



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2019

CORAM:

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.22459 of 2018 and
WMP (MD)Nos.20320 and 20321 of 2018

K.Senthil Kumar

Petitioner

Vs.

1. The Principal Secretary to the Government
Home (Pol.IV) Department
Fort.St.George
Chennai - 600 009

2. The Director General of Police
Office of the Director General of Police
Mr.Radhakrishnan Salai
Mylapore
Chennai - 600 004

3. The Commissioner of Police
Tiruchirappalli City
Tiruchirappalli

4. The Deputy Commissioner of Police (Law and order)
Tiruchirappalli City
Tiruchirappalli

Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the 4th respondent made in PR 148/E1/2000 dated 20.11.2000, whereby the order of punishment of pay reduction by three stages for three years with cumulative effect was imposed which has been suo motu enhanced by the third respondent in his proceedings in CPO.423/2001 dated 24.04.2001 to that of compulsory retirement from service which was confirmed by the 2nd respondent in his proceedings in RC No.145135/AP.I(3)/2004 dated 05.03.2004 and also order of the first respondent in G.O.(2D) No.63, Home (Pol.VI) Department dated 23.02.2015 whereby the order passed by the 2nd respondent has been confirmed and to quash the same and consequently direct the respondents to reinstate the petitioner into service with



all attendant and monetary benefits.

For Petitioner : Mr.Kannan

For Respondents : Mr.S.Dayalan

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O R D E R

The present writ petition is filed challenging the order of punishment imposed by the fourth respondent dated 20.11.2000, made in PR No.148/E1/2000, which has been suo motu enhanced by the 3rd respondent in his proceedings in CPO/423/2001, dated 24.04.2001 to that of compulsory retirement from service, which was confirmed by the 2nd respondent in his proceedings in RC No.145135/A.I(3)/2004 dated 05.03.2004 and also order of the 1st respondent in G.O.(2D) No.63, Home (Pol.VI) Department dated 23.02.2015, whereby the order passed by the second respondent has been confirmed and consequently, direct the respondents to reinstate the petitioner into service with all attendant and monetary benefits.

2. While the petitioner was working as Grade II Police Constable with Armed Reserve Police, Trichy City, he was suspended from service with effect from 14.07.2000 and charge-memo dated 10.07.2000 was issued alleging that he along with one Rajkumar, who was also a Police Constable, in a drunken mood had picked up a quarrel with one Chandra, women police and used un-parliamentary words against her. The petitioner has submitted his explanation on 16.10.2000. Not being satisfied with the explanation given by the petitioner, enquiry was conducted and the Enquiry Officer has held that charges levelled against the petitioner are proved without there being any evidence. The petitioner has submitted his explanation to the second show cause notice issued by the fourth respondent. The fourth respondent erroneously imposed punishment of reduction of pay by three stages for three years with cumulative effect. Challenging the said order of punishment, the petitioner has filed an appeal to the second respondent. During the pendency of the appeal, the third respondent has suo motu reviewed the order of punishment imposed by the 4th respondent and enhanced the same to the compulsory retirement from service, vide his proceedings in CPO/423/2001 dated 24.04.2001. The petitioner has filed a mercy petition on 12.07.2004, before the 1st respondent. Both the appeal and the mercy petition filed by the petitioner were dismissed. Challenging the same, the petitioner has come out with the present Writ Petition.

3. The learned counsel appearing for the writ petitioner contended that the enquiry officer has given a report that charges levelled against the petitioner were proved, without there being any evidence. In the domestic enquiry, prosecution witnesses were not examined. The statement given by them in the preliminary enquiry was



recorded behind the back of the petitioner and the same was relied on by the enquiry officer, which is contrary to the rules and in violation of principles of natural justice. The learned counsel further submitted that the fourth respondent without appreciating the materials on record and explanation submitted by the petitioner, accepted the finding of the enquiry officer and imposed the punishment of reduction of pay by three stages for three years with cumulative effect. The petitioner has filed an appeal to the second respondent. Pending the appeal, the third respondent without properly considering the objections of the petitioner, erroneously reviewed the order of punishment into compulsory retirement. Moreover, the petitioner filed mercy petition in the year 2004 before the first respondent. The first respondent did not pass any orders for more than 10 years.

4. The learned counsel further submitted that the petitioner has filed Writ Petition in WP (MD)No.3567 of 2014, seeking the relief to direct the first respondent to consider his review petition dated 12.07.2004, made against the order of punishment of compulsory retirement and this Court by an order dated 19.08.2014, has disposed of the Writ petition with a direction to the 1st respondent to consider the review petition filed by the petitioner on merits and as per law. The first respondent, by letter dated 23.12.2014 stated that the petitioner filed OA No.2337 of 2014 and sought information about the status of the said Original Application. According to the petitioner, he has not filed any Original Application and no such Original Application is pending. The first respondent, by order dated 23.02.2015, after 10 years of filing of the appeal, rejected the mercy petition.

5. The Disciplinary proceedings was initiated against the co-delinquent, namely P.Rajkumar, and the fourth respondent imposed punishment of removal from service against the said Rajkumar and the same was confirmed by the 3rd respondent. The said Rajkumar challenged the said order of removal by filing OA No.5047 of 2002. The Tamil Nadu Administrative Tribunal, by an order dated 25.07.2003, has set aside the punishment of removal and further ordered that the respondent shall impose the punishment of stoppage of increment for three years with cumulative effect and also denial of back wages for the period of non-employment as punishment for the proved charge of misbehaviour. Further, in the said order, the respondents are directed to reinstate the applicant and the applicant will be entitled to continuity of service and he is also entitled for full wages from the date of the order. The said order was also implemented by the 3rd respondent in C.No.H1/14741/04 on 14.05.2004. Finally, the learned counsel prayed that the petitioner herein is also entitled for the same relief granted to the said Rajkumar. The enquiry officer failed to consider the evidence of witnesses PWs 1,3 and 5 and other evidence, supporting the evidence of PW 2. PW 2 did not give any complaint and the respondent has not

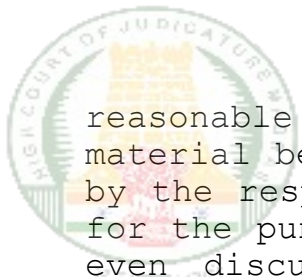


false complaint against the petitioner. The enquiry officer has not considered the same and also not considered the evidence in favour of the petitioner.

