

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

C O R A M

THE HONOURABLE MR.JUSTICE P. VELMURUGAN

W.P.Nos.29743 of 2007

P.Mohanraj

S/o.Patti Gounder

... Petitioner

Vs.

1. The Director General of Police,
Dr.Radhakrishnan Salai,
Chennai - 4.

2. The Secretary to Government,
Home (Police IV) Department,
Fort St.George, Chennai - 9.

... Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, calling for the records of the respondents in connection with the impugned orders passed by them in R.C.No.19265/GBIV(2)/2005 dated 11.01.2006 and G.O.2D.No.289 Home Pol.IV Department dated 15.05.2007 respectively and quash the same.

For Petitioner : No Appearance

For Respondents: Mr.P.Chinnadurai

Additional Government Pleader

O R D E R

This matter is pending from the year 2007. Earlier the matter was taken up for hearing on 06.11.2020, there was no representation for the petitioner and the matter is directed to be listed on 04.12.2020. On 04.12.2020, there was no representation for the petitioner.

2. Today also, there is no representation for the petitioner. Mr.P.Chinnadurai, learned Additional Government Pleader appearing for the respondents is ready to argue the matter.

3. The facts of the case is that the petitioner was serving as Sub-Inspector of Police from 29.01.2003 to 30.01.2005 at Erode Police Station, Dindugal District. On 03.12.2004, one Kanagapandian, Kovilur Village, preferred a complaint against his mother Krishnammal and one Kannagi, alleging that they have kidnapped his wife Pushpavalli, a pregnant woman. A case was

registered under Section 365 IPC in Crime No.94 of 2004 in Erode Police Station. On 03.04.2004, the petitioner took up investigation and examined 17 witnesses from 03.04.2004 to 05.04.2004. The petitioner has gone to search the accused, who were absconding. One of the accused by name Kannagi moved anticipatory bail before the Session Court, Dindugal, and the same was dismissed in CrI.M.P.No.927 of 2004 dated 20.04.2004. The said accused Kannagi surrendered before the Judicial Magistrate, Vendasandur on 06.05.2004 and the intimation of surrender reached the police station on 11.05.2004. At that time, the lok sabha election was scheduled to be held on 10.05.2004. The petitioner was fully preoccupied with the election bandobust duty from 08.04.2002 to 11.05.2004. The petitioner was on special duty, Erode Police Station from 12.05.2004 to 16.05.2004 in connection with the absconding accused and also to locate the kidnapped woman. The petitioner after taking advise from the Assistant Public Prosecutor filed a petition seeking police custody of the accused Kannagi. On 17.05.2004, the petitioner submitted that the petition for police custody was filed before the Judicial Magistrate and after a hot argument, the Magistrate dismissed the same on the reasoning that charge sheet has already been filed and they also given charge memo. The enquiry officer filed the enquiry report, without affording any opportunity, stating that the charge leveled against the petitioner was proved. The Disciplinary Authority, viz., Director General of Police without serving the enquiry report had called for further explanation. Though the petitioner submitted his explanation, without considering the same, the enquiry Officer awarded the punishment of reduction in time scale of pay by three stages for a period of three years and stoppage of further increment. He also filed appeal before the Government and the same was dismissed by modifying the sentence from three stage reduction pay in time scale of pay to two stage without postponing his further increment. Therefore, challenging the same, he filed the present writ petition.

4. The matter is pending from the year 2007 and despite giving sufficient opportunity to the petitioner, there is no representation for the petitioner.

5. Learned Additional Government Pleader submits that though the petitioner registered the case, he has not investigated the case properly. Therefore, the petitioner moved before this Court and after giving direction, he had proceeded with the investigation. Therefore, based on the complaint and the preliminary enquiry, it was found that the petitioner has committed misconduct. Therefore, he was served with charge memo dated 30.01.2005 and called for explanation and since the department has not satisfied with the explanation submitted by the petitioner, enquiry officer was appointed. The Enquiry

Officer, without affording opportunity to the petitioner, conducted the enquiry and after conducting the enquiry, he submitted the enquiry report before the disciplinary authority. The disciplinary authority by giving opportunity to the petitioner and serving copy of the enquiry report, called for further explanation. Not satisfied with the explanation, the disciplinary authority awarded the punishment. Challenging the same, the petitioner preferred an appeal and the appellate authority dismissed the appeal by modifying the sentence.

6. Heard learned Additional Government Pleader and perused the records.

7. Admittedly, the petitioner was served as Sub-Inspector of Police, Erode police station and one Kanagapandian filed a complaint and the same was registered in Crime No.94 of 2004. Though the record shows that the petitioner has immediately acted and investigated the matter properly, which reflected in the HCP, he was served with charge memo with charges leveled against the petitioner and he was called to submit his explanation. The petitioner also submitted the explanation but the same was not to the satisfaction of the department. The Additional Superintendent of Police Crime Branch, Dindugal, was nominated as enquiry officer and he conducted the enquiry and filed a enquiry report and found that the charges leveled against the petitioner were proved and he has also stated that the petitioner has not conducted investigation soon after registration of the case, but he has done so after a direction of this Court. Therefore, the enquiry officer found that all the charges leveled against the petitioner were proved and submitted the enquiry report before the Director General of Police, Chennai, who awarded the punishment on 11.01.2006.

