

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2020

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.P. No.35679 of 2007

S.N.Thangasamy

... Petitioner

Versus

1.The Director General of Police
Kamarajar Salai
Chennai-600005.

2.The Chairman
Uniform Services Recruitment Board,
Chennai.

3. The Superintendent of Police
Thoothukudi District

4. Deputy Inspector General of Police
Tirunelveli.

... Respondents

PRAYER: Writ petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the first respondent in Rc.No.PR II (1)/145559/2004 dated 28.07.2004 and quash the same.

For Petitioner : Mr.K.Venkataramani
Senior Counsel
for Mr.Muthappan

For Respondents : Mr.K.Magesh (R1 to R4)
Special Government Pleader

ORDER

This Writ Petition has been filed the first respondent in Rc.No.PR II (1)/145559/2004 dated 28.07.2004, rejecting the mercy application filed by the petitioner and to quash the same.

2.The case of the petitioner is that while the petitioner was working as a Grade I Police Constable, a Charge Memo was issued against the him, by levelling three charges. The Charge No.1 relates to verification of the identity with regard to the

passport application of one Dhanapandian son of Kaliyugam, Malapettai, as the passport applicant, Dhanapandian refused to give bribe to the delinquent, as a result the Sub Inspector of Police has returned the passport verification on 11.03.2002 stating that the applicant was not available in the village. Charge No.2 relates to the alleged misconduct of having demanded and accepted the bribe of Rs.200/- from the passport applicant Dhanapandian on 16.07.2002 for giving police certificate. The Charge No.3 relates to the alleged act of issuing him bogus police certificate to the above said Dhanapandian on 16.03.2002 by using the seal of Sub Inspector of Police, Pudur Police Station unauthorisedly and putting his signature in it. It is further stated that for the alleged three charges, the petitioner have submitted detailed reply on 10.04.2003 denying all the aforesaid charges. It is further stated that the enquiry officer after conducting the enquiry found guilty of the petitioner in all the three charges levelled against him. It is also stated that the petitioner also received the minutes copy on 12.08.2003 and based on that, the third respondent issued proceedings in C.No.F1/PR 117/02 D.O.No.1326/03 dated 22.09.2003, compulsorily retired him from service with effect from 08.01.2003. It is the further case of the petitioner that the third respondent awarded the punishment without issuing second show cause notice and therefore as against the punishment, the petitioner filed Appeal before the Deputy Inspector General of Police, Tirunelveli, who dismissed the Appeal vide order dated 22.12.2003 and as against that he filed a revision before the Additional Director General of Police and Mercy petition before the first respondent and both the petitions were dismissed and therefore the petitioner has filed the present writ petition challenging the order of the first respondent on the ground that the order of the first respondent is non speaking order and the punishment imposed against the petitioner is shockingly disproportionate.

3. The learned senior counsel appearing for the petitioner would submit that the enquiry officer has not examined the vital witnesses i.e., the applicant of the passport viz., Dhanapandian and also Sub Inspector who has given the certificate and therefore non examination of these witnesses is fatal to the case of the Department. It is further submitted that before imposing punishment, no opportunity for further representation has been given and further there is no material to show that the petitioner demanded the bribe from Dhanapandian and therefore in the absence of any material the fact that the charges were proved is not acceptable. He would further submit that there is no corroborated evidence for all the charges and hence the punishment imposed by the disciplinary authority is liable to be set aside.

