



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2019

CORAM

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

W.P. (MD) .No.1248 of 2014

WEB COPY

N.Suresh Babu

.. Petitioner

Vs.

1.The Deputy Inspector General of Police,
Thanjavur Range,
Thanjavur.

2.The Additional Director General of Police,
(Law and Order),
Chennai.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the first respondent in C.No.B1/RO/PR/10/09, R.O./307/09, dated 28.10.2009 as confirmed by the second respondent in his proceedings in R.C.No.80233/AP.2(3)/2010, dated 24.12.2012 and quash both the orders and further directing the respondents to give all service benefits including the monetary benefits.

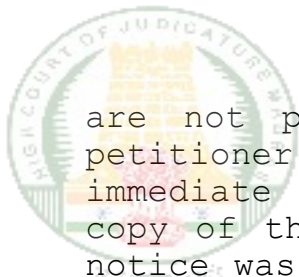
For Petitioner : Mr.R.V.Rajkumar

For Respondents : Mr.D.Muruganandam
Additional Government Pleader

O R D E R

This Writ Petition is filed for issuing a Writ of Certiorarified Mandamus to quash the impugned order passed by the first respondent dated 28.10.2009 which was confirmed by the second respondent in his proceedings dated 24.12.2012 and to direct the respondents to give all service and monetary benefits.

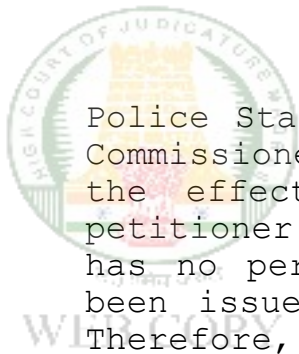
2.The petitioner while working as Inspector of Police in K.Pudur Police Station, Madurai, was issued with a charge memo on 21.09.2004 mainly for his involvement in a criminal case wherein he was arrayed as an accused. One of the charges in the charge memo is that the petitioner did not write and submit his daily diaries to his immediate superior from 21.04.2004. Since the petitioner denied all the charges, an Enquiry Officer was appointed. The Enquiry Officer though held that out of four charges, charge Nos.1, 2 and 4



are not proved, found that the third charge alleging that the petitioner failed to write and submit his daily diaries to his immediate superior from 21.04.2004 is proved. After furnishing a copy of the Enquiry Report to the petitioner, a second show cause notice was also issued. Thereafter, the petitioner sent a detailed explanation. After considering the enquiry report and the explanation offered by the petitioner, the disciplinary authority accepted the findings of the Enquiry Officer. For the third charge alleging that the petitioner had not written and submitted his daily diaries to his superior from 21.04.2004, the disciplinary authority, namely, the Deputy Inspector General of Police imposed a punishment withholding the petitioner's next increment for a period of one year with cumulative effect. It was, thereafter, the petitioner filed an appeal before the second respondent. The second respondent also dismissed the appeal confirming the order of punishment. Without considering the materials that were relied upon by the Enquiry Officer and the first respondent, the second respondent rejected the contentions of the petitioner on the ground that preponderance of probability is sufficient to hold the charges proved. Aggrieved by the same, the above Writ Petition is filed by the petitioner.

3.The learned Counsel appearing for the petitioner submitted that the Enquiry Officer relying upon the memo alleged to have been given by the Assistant Commissioner of Police by name Thiru.Manivannan, has rendered a finding that the petitioner is guilty of the third charge. The learned Counsel appearing for the petitioner submitted that the charge is that the petitioner failed to write his daily diaries and submit the same to his immediate superior. Ex.B5 relied upon by the Enquiry Officer would show that Thiru.Manivannan, Assistant Commissioner of Police in Tallakulam Crime Branch, Madurai City had issued a memo to the petitioner for not getting the daily diaries after 20.04.2004. From the information received from the Assistant Commissioner of Police under Right to Information Act, it is revealed that the officer who was working as Assistant Commissioner of Police in the station concerned from 04.03.2004 to 31.12.2004 was Thiru.A.Basheer Ahamed. The contention of the petitioner from this document is that the said Thiru.Basheer Ahamed, Assistant Commissioner of Police, who was supposed to be in the office during the relevant point of time though was cited as a witness, was not examined at the time of enquiry by the Enquiry Officer. From the sequence of events and the specific charge that was framed against the petitioner, the document Ex.B5 is not acceptable as it was not recorded by the Assistant Commissioner of Police who was there in office during the relevant point of time. Thiru.Manivannan, who is said to have given the memo to the petitioner was also not examined. One Mr.Ilangeswaran who was also holding the post of Assistant Commissioner of Police subsequently made a statement before the Enquiry Officer that the memo stated to have been given to the petitioner was not available in the file and that he has not given any memo to the petitioner.

