



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.12551 of 2018

and

W.M.P. (MD) No.11445 of 2018

WEB COPY

S.Sivaraman

... Petitioner

-Vs-

The Additional Chief Secretary to the
Government of Tamil Nadu,
Department of Home (Police-2),
Secretariat, Chennai.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the respondent in G.O.(2D)No.134, Home (Police-2) Department, dated 26.04.2018 and quash the same as illegal and in consequence thereof give promotion to the petitioner with retrospective effect from the date of issuing charge memo dated 16.03.2012 with attendant monitory benefits.

For Petitioner : Mr.P.Ganapathi Subramanian
For Respondent : Mr.V.R.Shanmuganathan,
Special Government Pleader.

ORDER

The Government Order in G.O.(2D)No.134, Home (Police-2) Department, dated 26.04.2018, is under challenge in the present Writ Petition. Further direction is sought for to direct the respondent to give promotion to the petitioner with retrospective effect from the date of issuing charge memo dated 16.03.2012, with attendant monitory benefits.

2.According to the petitioner, he is working as Sub-Inspector of Police, Special Branch CID, Trichy. While he was working as Sub-Inspector of Police, Fort Police Station, Trichy City, a charge memo dated 19.03.2012, under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, had been issued to the petitioner, alleging that on 23.05.2009, the petitioner and one Kannan Inspector of Police, have threatened and abused one Ponnammal, when she came to the Police Station for release of her brother, namely, Sait, who was brought to the Police Station, for interrogation. Due to the same, the said Ponnammal poured kerosene on her and set fire on her. She was admitted in the Government Hospital and she died on 30.05.2009. Based on the enquiry conducted under Police Standing Order (hereinafter referred to as 'PSO') 151, orders were issued to take departmental action against the



petitioner, alleging that the petitioner was indirectly responsible for the suicide of Ponnammal. The petitioner has submitted his explanation and participated in the enquiry. Based on the enquiry report, the respondent, by issuing impugned G.O.(2D)No.134, Home (Police-2) Department, dated 26.04.2018, has imposed punishment of stoppage of increment for a period of three years with cumulative effect. The petitioner has come out with the present Writ Petition, challenging the said order.

3.The learned counsel appearing for the petitioner contended that the enquiry conducted under PSO 151, is against the law and only in case of custodial death, proceedings under Section 176(1A) of Cr.P.C., can be initiated by jurisdictional Magistrate, who alone has jurisdiction to entertain the complaint against the custodial death. In the present case, no custodial death and cause of suicide was narrated by the deceased Ponnammal herself and the same was recorded by her sister's husband in the presence of medical practitioner. There are no materials to order for departmental enquiry. The enquiry officer did not record the evidence of witnesses, but marked statement of witnesses given before the Revenue Divisional Officer and marked the same as Exhibits without furnishing the copies of such statement. The Revenue Divisional Officer is not competent to record the statement of witnesses and statement given before the Revenue Divisional Officer ought not to have been marked. There are two dying declarations given by the deceased Ponnammal. There are material contradictions between the two dying declarations and material variation by the evidence adduced by other witnesses. The enquiry officer failed to examine Doctor Rajagopal and the Sub Inspectors of Police, namely, Vijayakumar and Vijayalakshmi, who were present when the Ponnammal has given first dying declaration. The domestic enquiry was initiated after three years of occurrence and there is every possibility of improved versions by the witnesses. The deceased Ponnammal gave a complaint before the State Human Rights Commission, Chennai, against the said Kannan, Inspector of Police, who is the co-delinquent of the petitioner, alleging that she was abused and raped by the said Kannan, Inspector of Police on 17.03.2009. The State Human Rights Commission, after contest, held that the said charges are not proved. The respondent has failed to see that the deceased is in the habit of making false complaint. None of the witness examined in the enquiry, deposed about any specific overtact against the petitioner. The respondent has failed to consider that the second dying declaration was recorded after 24 hours of occurrence and there is every possibility of the deceased being tutored by her relatives. In the second dying declaration, the deceased has mentioned the name of the Sub Inspector of Police, namely, Sivaraj and alleged that the said Sivaraj and the said Kannan, Inspector of Police have abused her and threatened to foist false complaint against her. The brother of the deceased Ponnammal is claiming to be District President of Devendrakula Velalar Sangam and he is the



history sheeted rowdy element and criminal cases are pending against him.

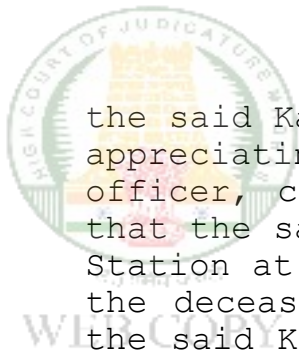
4.The learned counsel appearing for the petitioner further submitted that this Court in W.P.No.23644 of 2018 filed by the said Kannan, Inspector of Police, by its order dated 28.08.2019, has set aside the punishment imposed on him in the very same incident, in view of the delay in initiating disciplinary proceedings and concluding the disciplinary proceedings on merits, which was kept pending for about 9 years. The reason in the said order is squarely applicable to the facts of the present case and prayed for allowing the Writ Petition.