4. The learned Special Government Pleader appearing for the respondents would submit that the charge levelled against the petitioner was grave in nature. He would further submit that the police in Tamil Nadu Uniformed services were entrusted to verify the application for giving passport and the petitioner while working as Grade I Police Constable in Pudur Police Station has demanded the bribe from the applicant viz., Dhanapandian and when the same was not paid, he reported to the Sub Inspector of Police that the applicant not available in the village then subsequently after receiving a sum of Rs.200/- from the applicant, he submitted a report that the said Dhanapandian was available. It is further submitted that he has also issued the forged certificate as if he is the Sub Inspector of Police by putting his initial and therefore, the enquiry officer also found that the charges levelled against the petitioner were proved. It is further contended that mere non examination of Dhanapandian is not fatal to the case of the Department for the reason that Dhanapandian is in abroad and the enquiry officer also stated that why the applicant Dhanapandian was not examined in the enquiry. It is further submitted that all the witnesses were consequential and the opportunity was given to the petitioner for further representation and he petitioner also availed the opportunity and further the petitioner was given second show cause notice and therefore he would submit that the contention of the petitioner that he was not given the opportunity for further representation and second show cause notice was not issued are not correct. He placed reliance on the following Judgments of the Hon'ble Supreme Court in support of his contentions.

(i) Coimbatore District Central Cooperative Bank Versus Coimbatore District Central Cooperative Bank Employees Association and another reported in (2007) 4 SCC 669.

(ii) Om Kumar and others Versus Union of India reported in (2001) 2 SCC 386.

(iii) Life Insurance Corporation of India and others Versus S.Vasanthi reported in (2014) 9 SCC 315.

(iv) Tara Chand Vyas Versus Chairman & Disciplinary Authority and others reported in (1997) 4 SCC 565.

5. Heard both sides. Perused the materials available on record.

6. Admittedly, the petitioner while working as Grade I police constable charge memo was issued against him for the three charges. The Charge No.1 relates to verification of the identity with regard to the passport application of one Dhanapandian son of Kaliyugam, Malapettai, as the passport

applicant, Dhanapandian refused to give bribe to the delinquent, as a result the Sub Inspector of Police has returned the passport verification on 11.03.2002 stating that the applicant was not available in the village. Charge No.2 relates to the alleged misconduct of having demanded and accepted the bribe of Rs.200/- from the passport applicant Dhanapandian on 16.07.2002 for giving police verification certificate. The Charge No.3 relates to the alleged act of issuing him bogus police verification certificate to the above said Dhanapandian on 16.03.2002 by using the seal of Sub Inspector of Police, Pudur Police Station unauthorisedly and putting his signature in it. It is further stated that for the alleged three charges, the petitioner have submitted detailed reply on 10.04.2003 denying all the aforesaid charges. An enquiry officer was appointed and after conducting the enquiry, the enquiry officer filed a report by giving a finding that the charges levelled against the petitioner were proved. Further, the disciplinary authority called for further representation and imposed the punishment of compulsory retirement. Though the learned counsel for the petitioner would submit that non examination of the applicant viz. one Dhanapandian is not fatal to the case of the Department, in this case admittedly the enquiry reveals that firstly the petitioner approached the applicant one Dhanapandian and demanded bribe, since the applicant refused to pay the bribe, he reported before the Sub Inspector of Police that the said one Dhanapandian was not available in the village. Thereafter, he approached the Dhanapandian by sending the Munusamy, Head constable to the house of one Dhanapandian for getting bribe money and after receiving the same from Munusamy, the petitioner reported the Sub Inspector of Police that one Dhanapandian was available. Though in the enquiry the petitioner stated that only Munusamy demanded the bribe and got the same and the petitioner has not received it and he sent Munusamy only to know about the availability of the petitioner, in the enquiry, the petitioner himself admitted his signature in the verification certificate. Though he has given explanation that he has not issued bogus certificate to one Dhanapandian by using the seal of Station House Officer, it was found that the certificate issued was a bogus one because when one Dhanapandian approached the petitioner, the Station House Officer is not available, but the petitioner has signed in the certificate as if he is the Station House Officer and the petitioner also admitted his signature in the said document. Therefore, it is clear that the certificate issued was a bogus one and further it is also seen that the petitioner has not signed for Station House Officer but signed as Station House Officer and the explanation given by the petitioner is only after thought. In criminal cases the charge must be proved beyond reasonable doubt, but preponderance of probabilities was sufficient to punish the Government servants in case of disciplinary

