

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.20763 of 2005

V.Krishnamurthy

... Petitioner

vs.

The Secretary to Government,
Home (Police 1-A department),
Fort St.George, Chennai - 9.

... Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorari, calling for the records of the respondent in connection with the impugned order passed by the respondent in G.O.(4D).No.93 Home (Police 1-A) Department dated 18.12.2002 and quash the same.

For Petitioner : Mr.K.Venkatramani
Senior Counsel for M.Muthappan

For Respondent : Mr.R.Janaki
Additional Government Pleader

O R D E R

The petitioner was posted as Sub-Inspector of Police at Kalasapakkam Police Station, Vellore District. On 23.05.2000, due to consumption of poisonous arrack 13 persons died and 11 more persons were under treatment for the arrack related ailments. Therefore, a charge was framed on 11.07.2000 for dereliction of duty and failure to collect intelligence reports pertaining to prohibition offence.

2. An Enquiry Officer was appointed and 14 witnesses were examined and cross-examined. On the side of defence, 4 witnesses were examined. After going through the evidence of the witnesses and the documents marked before him, the Enquiry Officer has held that the charges were proved. The Disciplinary Authority imposed a punishment of withholding of increment for a period of

three years with cumulative effect in G.O.(4D).No.93 Home (Police I-A) Department dated 18.12.2002. Against which, the petitioner filed a Review Petition on 14.01.2003 and it was rejected by letter dated 02.05.2005. Aggrieved over the same, the petitioner is before this Court.

3. The learned Senior counsel would vehemently contend that the charges cannot be attributed against the petitioner as there is a full fledged Prohibition Enforcement Wing having hierarchy of officers under the control of Additional Superintendent of Police having Deputy Superintendent of Police, Two Inspectors of Police, two Sub-Inspectors of Police and 28 other ranked officials are functioning to put down trade in illicit liquor. Dereliction can be attributed only against them. Apart from that, there was a local festival on that fateful day. Despite the shortage of man power for police bundabust and VIP escort, he deputed one Mannar, Head Constable, to collect intelligence information. The village is not a black spot village and with the concerted efforts of villagers, committees were formed and illicit liquor was eradicated with their co-operation. The said liquor tragedy was due to professional jealousy and there is no lapse on the part of the petitioner in the discharge of his official duties. Moreover, there is no specific allegation on the petitioner that he derelicted his official duties.

4. During enquiry, P.W.11, the Medical Officer in his opinion would depose that the cause of death was due to consumption of Organophosphorus compound - mono chrostophes - Insecticide poison. P.W.12 - Inspector of Police would depose that upon investigation, the case had assumed a different turn that suspected administration of poison with professional jealousy and would admit that the village was not a black spot village. The charges were altered to Section 328 and 302 IPC, apart from this the defence witnesses would affirm the fact that the village is not a black spot village and that the illicit liquor has been eradicated and the tragedy was due to professional enmity between the rival groups.

5. In spite of the unassailing evidence, the enquiry officer had found the charges proved and the disciplinary authority without applying his mind and without considering the evidence and other materials had passed the impugned order of punishment without recording any reasons. The reviewing authority also did not record any reasons, but mechanically confirmed to punishment. Hence, he would contend that the impugned order is liable to be quashed for violation of principles of natural justice for not recording reasons.

6. Per contra, the learned Additional Government Pleader for the respondent would contend that on the date of incident there were 13 deaths due to consumption of poisonous illicit arrack, 11 more persons were undergoing treatment and they were in serious condition, which means, that there was sale of illicit arrack. Even assuming the petitioner was not responsible for mixing of poison and when charges under Section 302 IPC was framed, he cannot deny the fact that there was sale of illicit arrack. Despite having police force, he has failed to collect information with regard to the incident and thereby, derelicted his duty. The witnesses of P.W.1 to 9 clearly spoke about the sale of arrack more than a month involving several persons. In that event, though the particular village was not a black spot village, the fact remains that sale of arrack had taken place for more than one month, leading to the incident and loss of lives. There is no answer to point by the petitioner and therefore, Enquiry Officer as well as the Disciplinary Authority have rightly found that he was guilty on the charge of dereliction of duty with respect to sale of illicit liquor. Therefore, imposing the punishment of withholding increment for three years with cumulative effect is not disproportionate, when compared to the seriousness of the incident that had taken place. On these grounds, she seeks dismissal of the Writ Petition.

