



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD)No.4758 of 2017

and W.M.P(MD)Nos.3801 & 3802 of 2017

S.Pagamu

... Petitioner

Vs.

1.The Additional Director General of Police cum
Inspector General of Prison,
Chennai.

2.The Deputy Inspector General of Police (Prisons),
Madurai Division, Madurai.

3.The Superintendent of Prison,
The Central Prison,
Palayamkottai,
Tirunelveli District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records on the file of the third respondent pertaining to its order bearing No.10618/Pol/2010-4, dated 26.02.2013 and consequently, the order passed by the second respondent in appeal petition bearing No.1438/Muo/2013, dated 23.10.2013 and the consequential order passed by the first respondent in review petition bearing No.52394/EW.1/2013, dated 22.09.2016 and to quash the same.

For Petitioner : Mr.S.C.Herold Singh

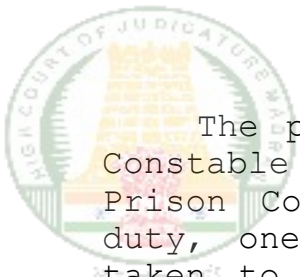
For Respondents : Mrs.J.Padmavathy Devi,
Special Government Pleader.

ORDER

This Writ Petition has been filed to quash the impugned orders, dated 26.02.2013, 23.10.2013 and 22.09.2016 passed by the respective respondents.

2.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

3.Factual background of the case, in a nutshell is as follows:-



The petitioner joined in the police force as Grade II Prison Constable on 24.03.1998 and subsequently, was promoted as Grade I Prison Constable on 23.01.2015. On 12.09.2010, while he was on duty, one Subramanian became unconscious and he was immediately taken to the hospital, which is situated inside the prison and thereafter, he was taken to Tirunelveli Government Medical College Hospital, where the Hospital authorities declared that he died. Pursuant to the same, the petitioner has been served with a charge memo, dated 13.11.2010 by the third respondent alleging that he failed to supervise and prevent the prisoners from quarrelling and he failed to supervise the unconscious of the said Subramanian, for which, enquiry was conducted. Based on the enquiry report submitted by the enquiry officer, the third respondent, vide impugned proceedings, dated 26.02.2013, imposed a punishment of reduction in Time scale of pay for one stage for one year without cumulative effect. Aggrieved over the same, the petitioner preferred an appeal before the second respondent, who in turn, rejected the appeal on 23.10.2013, against which, the petitioner preferred a review petition before the first respondent, who in turn, rejected the same on 22.09.2016. Challenging the said orders, the petitioner has preferred the present Writ Petition.

4.The learned counsel appearing for the petitioner submitted that no such incident took place as alleged in the charge-memo and the impugned order passed by the first respondent is a cryptic one. Further, since the impugned orders are passed without application of mind, the same are liable to be quashed.

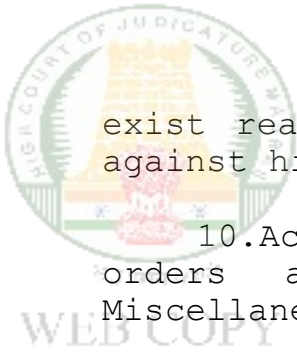
5.The first respondent filed a counter-affidavit, wherein it is stated that the petitioner was issued with a charge memo for his dereliction of duty in the occurrence of death of a prisoner.

6.I have considered the rival submissions and perused the materials available on record.

7.A perusal of the charge-memo and the consequential orders thereto would go to show that the petitioner was entrusted with the work of maintaining 131 inmates. As such, a charge of not rendering official service properly cannot be sustained in the eye of law in view of the work load entrusted with him. Further, the liability in the death of one of the inmates, who was permitted to play Kabadi, fixed on the petitioner is not based on any concrete material.

8.At this stage, it is fairly submitted by the learned Special Government Pleader appearing for the respondents that there is no straitjacket allegation levelled against the petitioner.

9.Considering the facts and circumstances of the case and having regard to the submissions made by the learned Special Government Pleader appearing for the respondents, this Court of the view that when the charge was not specific, no liability can be fixed on the petitioner, based on the said charge and there must



exist reasonable basis for the disciplinary authority to proceed against him. Hence, the impugned orders are liable to be set aside.

10. Accordingly, the Writ Petition is allowed and the impugned orders are set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P & A)

// True Copy //

Sub Assistant Registrar (CS)

Ps

To

1. The Additional Director General of Police cum
Inspector General of Prison,
Chennai.
2. The Deputy Inspector General of Police (Prisons),
Madurai Division, Madurai.
3. The Superintendent of Prison,
The Central Prison,
Palayamkottai,
Tirunelveli District.

+1CC TO MR.S.C.HEROLD SINGH, Advocate Sr. No. 54817

W.P(MD)No.4758 of 2017
18.03.2019

TR (23.04.2019) 3P 5C