



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on  
22.10.2019

Delivered on  
05.11.2019

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CORAM :

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

W.P.(MD)Nos.21111 and 20750 of 2018  
and  
W.M.P.(MD)Nos.18906 and 18505 of 2018

W.P.(MD)No.21111 of 2018:-

I.Jamal

... Petitioner

vs.

1.The Additional Chief Secretary to Government,  
Home Department of Tamil Nadu,  
Secretariat,  
Chennai.

2.The Director General of Police,  
Tamil Nadu,  
Chennai.

3.The Deputy Inspector General of Police,  
Tirunelveli Range,  
Tirunelveli,  
Tirunelveli District.

4.The Superintendent of Police,  
Tirunelveli District at Tirunelveli. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent pertaining to the order bearing G.O.(2D)No.278, Home (Police -2) Department, dated 06.09.2017 and the subsequent order in G.O.(D) No.539, Home (POL-IV) Department, dated 21.05.2018, quash the same and consequently, direct the respondents to reinstate the petitioner with continuity of service with all attendant, service and monetary benefits, within a time frame that may be fixed by this Court.

For Petitioner

: Mr.S.C.Herold Singh

For Respondents

: Mr.VR.Shanmuganathan  
Special Government Pleader



W.P. (MD)No.20750 of 2018:-

V.Murugan

... Petitioner

vs.

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1.The Additional Chief Secretary to Government,  
Home Department of Tamil Nadu,  
Secretariat,  
Chennai.

2.The Director General of Police,  
Tamil Nadu,  
Chennai.

3.The Deputy Inspector General of Police,  
Tirunelveli Range,  
Tirunelveli,  
Tirunelveli District.

4.The Superintendent of Police,  
Tirunelveli District at Tirunelveli.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent pertaining to the orders bearing G.O.(2D)No.279, Home (Police -2) Department, dated 06.09.2017, quash the same and consequently, direct the respondents to reinstate the petitioner with continuity of service with all attendant, service and monetary benefits, within a time frame that may be fixed by this Court.

For Petitioner : Mr.H.Velavadhas

For Respondents : Mr.VR.Shanmuganathan  
Special Government Pleader

COMMON ORDER

W.P.(MD)No.21111 of 2018 has been filed seeking to quash G.O. (2D)No.278, Home (Police - 2) Department, dated 06.09.2017 and the subsequent G.O.(D)No.539, Home (POL-IV) Department, dated 21.05.2018, and a consequential direction to the respondents to reinstate the petitioner with continuity of service with all attendant, service and monetary benefits.

2.W.P.(MD)No.20750 of 2018 has been filed seeking to quash G.O. (2D)No.279, Home (Police -2) Department, dated 06.09.2017, and a consequential direction to the respondents to reinstate the petitioner with continuity of service with all attendant, service and monetary benefits.



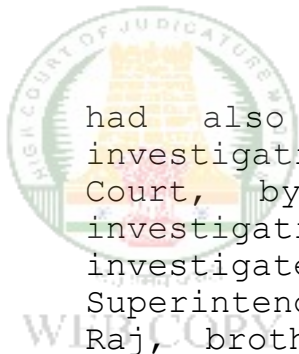
3.The issues involved in both the Writ Petitions are one and the same and therefore, the same are heard together and disposed of by way of this common order.

4.The relevant facts, which are necessary for disposal of the Writ Petitions, are as follows:-

On 26.08.2008, one Duraisingh, S/o.Lekshmana Perumal, was brought to Vadasery Police Station by Suresh Kumar, Special Branch Inspector and his team and he was interrogated therein. At the time of interrogation, one Chandrapaul, Deputy Superintendent of Police also came and participated in the interrogation. At that time, the said Durai Singh fainted. The said Suresh Kumar and his team left the Police Station. At the relevant point of time, the petitioner in W.P.(MD)No.21111 of 2018 was working as Inspector of Police, Vadasery Police Station and the petitioner in W.P.(MD)No.20750 of 2018 was working as Head Constable in Special Branch, Nagercoil.