proceedings under the Discipline and Appeal Rules. In this case, on going through the entire records and submissions, it is clearly seen that all the charges levelled against the petitioner were proved and therefore he was imposed with the punishment of compulsorily retirement. The appellate authority as well as the revisional authority has rightly dismissed the appeal and revision filed by the petitioner and the first respondent also rightly rejected the mercy petition. Though the learned counsel for the petitioner submitted that the first respondent has not passed the speaking order, the fact remains that the enquiry officer elaborately conducted the enquiry and found that the charges were proved against the petitioner. Even though disciplinary authority, appellate authority, revisional authority and the first respondent found that the allegations levelled against him were proved. Therefore, considering the facts and circumstances of the case the punishment imposed on the petitioner is correct and it is not found to be violation of principles of natural justice and even non examination of the Dhanapandian is not fatal to the case of the Department. From the available records, this Court finds that the charges levelled against the petitioner are proved and there is no violation of principles of Natural justice and the punishment imposed on the petitioner is not shockingly disproportionate.

7. In view of the same, there is no merit in this Writ Petition and the same is liable to be dismissed and 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 Director General of Police

Kamarajar Salai

Chennai-600005.

2.The Chairman

Uniform Services Recruitment Board,
Chennai.

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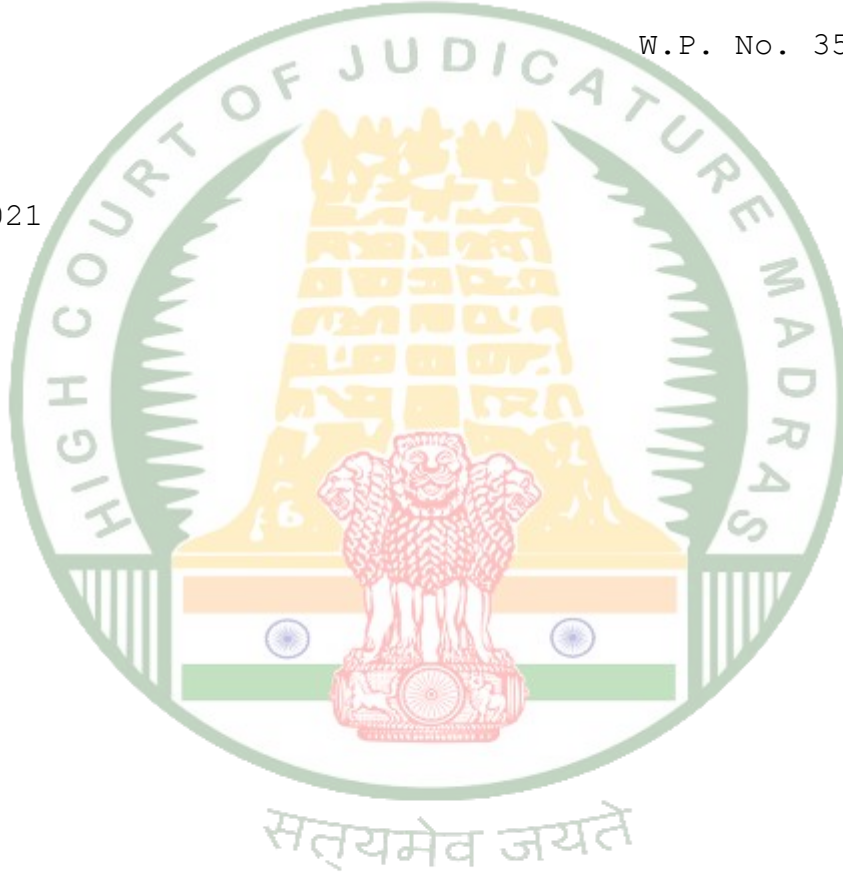
3. The Superintendent of Police
Thoothukudi District

4. Deputy Inspector General of Police
Tirunelveli.

+1 cc to Mr.M.Muthappan Advocate sr42672
+1 cc to Government Pleader sr43003

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