



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2019

CORAM

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

W.P. (MD)No.8713 of 2014

and

M.P. (MD)No.1 of 2014 and W.M.P. (MD)No.17773 of 2017

R.Balaiah

... Petitioner

vs.

1.The Deputy Inspector General of Prison,
Trichy Range, Trichy.

2.The Superintendent of Prison,
Central Prison, Trichy.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the entire records in connection with the impugned order passed by the second respondent in No.1755/Po.2/2013, dated 27.11.2013 and the consequential impugned order passed by the first respondent in his proceedings No.5248/Mu.Vu/2013, dated 31.12.2013 and quash the same and to direct the second respondent to reinstate the petitioner into the service with all back wages and regularisation of service.

For Petitioner

:Mr.K.K.Kannan

For Respondents

: Mr.R.Murugan

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 second respondent, dated 27.11.2013, as confirmed by the order of first respondent, dated 31.12.2013 and to reinstate the petitioner into service with all back wages and regularisation of service.

2.The petitioner was working as Head Constable Grade-I. When the petitioner was working in Central Prison, Trichy, a charge memo was issued to him, alleging that he was found in possession of prohibited articles, like, Beedi, Cigarette and that he was shouting at his Superior, when he questioned and reminded the petitioner's duty and responsibilities. Since the charges were refuted, an Enquiry Officer was appointed. It is admitted that the department examined several witnesses, who were present at the time of incident, which resulted in the charge memo against the petitioner. After holding an enquiry, the Enquiry Officer found the petitioner guilty of all charges.



3.The second respondent, after considering the report of the Enquiry Officer, dismissed the petitioner from service. Aggrieved by the order of the second respondent, dated 27.11.2013, the petitioner preferred an appeal before the first respondent. The first respondent modified the punishment, as one of compulsory retirement by order, dated 31.12.2013. Aggrieved by the same, the above Writ Petition is filed.

4.In the affidavit filed in support of the petition, the petitioner made some allegations against the Superintendent of Prison. It is stated that due to jealous and enmity, he was tortured by the second respondent. According to the petitioner, the charges levelled against him are minor in nature and that the major punishment passed by the second respondent is illegal. It is also contended that the impugned orders passed by the respondents are without an application of mind and the order of first respondent is non-speaking. The learned Counsel for the petitioner submitted that the punishment is not proportionate to the charges proved and that the dismissal or compulsory retirement of petitioner is unwarranted. It is further stated that the allegations against the petitioner regarding insubordination is not proved before the domestic enquiry. It is contended by the learned Counsel for the petitioner that the respondents proceeded with the enquiry under a wrong notion and impression.

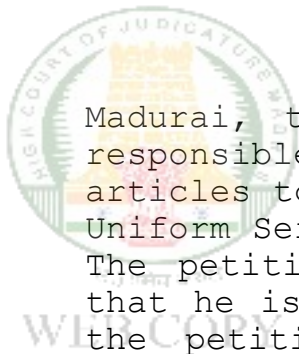
5.This Court considered the submissions of learned Counsel for the petitioner and the materials available on record carefully.

6.Though the allegations of *mala fide* are indirectly made by the petitioner, there is no factual basis for such allegations. The fact that the petitioner was found in possession of two cigarettes, 12 beedies and 1 match box is not disputed. The petitioner does not dispute the checking, by his superior. It is in those circumstances, the evidence given by other Police man and persons, who had heard the petitioner shouting at his superior, have been recorded by the Enquiry Officer.

7.Though the petitioner pleaded that by mistake, he had brought those prohibited articles, his reaction to his Superior upon finding such prohibited materials, was entirely different and the conduct of the petitioner is more than mere insubordination. It is in the said circumstances, the dismissal of petitioner from service is well justified. By showing lenience, the punishment has been reduced to one of compulsory retirement by the first respondent.

8.In a case of this nature, judicial review is limited. The findings of the Enquiry Officer are supported by reasons and materials. The petitioner has not produced any other independent witness to support his stand.

<https://hcservices.ecourt.gov.in/hcservices/> regard to the recent incident in Central Prison in



Madurai, this Court had an occasion to notice that some of the responsible Police personnels are involved in supplying prohibited articles to prisoners. The petitioner, who has committed himself to Uniform Service, is expected to behave well and respect regulations. The petitioner, by threatening his superior, has tried to convey that he is more powerful than his Superior and with this attitude, the petitioner cannot be permitted to serve in the department anywhere in any office. The order of second respondent dismissing the petitioner has now been modified by the first respondent, as one of compulsory retirement. The punishment of compulsory retirement is more appropriate. Having regard to the facts and attending circumstances, this Court has no reason to interfere with the order passed by the respondents. As a result, this Writ Petition is dismissed. The impugned orders passed by the second respondent dated 27.11.2013 and first respondent, dated 31.12.2013 are hereby confirmed. No costs.

10.The learned Counsel for the petitioner submitted that the petitioner has not been given his service benefits after the punishment of compulsory retirement. Hence, the petitioner shall make a representation to the respondents within a period of two weeks from the date of receipt of a copy of this order. The first respondent shall consider the representation of the petitioner and pass appropriate orders within a period of six weeks from the date of receipt of such representation from the petitioner. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Deputy Inspector General of Prison,
Trichy Range, Trichy.

2.The Superintendent of Prison,
Central Prison, Trichy.

+1 CC to M/s.K.K. KANNAN, Advocate (SR-90670[F] dated 01/10/2019)

+1 CC to M/s.GP (SR-91200[F] dated 03/10/2019)

W.P. (MD)No.8713 of 2014
01.10.2019

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