

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on:</i> <i>22.08.2019</i>	<i>Delivered on:</i> <i>28.08.2019</i>
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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No. 23644 of 2018

K.Kannan

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Petitioner

versus

The Additional Chief Secretary to
Government of Tamil Nadu,
Home (Police-2) Department,
Secretariat, Chennai-09.

..

Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the respondent in its G.O.(2D) No.133 Home (Police-2) Department dated 26.4.2019 and quash the same.

For Petitioner : Mr.V.Vijay Shankar

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

ORDER

This Writ Petition has been filed by the petitioner, praying for issuance of Writ of Certiorari, to call for the records of the respondent pertaining to G.O.(2D) No.133 Home (Police-2) Department dated 26.4.2019 and quash the same.

2. The petitioner was appointed as Sub Inspector of Police by way of Direct Recruitment in the year 1987. He was promoted as Inspector of Police in the year 1998 and thereafter as Deputy Superintendent of Police in the year 2010. On 16.08.2012, he was issued with a charge memorandum under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 (in short, 'the Rules') in relation to the incident which had taken place in 2009. According to the charge framed against the petitioner, that on 23.5.2009, while he was working as Inspector of Police, Fort Police Station, Tiruchirapalli City, he along with

the then Sub Inspector of police, abused one Ponnammal when she was brought to the police for investigation in respect of arrest of her brother and due to abusive language used by the petitioner and the Sub Inspector of Police, the said Ponnammal appeared to have committed suicide on 30.05.2009 and the petitioner was indirectly responsible for her death. In response to the charge memorandum, a detailed explanation was submitted by the petitioner, stating that he was not present in the station at all on that day and therefore, the allegation was without any basis. However, an enquiry was conducted in 2013, wherein, as many as 21 prosecution witnesses were examined. Thereafter on conclusion of the enquiry, a report was submitted on 26.11.2013, holding that the charges were proved against the petitioner. A copy of the report was furnished to the petitioner on 12.09.2014, calling for his objection. The petitioner submitted a detailed explanation, objecting to the findings of the Enquiry Officer on 03.11.2014. Thereafter, nothing was

heard from the Disciplinary Authority for a considerable time. Finally, the Government issued G.O.(2D) No.133 Home (Police-2) Department dated 26.4.2018 imposing punishment of stoppage of increment for two years with cumulative effect on the petitioner. The said order of punishment is put to challenge in the Writ Petition.

3. Shri V.Vijay Shankar, learned counsel appearing for the petitioner would submit that for the incident which was said to have taken place in the year 2009, the charge memorandum was issued after a lapse of three years, in 2012 and thereafter, an enquiry was conducted and enquiry report was submitted in 2013 and the explanation to the enquiry report was also submitted on 03.11.2014 itself. However, after a delay of four years, the punishment came to be imposed, for which, there was no explanation from the respondent. Therefore, the learned counsel, at the out set, would submit that the punishment imposed on the petitioner

is liable to be interfered with on the ground of delay in completion of the enquiry proceedings. According to him, such delay has caused irreparable prejudice to the interest of the petitioner for the reason that he was due for promotion as Additional Superintendent of Police for the panel year 2017-2018, but on account of pending departmental proceedings, he was overlooked. The learned counsel would submit that ever since his initial appointment as Sub Inspector of Police in 1987 and till the impugned disciplinary proceedings, the petitioner has enjoyed unblemished record of service. The learned counsel would submit that even on merits, the enquiry report which held the charges proved against the petitioner, was not supported by any evidence at all. According to the learned counsel, though as many as 21 prosecution witnesses were examined, but none of them, have deposed in the departmental proceedings about the presence of the petitioner in the police station on 23.05.2009. According to him, PWs.1 to 9 were the relatives of the deceased, while

PWs 10 to 21 were the officials in the rank of Constable, Head Constable, Inspector of Police, Station Writer, etc. All these witnesses have uniformly deposed that the petitioner was not present in the station on 23.5.2009. Therefore, the learned counsel would submit that it is a case of no evidence and hence the findings of the Enquiry Officer have to be set aside as the same were extremely flawed and unsupported by any evidence at all and consequently, the punishment imposed by the Government on the basis of such flawed findings, has to necessarily be set aside.