<https://hcc.mys.gov.in/services/> Assistant Commissioner of Police in Tallakulam



Police Station. The person examined as P.W.4 is also an Assistant Commissioner of Police by name Shri.Kumaravel. His evidence was to the effect that the memo alleged to have been issued to the petitioner was not there. His evidence has no significance as he has no personal knowledge about the memo that was stated to have been issued to the petitioner during the relevant point of time. Therefore, the issuance of memo to the petitioner is not established. All the witnesses examined during the enquiry are not competent to speak about the charges alleged against the petitioner, as no one was in office during the relevant point of time.

4.The learned Counsel for the petitioner relied upon several precedents for the proposition that this Court is entitled to consider the question whether the evidence let in by the department was sufficient to arrive at a conclusion regarding proof of charge alleged against the delinquent. Though reappreciation of evidence is not in the domain of this Court in a proceedings challenging the disciplinary action, the legality of the proceedings can be tested if the finding of the Enquiry Officer is perverse. The learned Counsel appearing for the petitioner also relied upon the judgment of the Hon'ble Supreme Court in the case of ***M.Paul Anthony v. Bharat Gold Mines Ltd., and another*** reported in ***AIR 1999 SC 1416*** for the proposition that the power of judicial review could not be refused to be exercised by the High Court in appropriate cases following the earlier judgement of the Supreme Court reiterating the principle that in a case where the disciplinary authority failed to take into consideration the relevant factors that itself is a reason for judicial review. In the present case, the inference drawn by the Enquiry Officer is not supported by any evidence. The Enquiry Officer proceeded on the basis that a memo had already been issued to the petitioner for his failure to write and submit daily diaries to his immediate superior at the relevant point of time. However, the copy of memo was not produced before the Enquiry Officer. What was produced is an endorsement made by the Assistant Commissioner of Police who was not holding charge at the relevant point of time. Hence, it is established that the document relied upon by the Enquiry Officer is not proved to be a genuine document to prove the charge against the petitioner. As it was pointed out by the learned Counsel appearing for the petitioner, there are other defects. Though several witnesses have been examined by the Enquiry Officer to prove with regard to the other charges, two witnesses alone were examined to prove the third charge. The statement of witnesses are against the department in the sense that they have admitted that they have no material to show that the petitioner had failed to write daily diaries and submit the same to his immediate superior after 21.04.2004. The punishment against the petitioner was only for the charge regarding failure to write daily diaries and submit the same to his immediate superior from 21.04.2004. Since there is no material to prove the charge, this Court has no hesitation to hold that the findings of the Enquiry Officer and the disciplinary



authority are perverse as no material is produced to prove the charge. Hence, the petitioner is entitled to succeed in the Writ Petition.

5.As a result, this Writ Petition is allowed and the impugned orders of the first respondent dated 28.10.2009 as confirmed by the second respondent by order dated 24.12.2012 are set aside. The petitioner is entitled to consequential monetary benefits. Since the petitioner is now retired from service, the first respondent is directed to forward proposals so that the eligible monetary benefits can be disbursed to the petitioner within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

SRM

To

1.The Deputy Inspector General of Police,
Thanjavur Range,
Thanjavur.

2.The Additional Director General of Police,
(Law and Order),
Chennai.

+1 CC to SPL GP (SR-95471[F] dated 01/11/2019)

+1 CC to Mr.R.V.RAJKUMAR, Advocate (SR-95755[F] dated 04/11/2019)

ORDER MADE IN
W.P. (MD) .No.1248 of 2014
31.10.2019

VB(08.11.2019) 4P 5C