7. I have considered the rival submissions.

8. Admittedly, there was an incident in which more than 10 persons died and others were undergoing treatment. The evidence of P.W.11 - the Medical Officer was that the death was caused due to consumption of organophosphorus compound-mono chrostophes which is an insecticide. Evidence of P.W.12 - Inspector of Police would disclose that the investigation took a different turn that it was not a case of liquor tragedy, but leading to offences of murder by mixing poisonous substances in the illicit liquor by a rival group. The named accused of both the sides were arrested and the case was transferred for investigation by CBCID for offences under Section 328 & 302 IPC.

9. Though it is an undisputed fact that there was an incident causing death of 13 persons, the charge has been framed against all the officials for dereliction of duty. The charge on the face of it is very vague. As admittedly there is a full fledged Prohibition Enforcement Wing having hierarchy of officers, specific charges should have been framed against the individual police officers, as to how he had derelicted his duty. Overflowing evidence on the side of the prosecution itself proves that the said village was not a black spot village and the incident had taken place due to professional rivalry. The

submission made by the learned Additional Government Pleader appearing for the respondent that the illicit liquor sale was going on for one month is not substantiated by any reliable evidence. On the contrary, a retired Deputy Superintendent of Police would depose that the said village is not a black spot village and the incident is not a liquor tragedy but leading to offences of conspiracy and murder. The Village Administrative Officer, Union Counselor, Village President of the respective village had deposed on the side of delinquent officer that there was no dereliction of duty on his part. The credibility of their evidence was not attacked.

10. Moreover, the Government, while passing order in respect of another Sub-Inspector of Police, with regard to the same incident vide G.O.(2D) No.10 Home Dept. dated 03.01.2008, had observed that the incident was not a liquor tragedy, but it is a clear case of motivated murder and that the said official discharged his duties without dereliction. On those grounds the punishment of withholding the increments for 3 years with cumulative effect was modified into one of withholding of increment for one year without cumulative effect.

11. In my considered opinion the charge on the face of it itself is very vague and not specific. Overwhelming evidence on both prosecution and defense does not disclose any specific dereliction of duty on the part of the petitioner, that too, when a full fledged Prohibition Enforcement Wing has been tasked for this purpose. Apart from this the impugned order is liable for interference for non application of mind to the relevant materials and not recording reasons. The authorities both Disciplinary and Reviewing Authority shall record reasons for arriving at their conclusion and imposing punishment. Non consideration of relevant material and not recording reasons amounts to non-application of mind and thereby, violation of principles of natural Justice.

12. Above all there cannot be different punishments for different delinquents who are facing same charges for the same misconduct arising out of the same incident. In the case of one Sub-Inspector of Police vide G.O.(2D) No.10 Home Department dated 03.01.2008, the punishment was modified into one of withholding increment for one year without cumulative effect. The petitioner was also a Sub-Inspector of Police at the time of incident and was facing a common charge, like that of the similarly placed individual. When Government had taken a conscientious decision in respect of one officer should have extended the same in respect of the similarly placed individual also, without forcing them to get a verdict from the Court. Not treating the similarly placed personnel and imposing different punishments for the same charges arising out of same is

violative of equality and equal protection enshrined under Article 14 of the Constitution. As such the punishment imposed on the petitioner is hit by discriminatory treatment. Hence the impugned order does not pass the test on the grounds of equality, consideration of relevant materials in proper perspective, and not recording reasons for rejecting the objections raised by the petitioner.

13. Considering the totality of circumstances and on the basis of the discussions above, I am inclined to set aside the punishment imposed in G.O.(4D).No.93 Home (Police I-A) Department dated 18.12.2002, against the petitioner and modify the same into withholding of increment for one year without cumulative effect as modified by the Government in G.O.(2D).No.10 Home (Police - IV A) Department dated 03.01.2008, in respect of a similarly placed individual. The respondent shall accordingly disburse the monetary and other attendant benefits to the petitioner.

In the upshot, the Writ Petition is ordered with the above directions. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Secretary to Government,
Home (Police - 1A Department),
Fort St.George, Chennai - 9.

+1cc to the Government Pleader Sr.10830

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