4. According to the learned counsel for the petitioner, the Enquiry Officer has solely relied on the statements given by the relatives of the deceased to the R.D.O., who conducted an enquiry in 2009 into the circumstances which led to the death of said Ponnammal and also relied on the second dying declaration of the deceased. In this regard, the learned counsel would submit that once the departmental action has

been initiated and a detailed enquiry has been conducted by examining as many as 21 prosecution witnesses, the Enquiry Officer has to act upon and guided by the evidence that was made available in the departmental enquiry and he cannot completely ignore the departmental evidence and rely on the statements given by the relatives of the said Ponnammal before the RDO. As regards the dying declaration is concerned, the learned counsel would submit that in the first dying declaration, there was no allegation against the petitioner, but in the second dying declaration, the deceased was compelled to declare the involvement of the petitioner as if he was indirectly responsible for her death. The learned counsel would submit that the brother of the deceased, namely, Sait was a History Sheeter and he was summoned to the police station for enquiry and the said Ponnammal appeared to have visited the police station on that day. In fact, the said Ponnammal had a motive against the petitioner for the reason that on earlier occasion, she had given a

complaint to the State Human Rights Commission, alleging that she was raped by the petitioner. The Commission, which went into the complaint, found that the allegation was completely baseless. Therefore, the so-called declaration by the deceased Ponnammal, cannot be given any credence to, as the deceased Ponnammal and her family members had nurtured a grudge against the petitioner. In any event, the role of the Enquiry Officer is limited, who has to give findings on the basis of the evidence let in before the enquiry and he cannot choose to ignore the evidence completely and rely upon the statements given to the RDO or dying declaration which became extraneous once the departmental action was conducted and concluded. Therefore, the learned counsel would submit that the entire disciplinary proceedings are liable to be quashed.

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5. Per contra, Shri J.Pothiraj, learned Special Government Pleader would stoutly oppose the contentions

raised on behalf of the petitioner. According to him, that because of the conduct of the petitioner along with other Sub Inspector of Police, in using abusive language against the deceased Ponnammal, she was forced to take extreme step by ending her life. He would submit that the evidence in the form of statements given to the RDO and the dying declaration, was very much relevant for the purpose of giving a finding in regard to the charges framed against the petitioner. Therefore, rightly the Enquiry Officer relied upon the statements and dying declaration and had come to a right conclusion towards the guilt of the petitioner in regard to the charges framed against him.

6. The learned Special Government Pleader would also submit that considering the extent of the petitioner's role in driving the said Ponnammal to take extreme action in ending her life, the Government thought it fit to impose penalty of stoppage of increment for two years with cumulative effect

which punishment is proportionate and cannot be faulted with. However, the learned Special Government Pleader would not dispute the contention raised on behalf of the petitioner about the deposition of the prosecution witnesses in the departmental enquiry to the effect that the petitioner was not present at the scene of occurrence, i.e. in the Police Station on 23.5.2009. The learned Special Government Pleader would also not dispute in regard to the earlier complaint filed by the said Ponnammal against the petitioner before the Human Rights Commission and the dismissal of the complaint as completely baseless. However, the learned Special Government Pleader would reiterate and emphasis that in order to hold the petitioner's guilty of the charges, the statements given by the relatives of the deceased to the RDO and the dying declaration of the deceased herself would be relevant and crucial which was rightly weighed with the Enquiry Officer for coming to the conclusion against the petitioner. Therefore, the punishment imposed on the

petitioner for the proved charges in the duly conducted departmental proceedings, does not call for any interference by this Court.

7. As regards the delay in concluding the disciplinary proceedings, the learned counsel for the petitioner would rely upon a decision rendered by a Division Bench of this Court reported in “(2009) 4 MLJ 884 (***Government of Tamil Nadu, rep.by the Secretary to Government, Environment and Forests Department, Chennai & others versus Ruchen S.Barua and others***)”, wherein, the learned counsel would draw the attention of this Court to paragraphs 35 and 37, which are extracted as under:

“35. The Disciplinary Authority issued an order dated 21.11.2006 to the first respondent holding that he was responsible for the loss to the tune of Rs.9,88,780/- and he was directed to furnish his further representation, if any, to

the Government within 15 days from the date of receipt of the said order. This was in substitution to its earlier letter dated 27.11.2000. In the said letter dated 21.11.2006, there was nothing mentioned about the report of the PCCF dated 22.06.2005 and 21.08.2006. However, it is very clear from the said order dated 21.11.2006 that the first petitioner came to the conclusion that the first respondent was solely responsible for the loss of Rs.9,88,780/- based on the reports of PCCF referred to above and the reports of the PCCF were not furnished to the first respondent. Further more, the exercise made by the PCCF behind the back of the first respondent revising the enquiry report is not permissible and is in flagrant violations of principle of natural justice.