6. The learned Government Advocate submitted that the petitioner along with one Rajkumar in a drunken mood misbehaved with the women police and used un-parliamentary words. The said charge was proved in the domestic enquiry, by the evidence let in by the prosecution. The enquiry was conducted in a fair and proper manner and the petitioner was given ample opportunity to put forth his case. The report of the enquiry officer has supported by the evidence and there is no perversity in the finding of the enquiry officer. The findings given by the enquiry officer was not proportionate to the proven charges levelled against the petitioner and therefore, the third respondent exercising the suo motu power of review and enhanced the punishment of compulsory retirement considering the misbehaviour of the petitioner with the woman police constable. The said punishment is just and proper and proportionate to the gravity of the proven charges levelled against the petitioner. The respondents 2 & 3 are passed orders after considering the objections and materials on record. The orders of the respondents 2 & 3 are valid and legal. Hence, the learned Government Advocate prayed for dismissal of the writ petition.

7. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

8. From the materials available on record, it is seen that the the petitioner was in a drunken mood misbehaved with one Chandra, woman police constable, who was on escort duty and used un-parliamentary words, while the petitioner was not on duty. To substantiate the said charge, the prosecution produced the statement given by witnesses in the preliminary enquiry. The contention of the petitioner is that the evidence of witnesses were recorded in the domestic enquiry and the statement given by the witnesses in the preliminary enquiry, which were recorded behind the back of the petitioner and the same was also not denied by the respondents. The Defacto complainant was examined as PW 2. The other prosecution witnesses did not support the evidence of PW 2. It is pertinent to note that PW 2 did not give any complaint against the petitioner. The petitioner let in evidence to show that the said P.Chandra was a tenant under the petitioner and there was a dispute between them with regard to the payment of rent. One Britto was examined by the petitioner to substantiate his contention. Similarly, the enquiry officer did not consider the evidence of the said witness and also other witnesses examined by the petitioner. The enquiry officer without considering the evidence of prosecution witnesses 1,3,4 & 5 and also the defence witnesses, in a proper and perspective manner, has given a finding of guilt based on the un-corroborative evidence of PW 2. The findings of the enquiry officer is perverse as no



reasonable person would come to such conclusion based on the material before the enquiry officer. A reading of the orders passed by the respondents 3 & 4 shows that they were not given any reason for the punishment imposed on the petitioner by them. They have not even discussed the evidence let in before the enquiry officer, findings of the enquiry officer as well as the objection of the petitioner. The orders passed by them are non-speaking order. The 3rd respondent can suo motu review the order of punishment imposed by the original authority only when there is a reason for enhancing the punishment imposed by the Disciplinary Authority. The reason for suo motu review and enhancement of punishment ought to have been explained in detail by the Appellate Authority. The 3rd respondent has failed to follow the rule and procedure laid down for suo motu review for enhancing the punishment. The second respondent also has not given any reason for rejecting the appeal filed by the petitioner, review and the mercy petition.

9. As far as the order of the first respondent is concerned, the petitioner has filed a mercy petition on 12.07.2004 itself. Whereas, the 1st respondent has passed an order against the said mercy petition on 23.02.2015 only after order of this Court dated 19.08.2014 in W.P.(MD)No.3567 of 2014, directing the first respondent to consider the mercy petition filed by the petitioner. The first respondent has not given any reason for not passing orders for 11 years against the mercy petition from 12.07.2004 to till 23.02.2015 when the mercy petition was rejected.

10. The learned counsel for the petitioner contended that the punishment of removal imposed on the co-delinquent Rajkumar, by the 4th respondent was confirmed by the 3rd respondent was set aside by the Tamil Nadu Administrative Tribunal, Chennai in O.A.No.5047 of 2002, filed by the said Rajkumar and directed the respondent to reinstate the said Rajkumar with a lesser punishment. The respondents have not denied the said fact. On the other hand, they have reinstated the said Rajkumar into service. The petitioner herein is also entitled for the same relief granted to Rajkumar. The Tribunal passed an order on the same set of facts whereas the third respondent has imposed punishment of compulsory retirement, which is confirmed by the second and first respondents. Further, it is pertinent to note that the prosecution failed to prove the charges levelled against the petitioner by any acceptable evidence and the enquiry officer without considering the evidence let in by the petitioner, submitted the report holding that the petitioner is guilty of charges levelled against the petitioner. The said findings are perverse and the respondents 3 & 4 have imposed punishment without giving any reasons, by non-speaking orders.

11. Considering the above materials in entirety, the orders of the respondents are hereby set aside. The respondents are directed to re-instate the petitioner into service within four months from the date of receipt of copy of this Order.



12. With the above direction, the writ petition stands allowed as prayed for. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

vrn/am

To

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Fort.St.George, Chennai - 600 009

2. The Director General of Police
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4. The Deputy Commissioner of Police (Law and order)
Tiruchirappalli City
Tiruchirappalli

+1 CC to M/s.R. SHRIRAM, Advocate (SR-101856[F] dated 27/11/2019)

+1 CC to M/s.SPL GP (SR-101984[F] dated 27/11/2019)

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