5.The respondent has filed counter affidavit and denied the averments made in the affidavit filed in support of the Writ Petition. The learned Special Government Pleader appearing for the respondent submitted that enquiry conducted by the Revenue Divisional Officer under PSO 151 is valid and the same is conducted based upon the complaint given by the mother of the deceased and the enquiry was not conducted under the provisions of Cr.P.C. In the enquiry, evidence was let in to prove the charges levelled against the petitioner. Based on the evidence on record, the enquiry officer held that the charges levelled against the petitioner are proved. The complaint given by the deceased against the said Kannan, Inspector of Police, before the State Human Rights Commission, is no relevance in respect of the charges levelled against the petitioner and the said Kannan, Inspector of Police.

6.The learned Special Government Pleader appearing for the respondent referred to the evidence on record in the enquiry and appreciation of said evidence by the respondent, while coming to the conclusion into the enquiry report as well as the punishment imposed by the respondent. The delay in conducting domestic enquiry is neither wilful nor wanton. The grounds raised by the petitioner did not support the case of the petitioner. The charges levelled against the petitioner and the said Kannan, Inspector of Police are that they abused the deceased Ponnammal in filthy language and threatened her to foist a false case against her. In view of the same, she has committed suicide. The order was passed based on the materials by following procedures known to law and as per the settled principles of law and prayed for dismissal of the Writ Petition.

7.Heard the learned counsel appearing for the petitioner, the learned Special Government Pleader appearing for the respondent and perused the materials available on record carefully.

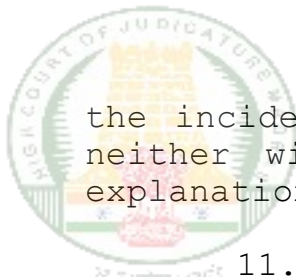
8.From the charge memo, it is seen that both Kannan, Inspector of Police and the petitioner abused the deceased Ponnammal and threatened her to foist false case against her. From the order



the said Kannan, Inspector of Police, it is seen that this Court, by appreciating the evidence of witnesses examined before the enquiry officer, came to the conclusion that none of the witnesses deposed that the said Kannan, Inspector of Police, was present in the Police Station at the time of alleged incident ie., abusing and threatening the deceased Ponnammal, and held that the charges levelled against the said Kannan, Inspector of Police, were not proved. The charges are that the petitioner and the said Kannan, Inspector of Police, abused and threatened the deceased Ponnammal in the Police Station, which led to her to commit suicide. When the respondent has failed to prove that the said Kannan, Inspector of Police was present in the Police Station and abused the deceased Ponnammal, the charge levelled against the petitioner that the petitioner along with the said Kannan, Inspector of Police abused and threatened the deceased Ponnammal to commit her suicide and the finding of enquiry officer, holding that the charge levelled against the petitioner is proved, is erroneous.

9.As rightly pointed out by the learned counsel appearing for the petitioner there are two dying declarations given by the deceased Ponnammal. The first dying declaration was given immediately after the incident, when she was admitted in hospital. The said dying declaration was given in the presence of medical practitioner attached to the said hospital. The dying declaration was written by the sister's husband of the deceased Ponnammal. The two Sub-Inspectors of Police namely, Vijayakumar and Vijayalakshmi, are present at the time of declaration. This statement of the petitioner was not denied by the respondent. The respondent has not given any reason for not examining the Doctor Rajagopal, and the said two Sub Inspectors of Police, namely, Vijayakumar and Vijayalakshmi, who were present at the time of first dying declaration. According to the petitioner, the deceased stated that she has taken the step to commit suicide as her relatives have tutored her. In the said dying declaration given before the concerned Judicial Magistrate, after 24 hours of the incident, the deceased changed her stand and stated that due to abuse and threaten given by the said Kannan, Inspector of Police and the petitioner, she has taken a step to commit suicide. In view of the same, the contention of the learned counsel appearing for the petitioner that the relatives of the deceased tutored the deceased to give second dying declaration, is acceptable. The enquiry officer has accepted the second dying declaration and failed to give any reason for not accepting the first dying declaration, which was given at the earliest point of time. However, the enquiry officer failed to see that the deceased's sister's husband is a practicing Advocate, who has admitted that he wrote the first dying declaration as per the dictation of the deceased and obtained her thumb impression and also signed as witness.

10.In the counter affidavit, the respondent has not given any reason for not taking disciplinary proceedings immediately, after



the incident. The respondent has simply stated that the delay is neither wilful nor wanton and such a statement is not a valid explanation for the delay.

11.The learned counsel appearing for the petitioner has produced a copy of the order of this Court dated 28.08.2019 made in W.P.No.23644 of 2008, wherein this Court has set aside the punishment imposed on the co-delinquent / Kannan, Inspector of Police and allowed the Writ Petition, directing the respondent to consider the claim of the said Kannan, Inspector of Police, for promotion to the post of Additional Superintendent of Police, for the year 2017-2018 and grant him promotion if he is otherwise eligible and grant all consequential attendant benefits. When the punishment imposed on the co-delinquent is set aside on the ground that the charges are not proved and on the ground of delay, the petitioner is entitled to the same relief.

12.For the above reason, the impugned order of the respondent in G.O.(2D)No.134, Home (Police-2) Department, dated 26.04.2018, is set aside. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

Myr

To
The Additional Chief Secretary to the
Government of Tamil Nadu,
Department of Home (Police-2),
Secretariat, Chennai.

+1 CC to M/s.P. GANAPATHI SUBRAMANIAN, Advocate (SR-100280[F] dated 21/11/2019)

+1 CC to M/s.GP (SR-100572[F] dated 22/11/2019)

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21.11.2019

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