008 has deviated from the findings of the Disciplinary Authority and has come to a conclusion that the deviation is justified and the charges against the petitioner have been proved. The reasons given by the first respondent reads as under:-

"5.The Government have carefully and independently examined the charge, findings of the CDP, Ramanathapuram and further representation of the delinquent officer on the deviation form the findings of the Commissioner for Disciplinary Proceedings with relevant records and have held the charges as proved. For the charges held proved the Government have decided to impose the punishment of stoppage of increment for a period of one year with cumulative effect on Thiru K.Pandi, Gr.I. Police Constable. 717. The Government accordingly order that the punishment of stoppage of increment with cumulative effect for a period of one year be imposed on hiru K.Pandi, Gr.I. Police Constable. 717 for the charges held as proved against him in Commissioner for Disciplinary Proceedings No.2/2002."

5. A perusal of the order of the first respondent shows that the first respondent has not gone in to the bulky enquiry report. In fact, it has not considered crucial evidence given by the witnesses. For example, PW1 who is a star witness in his deposition reads as under:-

"After one day the witness and his friend went to PEW Police Station in the afternoon and met Inspector Palanisamy and requested him there the witness is not in a position to give Rs.8000/- immediately and requested he will give 2 times on 2 installment and the accused officer asked don't speak anything about money towards him, go and meet him who is setting in side, as instructed he went and met the police constable, there the police constable discussed with the accused officer Palanisamy and informed that accused officer told to pay the amount Rs.2000/- within 3 days and to pay remaining Rs.6000/- after one week. Subsequently the witness met the accused officer there he told to follow the instruction of constable or otherwise your parents will be detained under Goondas Act."

6. Similarly PW10 has observed as under:-

"In progress of investigation on 07.12.2000, a requisition sent to the Court of Chief Judicial Magistrate, Ramanathapuram to send the seized solution bottles for Chemical Examination. While enquiring the witness Tr.Packiyaraj, he informed that later he came to know that the 33 aged police name as Nagaraj 1450. While enquiring witness Packiyaraj he informed that accused Tr.Pandi told on him OK give the money, and took the powder smeared money from the shirt pocket and given to the accused Pandi, Tr.Pandi received the money and kept the left side shirt pocket of Kakki uniform and moved toward to the hall. On enquiring the witness Packiyaraj, he didn't say he gave money to Balasubramanian. In the witness statement of Tr.Narayanan he reiterated that he asked the monthly subscription from the accused Balasubramanian and he gave two 50 rupee notes and he also told that under Tamil Nadu G.O.269, dated 04.06.96 the Inspector of V & AC empower to conduct investigation."

This shows that the contradictions are not minor and they go to the root of the charges.

7. The reasons given in the impugned order seems to be completely perfunctory. The Enquiry Officer has seen the conduct of the witnesses and has examined the depositions along with the other evidences. The finding of innocence of the Enquiry Officer

cannot be deviated by the Appellate Authority just because a different conclusion is possible. While deviating from the enquiry report it is expected from the Authority to go into details of the case and give very strong reasons as to why it is deviating from the enquiry report.

8. The order dated 12.06.2008 is therefore set aside and the matter is remanded back to the first respondent to once again consider the matter. Since the charge memo was passed as early in the year 2002 and 16 years have been passed, the first respondent is directed to consider the appeal within a period of 8 weeks from the date of receipt of a copy of this order. The writ petition is allowed in the above mentioned terms. No Costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

gsp/Pkn

To

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Home (Pol.IV) Department.
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+1 CC to Mr.L. Chandrakumar, Advocate sr 6185.

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PA (CO)

SP(14/02/2019)