



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

WEB COPY

W.P.(MD).No.3043 of 2010
and M.P.(MD).No.1 of 2010

Shenbagalingam

... Petitioner

Vs.

1.The Director General of Police,
Chennai - 4.

2.The Deputy Inspector General of Police,
Tirunelveli Range, Tirunelveli.

3.The Superintendent of Police,
Kanyakumari District,
At Nagercoil.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, calling for records relating to the proceedings of the first respondent vide Rc.No.019553/AP.2(1)/09, dated 31.03.2009 confirming the punishment imposed by the third respondent, dated 06.05.1999, quash the order, dated 31.03.2009 and consequently direct the respondents to pay all monetary benefits to the petitioner.

For Petitioner : Mr.B.Brijesh Kishore

For Respondents : Mr.D.Muruganantham

Additional Government Pleader

ORDER

This writ petition is filed for issuance of Writ of Certiorarified Mandamus, calling for records relating to the proceedings of the first respondent vide Rc.No.019553/AP.2(1)/09, dated 31.03.2009 confirming the punishment imposed by the third respondent, dated 06.05.1999, quash the order, dated 31.03.2009 and consequently direct the respondents to pay all monetary benefits to the petitioner.

2.The petitioner was working as a Head Constable in the Kottar Police Station. While he was on duty, the third respondent issued a charge memo to him in the year 1998 under rule 3(b) of Tamilnadu Police Subordinate Service Discipline and appeal Rules 1955 (two counts). The first charge is that the petitioner failed to hand over the Juvenile by name Premkumar S/o Chellappan, who

misappropriated
Gurusamy.

3. The petitioner submitted his explanation. The third respondent appointed an Enquiry Officer. The petitioner was given full opportunity to participate in the enquiry and the Enquiry Officer found the petitioner guilty of the first charge. As regards the second charge, the Enquiry Officer found that the charge is not proved. Based on the findings of Enquiry Officer, the third respondent imposed the punishment of reduction in time scale of pay in one stage for a period of one year with cumulative effect by order, dated 06.05.1999. Aggrieved by the order passed by the third respondent, the petitioner preferred an appeal before the second respondent, who rejected the same. As against the order passed by the second respondent, the petitioner filed a review petition before the first respondent seeking review of the punishment imposed by the third respondent. The first respondent treated the review petition as a mercy petition under Section 15(a) (1) (ii) of the Tamilnadu Police Subordinate Service Discipline and Appeal Rules 1958 and dismissed the same. Challenging the order of first respondent confirming the order of respondent 3 and 4 imposing the punishment, the above writ petition is filed.

4. The learned counsel appearing for the petitioner submitted that the punishment imposed by the third respondent is excessive and against the provisions of law. The learned counsel for the petitioner submitted that a major punishment has been imposed without considering the explanation offered by the petitioner. Even though another person was charged along with the petitioner, it is submitted that the respondents have not taken any action against the other constable who was also charged along with the petitioner in relation to the same incident. On the explanation offered by the petitioner, it appears that the petitioner has admitted the first charge that the juvenile who committed theft had escaped from the custody of the petitioner. It is also admitted that the petitioner had collected the amount from the juvenile who was handed over to him along with the money stolen by him. The fact that the petitioner had not handed over the money to the shop owners is also admitted. In, the explanation offered by the petitioner for the first charge that the minor offender escaped from his custody is not even disputed. The explanation offered by the petitioner was that the money which was taken by the juvenile offender was handed over to the President of Merchants Association, who approached and requested him not to precipitate the matter and to hand over the money to him. Stating that the money was handed over to the President of Merchants Association in the presence of other shop



owners, the learned counsel for the petitioner states that there was no misappropriation of any amount by the petitioner.

5.The learned counsel would further submit that the petitioner's conduct has been misinterpreted as if he has committed an irregularity while discharging his duties. The other explanation offered by the petitioner with regard to the first charge is that the juvenile offender who was handed over to him had escaped from the custody of petitioner taking advantage of the crowd, leaving the bag with the stolen money.

6.The third respondent considered the explanation offered by the petitioner and accepted the findings of the Enquiry Officer. The punishment of reduction of time scale by one stage for a period of one year with cumulative effect is only for the proved charge. The petitioner himself admits that he had allowed the juvenile offender to escape from his custody. As a matter of fact, this Court is able to see that the second charge is also proved as against the petitioner, having regard to the admitted facts. However, the Enquiry Officer himself has found that the second charge is not proved as the Disciplinary Authority did not prove the quantum of money that was stolen from the shops on the date of incident. The fact admitted in this case is that the petitioner did not hand over the money even though he had kept the bag that was taken from the juvenile offender at the time of incident. As a matter of fact, the petitioner himself would admit that he handed over the money to the President of Merchants Association. However, the petitioner has given a slightly different version before the Enquiry Officer. The fact that the petitioner handed over the money immediately to the President of the Association is not proved. It is admitted by the petitioner that he handed over the money to the Investigating Officer who was examined as PW7 only, after PW7 arrested the juvenile offender once again.

7.In these circumstances, the punishment imposed in this case is only for the proved misconduct and negligence as per charge No.1. The charge itself is admitted and the circumstances would indicate the petitioner's conduct was not well all along and only by showing some lenience, the authorities appear to have discharged the petitioner from the second charges which is more serious. The punishment of reduction of pay by one stage for a period of one year with cumulative effect cannot said to be excessive, especially when the petitioner is guilt of a charge which may result in major punishment. The scope of writ petition in these type of cases has to be considered and this Court normally will not interfere with the findings or punishment, unless there are vitiating circumstances or the respondents have passed orders without any supporting materials or ignoring the important facts and materials. Therefore, considering the whole circumstances, this Court find no merit in the writ petition.



8.This writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

WEB COPY

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Director General of Police,
Chennai - 4.
- 2.The Deputy Inspector General of Police,
Tirunelveli Range, Tirunelveli.
- 3.The Superintendent of Police,
Kanyakumari District,
At Nagercoil.

+1 CC to SPL GP (SR-90877[F] dated 01/10/2019)

W.P.(MD).No.3043 of 2010
30.09.2019

tm

MK (21.10.2019) 4P 5C