4(i).According to the petitioner in W.P.(MD)No.21111 of 2018, while he was working as Inspector of Police in Vadasery Police Station, S.Subramanian, Head Constable attached to Vadasery Police Station, Kanyakumari District, who was on beat duty, found a man, by name, Duraisingh, S/o.Lekshmana Perumal, Nariparai Colony, Levegipuram, Radhapuram Taluk, Tirunelveli District, lying unconscious stage near Thangam Theatre at Nagercoil. He took him to the Government Hospital, Asaripallam and got him admitted for medical treatment. The said Duraisingh died in the Hospital at 07.30 hours on 27.08.2018, due to Intra Cerebral Hemorrhage. He died due to natural cause and no external force had caused the death. The said Subramanian, Head Constable preferred a written complaint and based on the said complaint, S.A.J.Sahayasanthi, Woman Sub-Inspector of Police registered a case in Crime No.763 of 2008 on the file of Vadasery Police Station under Section 174 Cr.P.C. at 09.30 hours on 27.08.2008. The petitioner took up investigation of the case and held inquest over the dead body in the presence of Panchayatars and witnesses and sent the body to the Government Hospital, Asaripallam, for post-mortem examination.

4(ii).After conducting post-mortem, when the body was handed over to the relatives of the deceased, they refused to receive the body of the said Duraisingh and staged a protest and demanded an enquiry alleging that the said Duraisingh was tortured to death by the Police. In response to their demand, the District Collector, Kanniyakumari District, ordered for enquiry under the Police Standing Order 151 of Volume - I by the Revenue Divisional Officer, Nagercoil. The Revenue Divisional Officer conducted enquiry and forwarded a report recommending for transfer of the investigation to the CBCID without arriving any definite conclusion. In the meantime, one Raj, brother of the deceased Duraisingh, filed W.P.No.7992 of 2008, for re-post-mortem examination over the dead body of the deceased Duraisingh. Based on the order passed by this Court, a post-mortem was conducted on 04.09.2008. The said Raj



had also filed W.P.(MD)No.10003 of 2008 for transfer of investigation to the Central Bureau of Investigation [CBI]. This Court, by order dated 22.10.2009, ordered to transfer the investigation to the CBCID with a direction that the case be investigated by an Officer not below the rank of Additional Superintendent of Police. Not satisfied with the order, the said Raj, brother of the deceased filed W.A.(MD)No.687 of 2009 for transfer of investigation to the CBI. The Division Bench of this Court ordered for transfer of investigation to CBI on 30.10.2010. On transfer, the CBI re-registered the case and after investigation, submitted final report with a request to close the FIR stating among other things that there was no criminal act on the part of the Police Officials in the death of Duraisingh. According to CBI's investigation, the police did not commit any criminal act, but recommended departmental action against five Police Officers, including the petitioners.

4(iii).Based on the said report dated 29.11.2011, the third respondent issued separate Charge Memos, dated 07.04.2013, containing the following charges:-

'Charge Memo in P.R.No.53 of 2013, issued to the petitioner in W.P.(MD)No.21111 of 2018:-

Charge 1:-

Highly reprehensible conduct in having given false statement wantonly before the RDO Nagercoil during enquiry under PSO.151 held on 17.09.2008 in connection with the death of one Durai Singh on 27.08.2008 and deliberately recorded statements from witnesses contradictory to the real occurrence to safeguard the wrongdoers.

Charge 2:-

Highly reprehensible conduct in having tampered the station records such as G.D. and Beat book of Vadasery P.S. relating to the case in Cr.No.763/2008 u/s. 174 Cr.P.C. registered on 27.08.2008 by the WSI Tmt.Sahaya Santhi to cheat the higher officers.

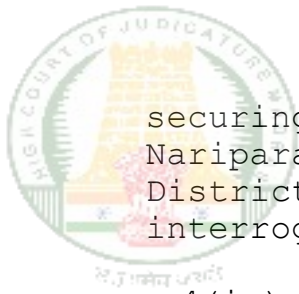
Charge Memo in P.R.No.55 of 2013, issued to the petitioner in W.P.(MD)No.20750 of 2018:-

Charge 1:-

Highly reprehensible conduct in having accompanied Tr.R.Suresh Kumar, Inspector of Police and Tr.C.Chandraseelan, SI of Police Special Branch, Nagercoil, on 26.08.2008 and brought one Duraisingh, S/o.Lekshmana Perumal, Nariparai Colony, Levengipuram, Radhapuram Taluk, Tirunelveli District to Vadasery P.S. under the guise of interrogation without any specific grounds and left the station when the secured person got fainted with intention to put the blame on others.