36.

37. Further, the aforesaid deliberations within the Department for five years after the first respondent submitted his representation dated 14.03.2001 on the enquiry report is totally not justified and the Tribunal is correct

in quashing the charge sheet holding that the delay of five years was not explained convincingly by the Department and the first respondent was seriously prejudice due to the delay in non-conclusion of the disciplinary proceedings as held by the Tribunal.”

8. According to the learned counsel, the above ruling of the Division Bench can be squarely applied to the factual matrix of the present case since the incident which was said to have happened in 2009, ultimately the impugned action as culminated in imposition of penalty was only in 2018, i.e. after a period of 9 years. Therefore, on this ground alone, the disciplinary action stands vitiated.

9. Considered the submissions made by the learned counsel for the petitioner and the learned Special Government Pleader for the respondent. Perused the materials and pleadings placed on record.

10. As regards the first objection raised on behalf of the petitioner about undue delay in completion of the disciplinary action against the petitioner, the details as disclosed above, would categorically establish that there was delay in completion of disciplinary proceedings which stood unexplained by the respondent. When the incident said to have happened in 2009, a charge memorandum was issued after three years, i.e. on 16.08.2012 and the enquiry report was submitted though within reasonable time on 26.11.2013 but the report was furnished to the petitioner only on 12.09.2014 and when the petitioner gave his explanation on 3.11.2014, this Court is unable to understand as to why it had taken 4 ½ years for the Government to pass final orders in the matter. Ultimately, the order imposing the impugned penalty was passed on 26.04.2018. the delay is not explained either in the counter affidavit filed on behalf of the respondent nor in the oral submissions made by the learned Special

Government Pleader and hence the delay is crucial factor in this case which should be taken into consideration while deciding the Writ Petition.

11. From the charge memorandum, it appears that only for one incident which led to the unfortunate death of one Ponnammal on 30.05.2009 preceded by the incident on 23.5.2009 when the petitioner along with Sub Inspector of Police used abusive language against the deceased Ponnammal, the Disciplinary Authority issued a formal charge memorandum on 16.08.2012, i.e. after a period of three years. Thereafter, an enquiry was conducted and a report was also submitted on 26.11.2013. When the explanation to the enquiry report was submitted on 31.11.2014, the Government sat over the file for 4 ½ years and issued impugned G.O., ordering punishment on 26.4.2018 and in the meanwhile, the petitioner came within the zone of consideration for promotion to the post of Addl. Superintendent of Police for the panel year

2017-18. Therefore, the petitioner's right to be considered for promotion to the next higher post was lost and in that view of the matter, the delay on the part of the respondent assumes larger significance. In fact, the Courts have consistently held that inordinate and unexplained delay by itself would cause great prejudice to the rights of the employees and the delay can be the sole basis for interfering with the disciplinary action initiated against the government servants. In this case, it is demonstrated that the petitioner suffered grave prejudice for not being considered for next higher promotion to the post of Addl. Superintendent of Police for the panel year 2017-18, in view of the pendency of the disciplinary action against him. Therefore, the petitioner suffered double jeopardy being punished, namely, stoppage of increment for a period of two years with cumulative effect and also loss of promotion to the next higher cadre, to the post of Addl. Superintendent of Police. This Court is informed that the petitioner is due for retirement in 2020, in which case, non-consideration of his

promotion would have far reaching civil consequences throughout his life time. Therefore, looking at from this angle, the case law relied upon by the petitioner has to be squarely applied to the factual matrix of the present case and on this ground alone, this Court is of the view that the disciplinary action culminated in the order of the penalty, has to be interfered with.

