

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.P.No.19404 of 2007
and M.P.No.1 of 2015

N.Nityanandan

..Petitioner

Vs

1.The Superintendent of Police
Coimbatore District
Coimbatore-18

2.The Deputy Inspector General of Police
Coimbatore Range
Coimbatore-18

..Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondents in connection with the impugned orders passed by the respondents 1 and 2 in RC.No.J1/PR-101/2004 dated 08.03.2006 and C.No.D2/AP-25/26 dated 06.09.2006 respectively and quash the same and direct the respondents to reinstate the petitioner into service with all consequential benefits and monetary benefits.

For Petitioner : No appearance

For Respondents : Mr.K.Magesh, Spl.Govt.Pleader.

ORDER

This Writ Petition is filed challenging the order of the respondents 1 and 2 in RC.No.J1/PR-101/2004 dated 08.03.2006 and C.No.D2/AP-25/26 dated 06.09.2006 respectively and prays to quash the same and for a direction to the respondents to reinstate the petitioner into service with all consequential benefits and monetary benefits.

2. The brief facts of the case is that the petitioner was working as Grade II Police Constable in the Tamil Nadu Special Police VII Battalion, KovaiPudur from 01.03.1985. Subsequently, he was transferred to Coimbatore District Armed Service. While

serving in the District Armed Reserve, the petitioner opted to serve in the Motor Transport Wing and serving the said Wing from the year 1998 onwards. During the year 2004, while he was serving as a driver for the police vehicle attached to the Forensic Science Department of Coimbatore District, the petitioner was stated to be falsely implicated in a criminal case registered in Crime No.932 of 2004 of Race Course Police Station, Coimbatore City for the offence punishable under Sections 120B, 420 and 109 IPC. The said complaint was preferred by one Krishnan against one Anandan and four others stating that they have informed that they can give him gold biscuits for cheaper price and part with a sum of Rs.5.50 lakhs. The name of the petitioner does not find a place in the First Information Report but based on the confession given by the co accused, Duriraj @ Chelladurai, the petitioner was arrested by the Inspector of Police, Race Course Police Station on 24.06.2004 and remanded to judicial custody. No statement was obtained from the petitioner and the petitioner has not admitted the offence. Subsequently, the petitioner was suspended from service on 25.06.2004 on the ground that he was arrested and remanded to the judicial custody and the criminal case is under investigation. The petitioner was enlarged on bail.

3. Subsequently, the petitioner was served with a charge memo dated 21.10.2004 containing a charge under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules stating that the petitioner along with four other conspired together and cheated one Krishnan on the pretext to give him gold biscuits worth Rs.5,50 lakhs. After serving the charge memo, the petitioner submitted a statement denying the charges and requested to furnish copies of the documents mentioned in the charge memo, by letter dated 09.11.2004. The petitioner also submitted another representation to the 1st respondent on 06.12.2004 to keep the disciplinary proceedings in abeyance, pending disposal of the criminal case on the ground that on the same set of allegations, the said criminal case was registered and the same was under trial. In spite of the request of the petitioner, the 1st respondent appointed one Deputy Superintendent of Police, PEW, Coimbatore, as an enquiry officer to conduct the oral enquiry on 01.12.2004. The petitioner also made a representation by letter dated 16.12.2004 and requested to keep the disciplinary proceedings in abeyance till the disposal of the criminal case.

4. Since the documents sought for by the petitioner were not furnished to him, he approached this court by filing W.P.No.37979 of 2004 and he sought for a direction from this court to the respondent to furnish the documents mentioned in the charge memo. This court, by order dated 21.12.2004 issued a direction directing the respondents to furnish copies of the

documents required by the petitioner with one week from the date of receipt of copy of the order.

5. The 1st respondent also furnished the copies of the documents mentioned in the charge memo as directed by this court vide proceedings dated 31.12.2004. The petitioner also made another representation to the first respondent on 15.5.2005 to stay the disciplinary proceedings pending disposal of the criminal case based on the directions of this court.

6. The enquiry officer issued proceedings dated 03.03.2005 for conducting enquiry. In the mean while, the petitioner made representation stating that the enquiry officer conducted the enquiry in haste manner and tried to conclude the disciplinary proceedings without giving adequate opportunity. Since the 1st respondent did not consider the same, the petitioner again approached this court by filing W.P.No.12046 of 2005 and also gave a direction to the 1st respondent to change the enquiry officer and to take appropriate action against the enquiry officer for the non application of mind. Following the direction of this court, the Deputy Superintendent of Police Economic Offences Wing-II, Coimbatore, was appointed as the enquiry officer to conduct the enquiry.