Charge 2:-

Gross neglect of duty in having failed to inform the G.D. In-charge officer to make necessary entries in the G.D. and other relevant records of Vadasery P.S. about the

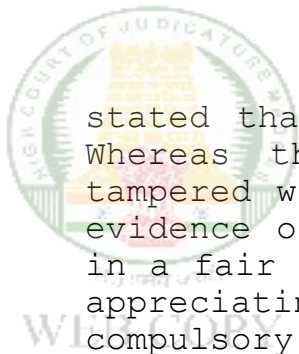


securing and bringing of Duraisingh, S/o.Lekshmana Perumal, Nariparai Colony, Levingipuram, Radhapuram Taluk, Tirunelveli District to Vadasery P.S. on 26.08.2008 for the purpose of interrogation.''

4(iv). The petitioners submitted their explanations to the charge memos. The Enquiry Officer submitted his report holding that the charges were proved. Based on the enquiry report, the third respondent imposed punishment of compulsory retirement on both the petitioners. The appeal and the review filed by the petitioners were rejected. Challenging the said orders, the present Writ Petitions are filed.

5.The learned counsel appearing for the petitioner in W.P.(MD) No.21111 of 2018 submitted that the respondents have not explained the delay in initiating and disposing the disciplinary proceedings. The alleged occurrence took place on 27.08.2008 and the charge memo was issued only on 07.04.2013 after five years of the alleged occurrence and the punishment was imposed on 06.09.2017 after nine years of the alleged occurrence. The same is against the guidelines issued by the Government in G.O.No.105, Home (Police) Department, dated 18.01.1989. The Enquiry Officer did not conduct enquiry as per the Police Standing Order 80(4)(b) of Volume - I. The Enquiry Officer did not record the evidence of witnesses in the presence of the petitioners, but re-typed the statement given by them before the CBI. In the cross-examination, the petitioners brought out points favourable to them, but the Enquiry Officer did not consider the same while submitting the report. The CBI in his report stated that there was no criminal act on the part of the Police Officials in the death of Duraisingh. The learned counsel appearing for the petitioner submitted that the charge that the petitioner gave a false statement before the Revenue Divisional Officer to safeguard the wrongdoer, is not correct. The petitioner gave statement before the Revenue Divisional Officer based on the statement given by the witnesses during the course of investigation by the petitioner in Crime No.763 of 2008, which was registered under Section 174 of Cr.P.C. None of the witnesses have stated that the petitioner has given false statement before the Revenue Divisional Officer. The Revenue Divisional Officer in his report also, did not state that the petitioner has given false statement. The respondents did not examine the Revenue Divisional Officer as well as Ravi, Inspector of Police, CBI and the petitioner is deprived of his opportunity to cross-examine to prove his innocence.

5(i).As far as the second charge is concerned, the witnesses Sahayasanthi as well as Sathishkumar P.Ws.12 and 13 did not state that the petitioner in W.P.(MD)No.21111 of 2018 tampered with station records, such as G.D. and Beat book. The alleged alteration in the said document is not in the handwriting of the petitioner in W.P.(MD)No.21111 of 2018. P.Ws.12 and 13 Sahayasanthi and Sathishkumar were examined before the CBI and Sathishkumar has



stated that he made alteration at the instance of the petitioner. Whereas the charge leveled against the petitioner is that he tampered with records, which is proved to be incorrect, in view of evidence of P.W.13 - Sathish Kumar. The enquiry was not conducted in a fair and proper manner. The third respondent without properly appreciating the materials on record, imposed punishment of compulsory retirement when the charges leveled the petitioner were not proved. Similarly, the appeal and the review petition filed by the petitioner were rejected without appreciating the grounds raised by the petitioner in proper perspective and prayed for allowing the Writ Petition.

6.The learned counsel appearing for the petitioner in W.P.(MD) No.20750 of 2018 adopted the arguments of the learned counsel appearing for the petitioner in W.P.(MD)No.21111 of 2018.