12. Be that as it may, as regards the findings of the Enquiry Officer is concerned, the learned counsel for the petitioner is right in contending that it is a case of no evidence since 21 prosecution witnesses uniformly deposed that the petitioner was not present in the police station on 23.05.2009. Once the prosecution witnesses have given statements in the enquiry in regard to the absence of the petitioner on 23.05.2009, the finding given by the Enquiry Officer as if the petitioner was present in the police station and was indirectly responsible for the said Ponnammal's death due to the

incident took place on 23.5.2009 is nothing but perverse finding and not supported by an iota of evidence. The reliance placed by the Enquiry Officer on the statements given to the RDO and the second dying declaration of the deceased person herself, this Court is of the considered view that in the teeth of complete absence of evidence in the departmental enquiry, such evidence given to different authority, i.e. RDO, cannot form the basis of the finding of the Enquiry Officer. If the Enquiry Officer relies on some other extraneous material in order to come to a conclusion while ignoring the evidence let in the departmental enquiry, then there would no purpose of conducting enquiry at all in terms of the disciplinary rules and regulations. Once the Department has initiated its own enquiry proceedings, the finding has to be rendered on the basis of evidence let in in the enquiry and the finding cannot be on the basis of statements given to the RDO or the dying declaration of the deceased, which may at best, be used a corroborative material, but certainly cannot form basis for the

finding notwithstanding complete absence of evidence against the petitioner in the departmental proceedings.

13. Moreover, the deceased Ponnammal and her family members appeared to have had some axe to grind against the petitioner as earlier there was a complaint of committal of rape by the petitioner on her and the complaint was preferred before the Human Rights Commission and the Commission went into it and found that the complaint was baseless. Therefore, this Court has serious doubt about the credibility of statements given to the RDO by the relatives of the deceased Ponnammal and her own dying declaration. In the said circumstances, unfortunately, the Enquiry Officer has given undue credibility to those statements and held that the petitioner was guilty of the charges by overlooking the complete absence of the evidence to that effect in the enquiry proceedings. Such course adopted by the Enquiry Officer is outside the scope of the departmental enquiry in terms of the

disciplinary rules and hence the enquiry finding as it is, is to be concluded as illegal, unacceptable and perverse. On the basis of such flawed findings, the punishment imposed on the petitioner cannot stand the test of judicial scrutiny. Unfortunately, the Disciplinary Authority has not appreciated the complete absence of evidence in the departmental enquiry, but mechanically chosen to accept the same and imposed the punishment. Therefore, the Disciplinary Authority's action suffers from non-application of mind and hence the same has to be interfered with. Moreover, it is not in dispute that the petitioner has not come under cloud during his entire career spanning 32 years. Therefore, the present allegation against the petitioner which had adverse impact of being not considered for promotion to the next higher grade post of Addl. Superintendent of Police and also before his due retirement in 2020, has far reaching civil implication. Therefore, it is incumbent upon the authority to evaluate the allegation made at the instance of tainted persons before

initiating departmental action against Officials of the Department. Unfortunately, in this case, some old incident was revived belatedly after a period of three years and the disciplinary action was kept pending for about 9 years. In these circumstances, this Court is of the view that the impugned action against the petitioner is liable to be set aside both on the grounds of delay in completion of the enquiry proceedings and also on merits.

14. For the foregoing reasons, the Writ Petition is allowed and the impugned Government Order in G.O.(2D) No. 133 Home (Police-2) Department dated 26.04.2018 is hereby set aside. There shall be a consequential direction to the respondent to consider the claim of the petitioner for promotion to the post of Additional Superintendent of Police for the panel 2017-18 and grant promotion if he is otherwise fit for such promotion and grant all consequential attendant benefits. The respondent is directed to pass appropriate

orders in this regard within a period of four weeks from the date of receipt a copy of this order. No costs.