7. Again the petitioner made another representation on 20.06.2005 to withhold the disciplinary proceedings. However, on the side of the department, 10 witnesses were examined and none of them were able to fix the petitioner with the alleged delinquency. None of them were able to find that the petitioner was a delinquent. Even P.W.1 has not stated that the petitioner is a party for cheating. There is no evidence to prove that the petitioner cheated the complainant Krishnan. The petitioner examined 3 defence witnesses to speak about the facts. The petitioner was able to demonstrate that he was not involved in the criminal case and he was picked up by the concerned police without any basic reason. The statement of defence made by the petitioner was ignored by the enquiry officer. The enquiry officer filed the report on 19.09.2005. The petitioner was furnished with a copy of the enquiry officer's report and was directed to file his representation. The petitioner also submitted his detailed representation. The 1st respondent as a disciplinary authority agreed with the findings of the enquiry officer of the proven charges agreed with the findings of the enquiry officer and for the proven charges, imposed a punishment of removal from service by an order dated 08.03.2006.

8. Against the said punishment, the petitioner preferred appeal before the 2nd respondent on 07.04.2006 before the appellate authority. Considering his case and points raised in the appeal, straight away, upheld the punishment imposed by the

1st respondent. There is no discussion with regard to proof of delinquency and also the adequacy of punishment. The order passed by the respondents are unjust, illegal, irregular and unsustainable. There was no evidence against the petitioner and the findings of the enquiry officer is perverse and no punishment can be imposed based on the perverse finding. The petitioner has taken the stand that on the same set of allegations, a criminal case was pending. The respondents ought to have kept the disciplinary proceedings in abeyance. In spite of the representation made by the petitioner, the respondents proceeded with the enquiry proceedings. The enquiry was not conducted in the manner known to law. The petitioner was able to prove that he was not in the company of the alleged accused who have been involved in the criminal case and the defence evidence has been ignored by the enquiry officer. The appellate authority has also similarly carried away the findings and held that the crime is alleged to have been committed by the petitioner and imposed a major punishment which warrants interference.

9. When the matter is called, there is no representation for the petitioner. The Writ Petition is pending from the year 2007. The case has been admitted by this court on 06.06.2007 and notice issued to the respondents. Thereafter, the matter was taken up on 16.10.2020 and on that day, there was no representation for the petitioner and hence, the matter was directed to be listed on 27.11.2020 and again there was no representation, hence, the matter is posted "for orders".

10. Heard the learned Special Government Pleader appearing for the respondents who supported the order passed by the respondents and submitted that the writ petition may be dismissed.

11. It is the case of the petitioner that while he was serving as a Driver of the Police Van in the Motor Transport Wing, Armed Reserve, Coimbatore District, he was implicated in the criminal case, arrested and subsequently suspended from service and was served with charge memo. Though he made several representations to keep the disciplinary proceedings in abeyance pending disposal of the criminal case on the ground that on the same set of allegations, criminal case was registered and the same was pending for trial, the enquiry officer was appointed who conducted the enquiry. No witnesses have spoken about the involvement of the petitioner in the criminal case. Though the criminal case was pending, the petitioner was able to demonstrate and prove his case and disprove the case of the prosecution. But, Charge memo was issued based on the criminal case registered against the petitioner. Therefore, for the same set of allegations, enquiry cannot be conducted and he cannot be punished twice.

12. The grounds raised by the petitioner is that even though the settled law is that disciplinary proceedings can be conducted even during the pendency of the criminal case, the department conducted enquiry only based on the criminal case registered against the petitioner and charge memo issued against the petitioner. Therefore, filing of the criminal case was the foundation for the departmental proceedings. Further the enquiry officer without looking into the statement of witnesses and defence witnesses simply cannot frame the charges and hold that allegations levelled against him were proved. The disciplinary authority miserably failed to appreciate the entire facts and based on the enquiry report, he imposed punishment of removal from service. Therefore, the petitioner preferred appeal before the 2nd respondent. The 2nd respondent also passed only non speaking order without application of mind and therefore this writ petition.

13. The learned Special Government Pleader would submit that it is not as if only the criminal case registered against the petitioner for IPC offences, but also in this case, the jeep was in the custody of the petitioner. The petitioner is stated to have taken the police jeep and accompanied 4 persons with him. P.W.1 Krishnan filed a complaint and he has clearly stated about the presence of the petitioner and he had reiterated the same statement which he previously stated before the Investigating Officer. During the investigation, P.W.1 stated about the presence of the petitioner along with other accused. The petitioner also admitted his guilt before the Investigating Officer in his confession statement on 24.06.2004 that he was driving the vehicle containing a label written in English as "POLICE" whereas according to P/W.1, the vehicle involved in the occurrence contained a label written in Tamil as "fht±" . This alleged variation cannot be taken as a valid and probable reason for construing that this vehicle was not the one which involved in the occurrence since the labels could have been changed at any time according to his will.

