



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD) .No.14971 of 2013

and

M.P. (MD) No.2 of 2013

WEB COPY

T.Gajendran

.. Petitioner

Vs.

1.The Principal Secretary to the Government,
Home (Police.IVA) Department,
Chennai - 9.

2.The Director General of Police,
Chennai.

3.The Commissioner for Disciplinary Proceedings,
Madurai.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for records pursuant to order passed by the second respondent proceedings in R.C.No.49686/Con.V(1)/2004, dated 09.03.2007 and consequently final order passed by the first respondent proceedings in G.O.(2D) No.97, dated 25.03.2013 and quash the same.

For Petitioner

: Mr.M.Subash Babu

For Respondents

: Mr.R.Murugan,

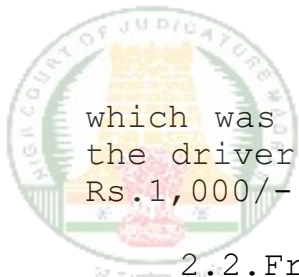
Additional Government Pleader

O R D E R

This Writ Petition is directed against the order passed by the first respondent vide G.O.(2D) No.97, Home (Police.IVA) Department, dated 25.03.2013 confirming the order of punishment passed by the second respondent by the impugned proceedings dated 09.03.2007.

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

2.1.The petitioner joined in service in the police department in the year 1996. While he was serving at Elumalai Police Station in Madurai District as Sub Inspector of Police, a charge memo was issued to the petitioner. It is stated that the charges were pursuant to the complaint by a driver of a vehicle carrying chickens

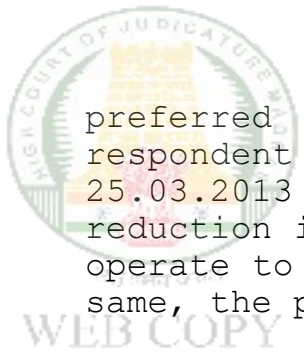


which was intercepted by the petitioner on duty. The complaint by the driver of the vehicle was that the petitioner demanded a sum of Rs.1,000/- for the release of vehicle and not to register any case.

2.2.From the reading of the charges, the case of the respondents is as follows:

On 14.12.2002, at about 24.00 hours, the petitioner who is the Sub Inspector of Police, Elumalai Police Station, intercepted the vehicle (Swaraj Mazda) bearing Registration No.TN-59-6951) loaded with chicks and ordered the van driver to park the vehicle at Elumalai Police Station and demanded a sum of Rs.1,000/- as bribe to release the van and not to register any case. On the next day, i.e., on 15.12.2002 at about 6.30 hours the petitioner instructed the Head Constable of Elumalai Police Station to receive the available amount with the driver and to hand over the key of the van and to instruct the van driver to send the owner of the vehicle to pay the balance amount demanded by the petitioner and to get back the xerox copy of the records seized from the driver of the vehicle on 14.12.2002. As instructed by petitioner, the Head Constable received Rs.300/- from the van driver and handed over the key. The balance amount was demanded for return of documents.

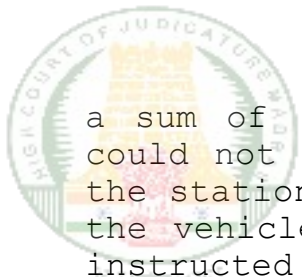
2.3.It is admitted that a case was registered in Crime No.16 of 2002 under Section 7 of Prevention of Corruption Act, 1988 by the Vigilance and Anti-corruption Unit, Madurai. The petitioner was placed under suspension on 02.01.2003 by the Superintendent of Police on the ground that a criminal case was registered against him. The charge memo dated 07.04.2004 was issued against the petitioner and the Head Constable by name Mr.P.Gurusamy. After getting explanation from the petitioner, an enquiry was conducted by the Tribunal for Disciplinary Proceedings. The prosecution examined witnesses and marked 13 exhibits apart from one material object. It is seen that no witness was examined on the petitioner side. The Tribunal held that the charge against the petitioner was proved. In the same report, it was also held by the Tribunal that the charge against the Head Constable by name P.Gurusamy was not proved. After serving the copy of the findings of the Tribunal for Disciplinary Proceedings on the petitioner on 19.10.2006, the second show cause notice was issued to the petitioner to submit his further explanation on the findings of the Tribunal. Thereafter, the second respondent passed a final order on 09.03.2007 by imposing the punishment of reduction in the time scale of pay by one stage for one year which shall operate to postpone his future increment. It was thereafter the petitioner filed an appeal before the first respondent. In the meanwhile, the petitioner also filed a Writ Petition in W.P.(MD) No.9764 of 2007 to quash the order passed by the second respondent dated 09.03.2007 imposing punishment. Though the appeal filed before the first respondent was withdrawn, the Writ Petition was disposed of with a direction to the petitioner to appear before the first respondent. Accordingly, the petitioner



