

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2020

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.P.No. 7554 of 2007

1. S.Shanmuganathan (deceased)

2.S.Deepa @Deepalakshmi

3.S.Baladarshini (minor)

4.S.Chandra Kanitha

(P1 to P4 substituted as LRs of the
deceased sole petitioner vide order
of this Court dated 08.10.2020) ...Petitioner

Vs

The Commandant,
Tamilnadu Special Police VI Battalion,
Madurai-14.Respondent

Prayer: Writ Petition is filed under Article 226 of Constitution of India for writ of certiorarified mandamus, calling for the records of the Respondent relating to his proceedings made in P.R.No.F1/38/01 U/r 3(b) dated 04.01.2002 and quash the same and consequently direct the Respondent to regularise the Applicant's scale without reference to the said proceedings placing him eligible to draw the difference in regular scale, allowances with effect from 5.1.2002 together with all other service and monetary benefits inclusive of regular promotion as Head Constable apart from directing the Respondent to transfer the Applicant to his parent Transport section VI Battalion 'B' company with all eligible allowances entitled to him as Constable cum Driver from January 2002.

For Petitioner : Mr.A.Amalraj

For Respondents : Mr.K.Magesh,Spl.GP

O R D E R

Originally the petitioner herein has filed an Original Application in O.A. No 4981 of 2002 before the State Administrative Tribunal. Due to abolition of State Administrative Tribunal, this Original Application was transferred to this Court and converted as Writ Petition and renumbered as W.P. No 7554 of 2007.

2. Brief facts of the case is that the petitioner had joined service on 01.11.1997 as Constable Grade-II and was posted at T.S.P. Villupuram District. While in service, the petitioner was placed under suspension pursuant to the proceedings of the respondent dated 30.10.2001 stating that "the petitioner had behaved indecently in drunken mood towards public in a public place at Muthupettai in Tiruvarur District on 04.10.2001 at 22.00 hrs and enquiry was conducted against the petitioner. Pursuant to the enquiry report dated 14.02.2001, the petitioner's suspension was revoked. But, the respondent herein dissented the view taken by the enquiry officer and found that the charges levelled against the petitioner were proved and awarded punishment of reduction in the time scale of pay vide proceedings in P.R.No. 38/2001, dated 11.01.2002. Challenging the same, the present writ petition is filed.

3. The learned counsel for the petitioner would submit that the enquiry officer has clearly found that the eyewitnesses have not supported the case of the department and no witnesses have spoken about that. Further the owner and the employees were not examined to prove the occurrence. Though the witnesses have spoken about the occurrence before the investigation officer, but during the departmental enquiry they disown their statement made before the investigation officer. He would further submit that after submission of the enquiry report, the disciplinary authority has to take action within a period of six months from the date of submission of the enquiry report, whereas in the present case, the disciplinary authority has failed to do the same. He would further submit that no one should be punished twice for the same cause. Not only the punishment of reduction of time scale of pay for two years, the petitioner was also transferred to some other place, which causes huge monetary loss to the petitioner.

4. The learned counsel for the petitioner would further submit that in order to prove the occurrence, no identification parade was conducted and there was no evidence to show that the petitioner was present in the said place at the time of occurrence. Therefore, the enquiry officer clearly gave a

finding that the charges leveled against the petitioner were not proved. But, the disciplinary authority has taken a different view without any materials and passed the impugned order of punishment against the petitioner. Therefore, the impugned order needs to be quashed.

5. On the other hand, the learned Additional Government Pleader would submit that during the investigation all the witnesses have made statement before the investigation officer and in the enquiry report prima facie found that the delinquent had committed misconduct. During the departmental enquiry, due to the delay, the petitioner convinced other witnesses not to make any evidence against the petitioner in the departmental enquiry proceedings. However the fact remains that on the date of the occurrence, the petitioner was not in the duty and also not in the Head Quarters and has not made any possible explanation. The learned Additional Government Pleader would further submit that witnesses clearly spoken that the petitioner was very much present at the time of occurrence and committed misconduct. Therefore the respondent dissented the view taken by the enquiry officer and found that the charges levelled against the petitioner were proved and awarded punishment. Therefore the punishment awarded to the petitioner does not require any interference.

6. Heard Mr.A.Amalraj, learned counsel for the petitioner and Mr.K.Magesh, learned Special Government Pleader and perused the records.

7. On a perusal of records, it is clear that the petitioner was placed under suspension pursuant to the proceedings of the respondent dated 30.10.2001 for the allegation that the petitioner had behaved indecently in drunken mood towards public in a public place at Muthupettai in Tiruvarur District on 04.10.2001 at 22.00 hrs and initiated enquiry and pursuance to the report of the enquiry officer, the petitioner's suspension was revoked as charges levelled against the petitioner were not proved. Subsequently the disciplinary authority had dissented the view taken by the enquiry officer and found that the charges levelled against the petitioner were proved and awarded punishment of reduction in the time scale of pay vide proceedings in P.R.No. 38/2001, dated 11.01.2002.

8. The punishment awarded to the petitioner is only reduction of two increments, which is proportionate to the charges. Since the petitioner's service is an uniformed service, he should be a role model to the public, but the act of the petitioner that without availing any leave and permission to leave the head quarters and involved in the misconduct is highly condemned and punishable. Further the petitioner has also not

given any possible explanation before the concerned authority for his misconduct.

9. After analysing all the facts and the connected records and evidence relating to the charges levelled against the petitioner, this Court has come to the conclusion that;

With regard to Charge No.1: Since the witnesses who have given the statement during the preliminary enquiry have not stated above the occurrence before the enquiry officer and their evidence is not sufficient to prove the charge no.1 leveled against the petitioner.

With regard to the charge no.2 : it is very much proved that the petitioner was present at the time of the occurrence in the place of occurrence, which is away from the Head quarters and he was not in duty on the said date. Therefore, it is for the petitioner to prove that as to how he left the Head quarters on the said date, without availing leave or availing permission from the department. Since the petitioner had failed to prove the said aspect, the disciplinary authority had dissented the view taken by the enquiry officer and awarded the punishment. In view of the above, the charge no.2 levelled against the petitioner is correct and there is no perversity in the order passed by the authority.

10. It is also brought to the notice of this Court that the petitioner had died and his family members are getting family pension regularly. Therefore, considering the facts and circumstances of the case, this Court is of the considered opinion that the punishment awarded to the petitioner is not disproportionate and it is well within the powers of the appointing authority and does not require any interference by this Court.

11. In the result, the Writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Commandant,
Tamilnadu Special Police VI Battalion,
Madurai-14.

W.P.No. 7554 of 2007

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