7.The respondents filed separate counter affidavits and denied all the averments made by the petitioners. The learned Special Government Pleader appearing for the respondents submitted that the petitioner in W.P.(MD)No.21111 of 2018 has registered a false FIR in Crime No.763 of 2008 stating that Duraisingh was found near Thangam Theatre, Nagercoil, and he was admitted in Government Hospital, Asaripallam. On the other hand, the said Duraisingh was brought to Vadasery Police Station by Sureshkumar, Inspector of Police and others and interrogated in the Police Station. When Duraisingh fainted during interrogation, the said Sureshkumar, Inspector of Police and his team left the Vadasery Police Station. This fact came to light during the investigation by the CBI. In the report, the CBI has stated that the Police Officials have admitted the lapses with regard to the said incident and stated that the departmental proceedings must be initiated against the Officers. As far as the first charge is concerned, the petitioner in the enquiry conducted by the Revenue Divisional Officer, did not depose with regard to the part played by Sureshkumar and others, but falsely deposed that the said Duraisingh was found unconscious near Thangam Theatre, Nagercoil, by Subramanian, Head Constable and was admitted in the Government Hospital. The petitioner in order to safeguard the erring officials, made Subramanian to give false complaint and subsequently, tampered with G.D. and Beat book. In the departmental enquiry, the witnesses were examined and the petitioner was given ample opportunity to cross-examine the witnesses. The enquiry was conducted in a fair and proper manner following the principles of natural justice. The enquiry was conducted as per the Rules provided in Police Standing Order No.80 of Volume - I, in the presence of delinquent. The delinquent cross-examined the prosecution witnesses and also produced one defence witness. During the time of oral enquiry, the statement of witnesses, which were already produced before the CBI, were produced before the Enquiry Officer.



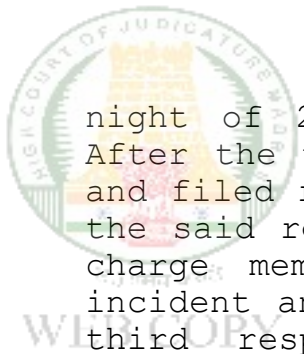
submitted a report by recommending CBCID enquiry to bring out the truth. Sathishkumar, Special Sub-Inspector of Police deposed that the corrections were made in the station records as per the direction of Chandrapaul, Deputy Superintendent of Police and the petitioner in W.P.(MD)No.21111 of 2018. Through the evidence of the said Sathishkumar [P.W.13], the respondents have proved the second charges against the petitioner in W.P.(MD)No.21111 of 2018. It is not correct to state that the punishments were not imposed against the other erring officials. For the said Sureshkumar, the then Special Branch Inspector, the petitioners herein and C.Chandraseelan, Inspector of Police, formerly Sub-Inspector of Police, Special Branch, Nagecoil, Kanniyakumari District, major punishment of compulsory retirement was imposed.

7(ii).As far as M.Chandrapaul is concerned, punishment to be imposed is under consideration and final order will be passed. The disciplinary proceeding against S.Subramanian, who was the then Head Constable attached to Vadasery Police Station, Kanyakumari District, is contemplated under Rule 3(b) instead of 3(a). On receipt of orders from the second respondent, the charge memo will be issued. All the erring officials were imposed with punishment. The respondents denied that the petitioners alone were singled out and imposed with major punishment, whereas all the erring officials were imposed with punishment by initiating departmental proceedings.

7(iii).As per the report of the CBI, the Police Officials have not enacted any criminal act and there are lapses on the part of the Police Officials and recommended departmental proceedings. The Enquiry Officer after considering entire materials held that the charges leveled against the petitioners are proved. The third respondent as a disciplinary authority considering the report of the Enquiry Officer, explanation of the petitioners and all the materials on record, imposed the punishment of compulsory retirement. The appeal and the Revision filed by the petitioners were considered and rejected by giving valid reasons. The punishment imposed is proportionate to the proven misconduct committed by the petitioners and prayed for dismissal of the Writ Petitions.

8.I have heard the learned counsel appearing for the petitioners and the learned Special Government Pleader appearing for the respondents and perused the materials on record.

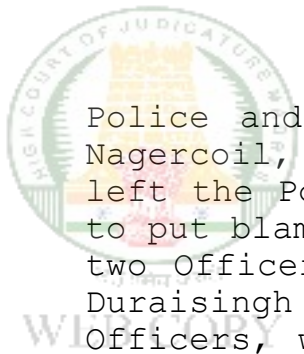
9.From the materials on record, it is seen that the charges leveled against the petitioners are that they have committed serious lapses with regard to the death of Duraisingh. The said charges were framed against the petitioners based on the report of the CBI, dated 29.11.2011. It is an admitted fact that in the report, the CBI has stated that the petitioners and others did not commit any criminal act, but there are certain lapses on the part of the petitioners and others. The alleged incident had occurred in the



