



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.11.2019**

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) No.14946 of 2010

WEB COPY

M.Mariappan

... Petitioner

Vs.

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

2.The Inspector General of Police,
Armed Police,
Chennai-10.

3.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the first respondent in the petitioner's proceedings in G.O.(2D).No.97, Home (Pol.IV) Department, dated 24.02.2010 and to quash the same.

For Petitioner : Mr.P.Senthur Pandian
For R1 to R3 : Mr.M.Jeyakumar
Additional Government Pleader

O R D E R

This Writ Petition is filed seeking for issuance of a Writ of Certiorarified Mandamus, to quash the proceedings of the first respondent vide G.O.(2D).No.97, Home (Pol.IV) Department, dated 24.02.2010.

2. The brief facts of the case that are necessary for the disposal of the Writ Petition are as follows:-

(2.1). While the petitioner was working as Head Constable in the Thermal Nagar Police Station, Thoothukudi, he was issued with a charge memo, for an incident, which took place, when he was working as Grade-I Police Constable in the Central Crime Police Station, Thoothukudi. The charge against the petitioner is as follows:-



"Highly reprehensible conduct in having detained one Muniammal, W/o. Yovan of Toovipuram, Thoothukudi, concerned in Thoothukudi Central Branch Crime No.514 /2000 and 31/2002 under Sections 454, 457, 380 of the Indian Penal Code at Thoothukudi Central Crime Branch and All Women Police Station, Thoothukudi on 29.05.2002 and 30.05.2002, without making necessary entries in the Station records by assisting Thiru.Ayyampillai, SSI of Central Crime Branch, Thoothukudi and later on 31.05.2002, she was handed over to All Women Police Station, Thoothukudi, where she committed suicide on the night of 31.05.2002. In this connection a case in All Women Police Station Crime No.18 of 2002, under Section 174 Cr.P.C. was registered."

(2.2). Therefore the illegal detention of a women prisoner in the Police Station without making necessary entries in the station records was the prime charge against the petitioner and the Special Sub-Inspector of Police, who was also charged as in-charge of Station. It is admitted that the Woman Prisoner was kept for two days in the Station, which was under the control of the Special Sub-Inspector of Police, without any records to show her confinement in the concerned Police Station. The Superintendent of Police, Tuticorin District, is appointed as Enquiry Officer and after conducting the oral enquiry, the third respondent drew a minute holding that the charge against the petitioner is proved as per the proceedings in P.R.No.120 of 2005, dated 08.09.2006.

(2.3). Thereafter, the Deputy Inspector General of Police, Chennai, issued a second show-cause notice. After receiving further representation from the petitioner, the Punishing Authority viz., the second respondent herein, exonerated the petitioner from all the charges deviating from the findings of the enquiry officer and held that the charge is 'not proved'. Thereafter, the first respondent initiated *suo-motu* review against the order of the second respondent and issued a show cause notice, calling upon the petitioner to respond as to why the findings of the Punishing Authority should not be deviated and the charges can be held as proved against the petitioner. The petitioner submitted his further explanation on 08.06.2009 to the show cause notice and the first respondent imposed a punishment of stoppage of increment for two years with cumulative effect. Aggrieved by the same, the present Writ Petition is filed.

3. Though the petitioner has raised several grounds challenging the order of the first respondent, the prime submission of the learned counsel appearing for the petitioner is that the first respondent has not followed the procedure contemplated under Rule 15 A of the Tamil Nadu Police Subordinate Services (Discipline and Appeal Rules), 1955. Rule 15 A of the said Act reads as follows:-



'No such penalty shall be imposed except after an enquiry in the manner laid down in Sub rule (b) of Rule (3) and after giving a reasonable opportunity to the Government servant concerned of showing cause against the penalty proposed on the evidence adduced during the inquiry and except after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary.'

4. Admittedly, in this case, there was no show-cause notice issued before imposing the punishment as to the impugned order. Hence, there is violation of specific rule namely, proviso to Section 15 (A) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955.

5. It is seen from the facts that the Punishing Authority has exonerated the petitioner from all the charges holding that the petitioner as Grade-I Police constable is not in-charge of maintenance of the records. Hence, the punishing Authority was of the view that the responsibility cannot be fixed on the petitioner for the failure to make necessary entries in the Registers for keeping the Women Prisoners in the Police Station. It is also a fact that the petitioner was not the Station in-charge. The Sub-Inspector of Police or the Special Sub-Inspector of Police, who was the Station Officer on the date of incident, is solely responsible for the illegal confinement of a Women Prisoner in the Police Station. The petitioner was charged for aiding the Special Sub-Inspector of Police, in the irregularity. Though the death of the woman prisoner committing suicide on the next day of her release from the Police Station makes the incident so grave, the involvement of the petitioner and the responsibility of the petitioner having regard to the delinquency alleged, has to be considered as a vital point. In this case, no dereliction of duty as against the petitioner can be inferred from the nature of charge. When the Station Officer in-charge of the Station is responsible for the illegal detention, it is not known as to how the Grade-I Police Constable can be punished, for aiding the Station as an Officer in the illegal confinement without specifying any specific act except making entries in the Register.

6. Be that as it may the punishment of stoppage of increment for a period of two years with cumulative effect appears to be dis-proportionate to the delinquency proved against the petitioner. Having regard to the procedures followed in this case as pointed above, this Court is of the view that the matter has to be remitted back to the file of the first respondent for taking appropriate decision, after issuing another show cause notice mentioning the proposed punishment under the proviso of Rule 15 (A) of the Tamil Nadu Subordinate Services (Discipline and Appeal) Rules, 1955.



7. It is seen that the charge-memo has issued in the year 2006, for the incident that had happened in the year 2002. The Writ Petition itself was filed in the year 2010 and already, nine years have gone. Considering the long delay, this Court instead by remitting the matter back to the first respondent, proposed to modify the punishment of stoppage of increment for a period of two years with cumulative effect into one of stoppage of increment for a period of two years without cumulative effect. Hence, the order impugned in the Writ Petition is set aside and the period of punishment is modified as indicated above.

8. The Writ Petition stands partly allowed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

tsg

To

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

2.The Inspector General of Police,
Armed Police,
Chennai-10.

3.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

+1 CC to Mr.P.SENTHUR PANDIAN, Advocate (SR-99090[F] dated
18/11/2019)

+1 CC to SPL GP (SR-99540[F] dated 19/11/2019)

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