

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2020

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.32953 of 2007

1.G.Jayakumar ... Petitioners  
S/o.T.Govindasamy (deceased)

2.J.Manimekalai  
W/o.Late.G.Jayakumar

3.J.Pradeep Kumar  
S/o.Late.G.Jayakumar

4.J.Preethi  
D/o.Late. Jayakumar

5.Janaki Ammal  
M/o.G.Jayakumar

[P2 to P5 are substituted as LRs' of P1 deceased G.Jayakumar as per order dated 27.07.2018 by MDIJ in M.P.No.1/13 in W.P.No.32953/2007]

Vs.

1.Government of Tamil Nadu ... Respondents  
Rep.by Secretary to Government,  
Home [Prison.II] Department,  
Fort St.George,  
Chennai - 600 009.

2.The Additional Director General of Prisons,  
Chennai - 600 008.

3.The Deputy Inspector General of Prison,  
Coimbatore Range, Coimbatore.

4.The Superintendent,  
Central Prison,  
Salem.

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified Mandamus, calling for records relating to the orders in [1] G.O.[D].No.699, Home [Prison.II] Department, dated 13.06.2007 of the first respondent, [2] Pro.No.31856/EW1/2005 dated 31.07.2006 of the second respondent and [3] Pro.No.2667/Tha.U/05 dated 20.05.2005 of

the third respondent; [4] Pro.No.Po.1/12340/2004 dated 03.02.2005 of the fourth respondent; quash the same and issue consequential directions to the respondents to reinstate the petitioner in service with all consequential service and monetary benefits.

For Petitioners : Mr.M.Ravi

For Respondents : Mr.K.Magesh  
Special Government Pleader

#### ORDER

The petitioner has filed the present petition challenging the punishment order imposed against the petitioner.

2. Learned counsel for the petitioner submitted that no opportunity was given and an ex-parte enquiry was conducted and the documents sought for by the petitioner were not furnished to the petitioner and thereby violated the principles of natural justice. The Hon'ble Apex Court and this Court has dealt with similar issues and held that non-supply of the documents is fatal to the case of the department and it is in violation of principles of natural justice. Therefore, the punishment order passed by the Disciplinary Authority has to be set aside. Though he filed an appeal, Appellate Authority has not applied his mind and passed a non-speaking order. Therefore, the order of the Appellate Authority is not in accordance with law and therefore, it is liable to be set aside.

3. Learned Special Government Pleader would submit that sufficient opportunities were given to the petitioner even at the time of issuing charge memo and it was duly served on the petitioner. The petitioner, after receiving the charge memo, instead of filing the explanation, sought for relevant documents one after another. Even though the petitioner was given sufficient opportunity to peruse the documents, after perusal of the documents instead of appearing before the enquiry officer, he sought some other document. With an intention to protract the enquiry, he was going on asking documents which are irrelevant to the charge memo leveled against the petitioner and those documents were also not relevant to the charges leveled against the petitioner. Therefore, even sufficient opportunity was given, he failed to avail the opportunity. Therefore, the enquiry officer was forced to proceed with the enquiry as ex-parte enquiry with no other option and therefore, enquiry was conducted and after completing the enquiry, report was also furnished to the petitioner. Even in the representation, he has not spoken about the defence, only accusing the enquiry officer that the Officer has not furnished the copy of the document and the Disciplinary Authority after rightly agreeing with the finding of the enquiry officer imposed the punishment of the

dismissal. The Appellate Authority has also considered the entire facts and records and dismissed the appeal. Ultimately, the writ petition is also to be dismissed. Since the petitioner has not availed the opportunity given by the Department and also not co-operated with the enquiry officer to proceed with the enquiry, the enquiry officer concluded the enquiry as ex-parte and there is no violation of principles of natural justice. Considering the nature of misconduct committed by the petitioner, the Disciplinary Authority imposed the punishment is not shockingly disproportionate with delinquency.

4. Heard both sides and perused the records.

5. Admittedly, the petitioner was working as Jail Warden and in service from 23.09.1983. The charge memo was issued under Rule 17(b) of the Tamil Nadu Civil Services [D & A] Rules, with regard to the allegation of illegal contact with one of the convict-prisoner, Prakash, instigating him to send Rs.600/- from P.C.P. account standing to his credit, for educational expenses of his sister, to an address given by him. Thereby, committed violation of Rule 147 of Tamil Nadu Prison Regulation, Vol.2 and Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, which is also a punishable offence under Section 54(1) of the Prisons Act. The petitioner submitted the representation on 07.09.2004 and he called for certain documents and the records shows that he was permitted to scrutinize and peruse the documents. After perusing the documents, enquiry date was fixed. The petitioner failed to appear and he sought for some other document. Therefore, if at all, once charge memo is filed, the petitioner has to give an explanation to the respondents. If the petitioner wants any specific document, he should ask at once and he cannot go on asking the document in a peaceful manner. He has to follow the jail manual and if any document is given to the petitioner, he has to peruse the documents, take notes and further, he can proceed with the enquiry. Instead, petitioner was going on asking the documents. A further perusal of the documents sought for by the petitioner is not relevant to the charges leveled against the petitioner. Therefore, the petitioner instead of participating in the enquiry, evaded the enquiry purposely.

6. Therefore, the enquiry report was furnished to the petitioner and the petitioner received the same and sent further representation. Even in that representation, he has not put forth the actual defence and he has made accusations against the enquiry officer regarding non furnishing of documents.

7. A perusal of records shows that the documents sought for by the petitioner has nothing to do with the nature of allegation leveled against the petitioner. Therefore, all the opportunity was given to the petitioner and the enquiry

officer had rightly conducted the enquiry. Since the petitioner has not co-operated with the enquiry, the Disciplinary Authority passed the final order imposing punishment. On a perusal of the Enquiry Report, the order of the Disciplinary Authority and the Appellate authority as also the nature of allegation leveled against the petitioner and the statement of the witnesses, this Court finds that the charges leveled against the petitioner were proved and the Disciplinary Authority has rightly imposed the punishment of dismissal of service.

8. This Court does not find any merit in the writ petition and the punishment imposed against the petitioner was not certainly disproportionate.

9. Accordingly, this writ petition is dismissed. No costs.

-Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar

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To

- 1.The Secretary,  
Government of Tamil Nadu  
Home [Prison.II] Department,  
Fort St.George,  
Chennai - 600 009.
- 2.The Additional Director General of Prisons,  
Chennai - 600 008.
- 3.The Deputy Inspector General of Prison,  
Coimbatore Range, Coimbatore.
- 4.The Superintendent,  
Central Prison,  
Salem.

+1 C.C. to THE GOVERNMENT PLEADER Advocate SR.NO.41326

W.P.No.32953 of 2007

AJB (CO)  
UM (19.01.2021)