night of 26.08.2008 and the said Duraisingh died on 27.08.2008. After the writ proceedings before this Court, the CBI investigated and filed report on 29.11.2011. The third respondent did not act on the said report immediately, which is of the year 2011, but issued charge memo only on 07.04.2013, five years after the alleged incident and 1 year four months after the report of the CBI. The third respondent concluded the domestic enquiry and imposed punishment on 06.09.2017, i.e., nine years after the alleged incident. The second charge against the petitioner in W.P.(MD) No.21111 of 2018 is that he tampered with the station records. The Witnesses, viz., P.Ws.12 and 13 examined to prove the said charges, did not depose that the petitioner tampered with the records. On the other hand, P.W.13 - Sathishkumar admitted that he made corrections in the records, but deposed that he has done so as per the instruction of Chandrapaul, Deputy Superintendent of Police and the petitioner. The second charge memo against the petitioner in W.P.(MD)No.21111 of 2018 is not that he instructed his subordinates to make the corrections in the record, but he himself tampered with the records.

10.Considering the above facts, I hold that the second charge against the petitioner in W.P.(MD)No.21111 of 2018 is not proved. As far as the first charge is concerned, the charge against the petitioner is that he gave false statement wantonly before the Revenue Divisional Officer. The CBI in their statement have stated that the Police Officials have not committed any criminal act and Duraisingh died due to Intra Cerebral Hemorrhage. Considering the report of the CBI and that the petitioner was not on the party of interrogation done by Sureshkumar, Inspector of Police and Chandrapaul, Deputy Superintendent of Police and his team and he has made entries only to safeguard the other Police Officials and considering the charges leveled against the petitioner is only with regard to the lapses committed by him and there is no earlier misconduct and punishment was imposed after nine years of the incident, punishment of compulsory retirement is disproportionate to the proven charges. Therefore, it will be just and equitable if punishment of compulsory retirement is set aside and punishment of stoppage of increment for two years without cumulative effect is ordered.

11.As far as the petitioner in W.P.(MD)No.20750 of 2018 is concerned, the charge is that he accompanied Sureshkumar, Inspector of Police and C.Chandraseelan, Sub-Inspector of Police, Special Branch, Nagercoil, Kanniyakumari District, and when Duraisingh, who was brought to Vadasery Police Station for interrogation, fainted and left the Station with an intention to put the blame on others and that he failed to inform the Officers In-charge of G.D. to make necessary entries in the G.D. or any other relevant records of Vadasery Police Station about bringing Duraisingh, for the purpose of interrogation. From the above two charges leveled against the



Police and Chandraseelan Sub-Inspector of Police, Special Branch, Nagercoil, to Vadachery Police Station on the date of incident and left the Police Station, when Duraisingh fainted, with an intention to put blame on others. The petitioner was subordinate to the above two Officers and when they have not taken any steps when the said Duraisingh fainted with during investigation and did not inform the Officers, who were In-charge of the G.D., the petitioner being the subordinate cannot be expected to act contrary to the action of the Superior Officers. In view of the same, the punishment of compulsory retirement of the petitioner is disproportionate to the charges leveled against him. At the same time, the petitioner is guilty of lapses, as he failed to record the incident in the G.D. In view of the charges leveled against the petitioner with regard to the lapses on his part while working under Sureshkumar, Inspector of Police and punishment imposed after nine years of the incident, it will be just and equitable if a lesser punishment is imposed rather than the punishment of compulsory retirement. Therefore, the punishment of compulsory retirement is set aside and punishment of stoppage of increment for two years without cumulative effect is ordered.

12.For the above reason, the respondents are directed to reinstate the petitioners within two weeks from the date of receipt of a copy of this order. The punishment of stoppage of increment shall be implemented from the date of original order of compulsory retirement. The petitioners are entitled to promotion when their immediate junior was promoted and the petitioners will be entitled to all monetary benefits after the expiry of punishment period.

13.With above modifications, these Writ Petitions are partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Additional Chief Secretary to Government,  
Home Department of Tamil Nadu,  
Secretariat,  
Chennai.



2.The Director General of Police,  
Tamil Nadu,  
Chennai.

3.The Deputy Inspector General of Police,  
Tirunelveli Range,  
Tirunelveli,  
Tirunelveli District.

4.The Superintendent of Police,  
Tirunelveli District at Tirunelveli.

+1 CC to M/s.S.C. HEROLD SINGH, Advocate ( SR-96016[F] dated  
05/11/2019 )

+ 1CC TO MR.H.VELAVADHAS, ADVOCATE, SR NO.96233

+1 CC to M/s.SPL GP ( SR-96327[F] dated 06/11/2019 )

W.P.(MD)Nos.21111 and 20750 of 2018  
05.11.2019

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