8. The Director General of Police, after receipt of the enquiry report, called for further representation from the petitioner, who also submitted the same. After considering the further explanation, the Director General of Police awarded punishment of pay reduction in time scale of pay for three stages for a period of three years and postponed the further increment, against which the petitioner filed an appeal before the Government, which was dismissed by modifying the sentence to one of time scale of pay by two stages for two years without postponement of further increment. Challenging the same, he filed the present writ petition.

9. The petitioner's main contention is that the disciplinary authority while passing the order has not taken into consideration that the enquiry officer has concluded the enquiry without affording sufficient opportunity to the petitioner and the further representation submitted by the

petitioner and hence, it is a non-speaking order. Hence, the impugned order is liable to be quashed. Further, all the three charges are vague.

10. The petitioner examined 9 witnesses on 03.04.2004 and 4 witnesses on 04.04.2004 and again 4 witnesses on 05.04.2004. The investigation conducted by the petitioner was reflected in CD. P.W.1 Krishnammal deposed that he has conducted preliminary enquiry and further investigation was also conducted. The petitioner, after registering the case in Crime No.92 of 2004, was making effort to investigate the case. He conducted the investigation fairly and also examined the witness and the enquiry officer failed to consider all these facts and found that the charges leveled against the petitioner were proved. There was no evidence against the petitioner and the finding of the enquiry officer is perverse and no punishment can be imposed based on the perverse finding. The disciplinary authority imposed the punishment by non application of mind. Challenging the order of the disciplinary authority, the petitioner had filed an appeal and the appellate authority, without applying its mind, had passed a non speaking order by modifying the sentence.

11. On a perusal of the entire records, it is clear that the petitioner registered a case in Crime No.92 of 2004, but all the records clearly shows that the petitioner has committed misconduct as alleged in the charge memo. The enquiry officer found that the charge leveled against the petitioner was proved. A reading of the enquiry officer's report revealed that the charge leveled against the petitioner were proved. Since the further representation submitted by the petitioner was not satisfied, the disciplinary authority has accepted finding of the enquiry officer's and awarded the punishment. The appellate authority after thorough verification of entire records, dismissed the appeal by modifying the sentence. There is no violation of principles of natural justice in conducting departmental proceedings. This Court does not find any infirmity in the enquiry report, the order of the disciplinary authority and the appellate authority.

12. Accordingly, this writ petition is dismissed as there is no merit in the case. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

bri

To

1. The Director General of Police,
Dr.Radhakrishnan Salai,
Chennai - 4.

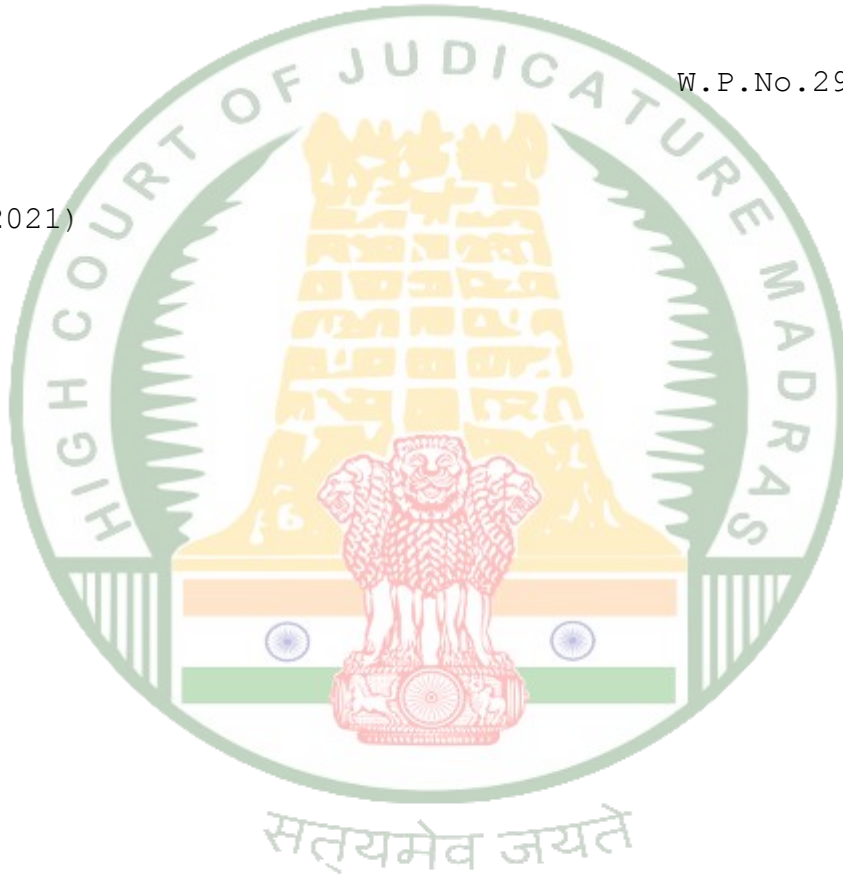
2. The Secretary to Government,
Home (Police IV) Department,
Fort St.George, Chennai - 9.

+lcc to M/s.M.Muthappan, Advocate, S.R.No.42671

+lcc to the Government Pleader, S.R.No.42508

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