preferred an appeal before the first respondent and the first respondent by G.O.(2D) No.97, Home (Police.IVA) Department, dated 25.03.2013 dismissed the appeal by confirming the punishment of reduction in time scale of pay by one stage for one year which shall operate to postpone petitioner's future increment. Aggrieved by the same, the petitioner has preferred the above Writ Petition.

3.The learned Counsel appearing for the petitioner submitted that the charge against the petitioner was not proved. When the Head Constable who was charged along with the petitioner was exonerated from the charges, the learned Counsel appearing for the petitioner submitted that the punishment imposed on the petitioner is illegal. The learned Counsel further submitted that the punishment imposed is disproportionate to the charges and that the order of the first respondent is liable to be quashed. The learned Counsel appearing for the petitioner further submitted that the Writ Petition earlier was disposed of with a direction to the first respondent to consider the evidence of P.W.1 and P.W.2. Since P.W.1 and P.W.2 turned hostile, their evidence have not been considered by the first respondent. Since the case revolves around the complaint of P.W.1, namely, the owner of vehicle and P.W.2 the driver of the vehicle, the first respondent ought to have considered the fact that P.W.1 and P.W.2 turned hostile as a relevant and material circumstance to disprove the charge against the petitioner. The learned Counsel further submitted that the findings of the Enquiry Officer is totally perverse and that the order passed by the second respondent imposing the major punishment is not warranted.

4.On behalf of the first respondent, a detailed counter is filed. Apart from denying the specific allegations made in the affidavit filed in support of the petition, in the counter affidavit, the first respondent narrated the whole background of the case leading to the charges and that the evidence considered by the Tribunal as well as the respondents 1 and 2. Four witnesses were examined. This is a case where the loaded vehicle (with live chicks) was detained by the petitioner in the police station for a day. It is the case of the petitioner that the vehicle was detained for violation of motor vehicles rules. But it is admitted that no case was registered and no fine was collected. The very fact that the petitioner has not explained the reason for detaining the vehicle in the police station for one full day, that too, when the vehicle was carrying livestock, gives an indication that for extraneous reasons, the petitioner has detained the vehicle. The fact that the criminal case could not result in conviction is not a ground to invalidate the disciplinary proceedings that was initiated through department against the petitioner. The enquiry report submitted by the Tribunal for Disciplinary Proceedings was elaborate and the petitioner was found guilty of the charges. The fact that the incident relating to the detention of vehicle and the fact that no case was registered when the vehicle was seized gives a clear indication that the petitioner is guilty of the charge of demanding



a sum of Rs.1,000/- for releasing the vehicle. The complainant could not get the vehicle released from others who were working in the station, particularly, the co-accused who prevented the owner of the vehicle from getting the vehicle without making any payment as instructed by the petitioner. The charge against the petitioner attract major punishment and the respondents 1 and 2 have imposed a punishment which is proper having regard to the nature of charge proved against the petitioner. The contention of the learned counsel for the petitioner that the findings of the Tribunal for Disciplinary Proceedings are perverse is not acceptable. This Court going by the elaborate report is convinced that the Tribunal has considered all the relevant materials and witnesses and that the findings are supported by reasons and materials. Though it is contended by the learned Counsel for the petitioner that the punishment is disproportionate to the charges proved, the charge against the petitioner in this case is about demanding bribe. This Court is unable to find any irregularity or illegality in the decision of the respondents 1 and 2 or the decision making process. Hence, this Writ Petition is dismissed as devoid of any merits. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Principal Secretary to the Government,
Home (Police.IVA) Department,
Chennai - 9.

2.The Director General of Police,
Chennai.

3.The Commissioner for Disciplinary Proceedings,
Madurai.

+1 CC to SPL.GP (SR-86575[F] dated 13/09/2019)

+1 CC to Mr.M.SUBASH BABU, Advocate (SR-86852[F] dated 16/09/2019)

ORDER MADE IN
W.P. (MD) .No.14971 of 2013
12.09.2019

SRM

VB(21.10.2019) 4P 6C

<https://hcservices.ecourts.gov.in/hcservices/>