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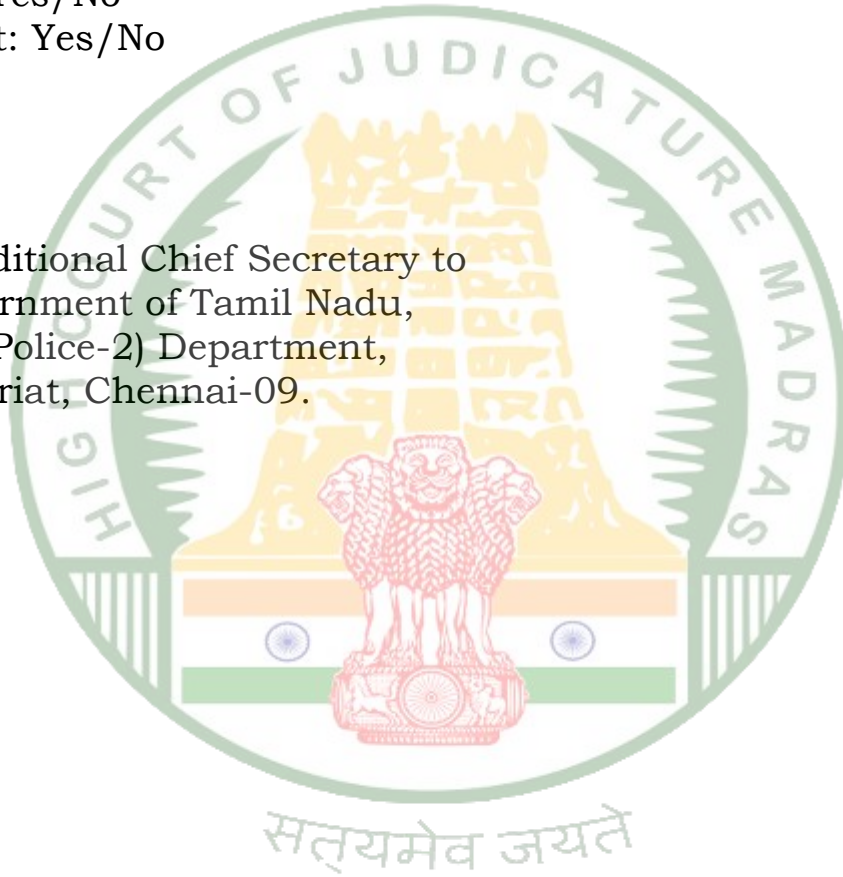
28.08.2019

Index: Yes/No

Internet: Yes/No

To

The Additional Chief Secretary to
Government of Tamil Nadu,
Home (Police-2) Department,
Secretariat, Chennai-09.

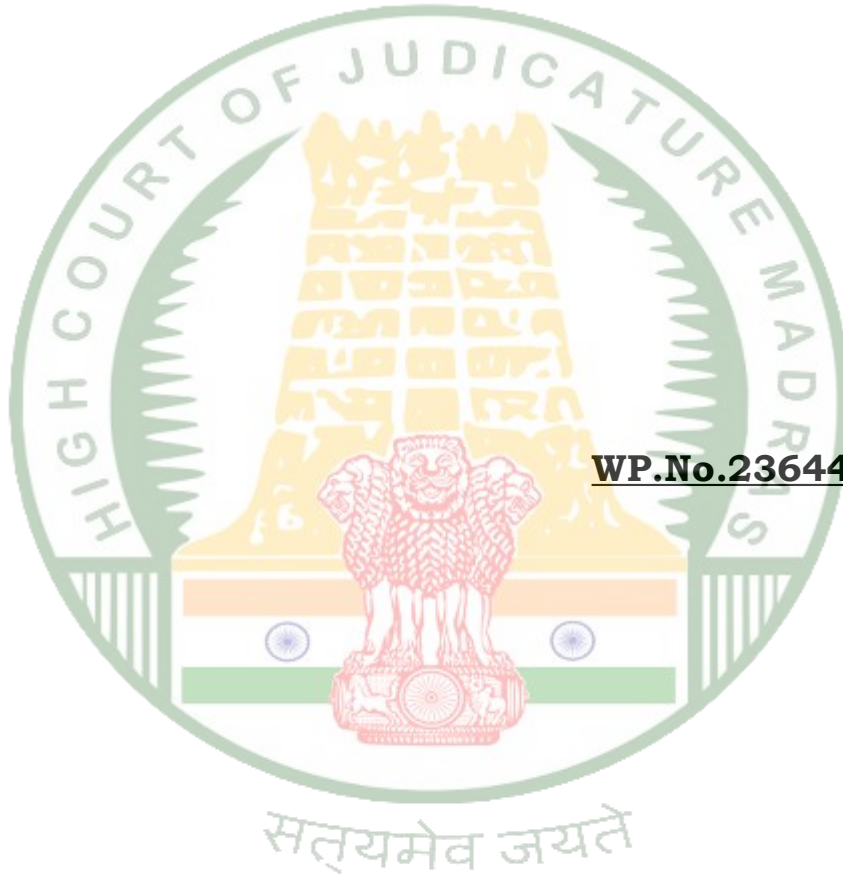


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