14. P.W.1's confession statement clearly proved that he drove the police van at the time of occurrence. Though P.W.1 did not mention the registration number of the vehicle involved in the occurrence and also not identified the delinquent as the driver of the vehicle involved in the occurrence, in the criminal case regarding cheating of a person, the petitioner admitted his guilt of receiving Rs.15,000/- as his share for arranging to cheat P.W.1 during the recording of his confession statement. The charge herein is that, the petitioner while he was in duty, taken away the police vehicle for some other purpose, which allegation is also grave in nature. Therefore,

pending criminal case has nothing to do with the departmental enquiry conducted by the disciplinary authority and it cannot be said the charges are not proved against the petitioner. Even though the criminal case ended in acquittal, it is always open to the respondents to conduct departmental enquiry against a Government Servant and in the departmental proceedings, the materials found in the records shows that the charges levelled against the petitioner are proved which absolutely needs to be imposed with a punishment.

15. In the criminal case, prosecution has to prove the case beyond reasonable doubt. But in the departmental proceedings, probability of preponderance is sufficient to arrive at a conclusion that the charges levelled against the delinquent are proved. In this case, admittedly, the criminal case was registered in Crime No.932/2004 under Sections 120(b), 430 and 109 IPC based on the complaint given by one Krishnan and immediately he was suspended and remanded to judicial custody and due to that, he was placed under suspension and subsequently, charge memo was issued and punishment was imposed by the Disciplinary Authority, which was confirmed by the appellate authority. Further, the confession statement given by the delinquent clearly proved that the charges framed against him are true and the petitioner was found guilty of the charges. The petitioner herein who is a Government Servant in Uniform service misused the department vehicle in his custody and committed misconduct and thereby involved in criminal offence.

16. A reading of the entire documents would transpire that the findings given by the Disciplinary Authority which has been confirmed by the Appellate Authority would clearly show that the charges levelled against the petitioner was proved and the Disciplinary Authority awarded suitable punishment.

17. In the case on hand, the petitioner working in the uniformed service involved in the grave misconduct and misused the official vehicle which was in his custody and therefore, he does not deserve to hold the post in Uniform Service and thereby the confidence of the department entrusting him the duty i.e., protection of law and order is lost and therefore, he has no reason to continue in the service.

18. In view of the serious nature of allegations and grave misconduct of cheating, the disciplinary authority awarded the punishment of removal from service against the petitioner and the appellate authority also confirmed the same, which in the

considered opinion of this court is not at all shockingly disproportionate especially when the charges are clearly proved. This court does not find any merit in the writ petition. Therefore, this writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

nvsri

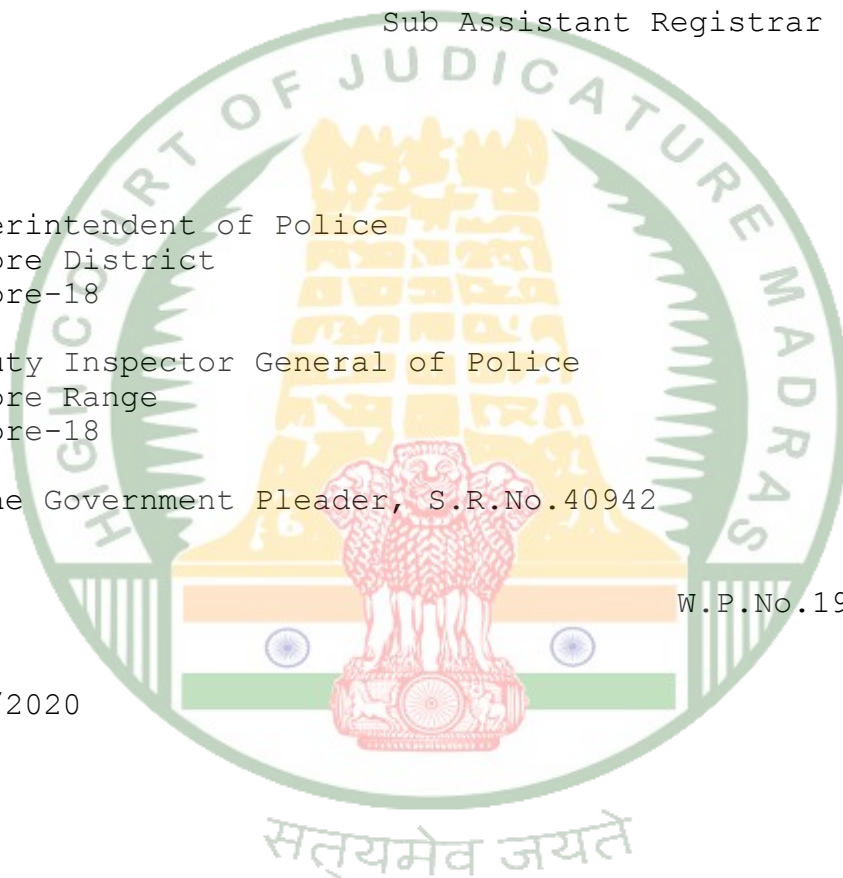
To

- 1.The Superintendent of Police
Coimbatore District
Coimbatore-18
- 2.The Deputy Inspector General of Police
Coimbatore Range
Coimbatore-18

+1cc to the Government Pleader, S.R.No.40942

W.P.No.19404 of 2007

AJS (CO)
KKV/31/12/2020



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