

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 20316, 20317, 20335, 20444 OF 2013

W.P. NO. 3900 OF 2018

AND

M.P. NOS. 1, 1, 1 of 2015

W.M.P. NO. 39358 OF 2018

W.P.No. 20316 of 2013

S.Seeralan

.. Petitioner

- Vs -

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

2.The Additional Commissioner of Police
Traffic Division, Chennai City Police
Kilpauk, Chennai - 10.

.. Respondents

W.P.No.20317 of 2013

Damodaran

.. Petitioner

- Vs -

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

2.The Additional Commissioner of Police
Traffic Division, Chennai City Police,
Kilpauk, Chennai - 10.

.. Respondents

W.P.No.20335 of 2013

K.Sindhukumar

.. Petitioner

- Vs -

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

2.The Deputy Commissioner of Police
Headquarters, Chennai City Police
Egmore, Chennai - 8.

3.The Joint Commissioner of Police
West Zone, Greater Chennai Police
Ambattur Industrial Estate
Chennai - 58.

.. Respondents

W.P.No.20444 of 2013

Venkateswara Rao

.. Petitioner

- Vs -

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

2.The Additional Commissioner of Police
(Traffic), Chennai City Police
Kilpauk, Chennai - 10.

.. Respondents

W.P.No.33900 of 2018

S.Srinivasan

.. Petitioner

- Vs -

The Principal Secretary to Government
Home Department
Secretariat.

.. Respondent

W.P.No. 20316 of 2013 filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorari, calling for the records of the respondents in connection with the impugned order passed in GO (2D) No.874 Home (Pol.II) Dept dated 31.12.2007 and consequential orders passed by the second respondent in C.No.1166/Tr.PR/2010 dated 23.02.2010 and Na.Ka.P.F.(P) 110/5950/2012 TDO No.113/2012 dated 27.02.2012 and quash the same.

W.P. No.20317 of 2013 filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorari, calling for the records of the respondents in connection with the impugned order passed by the first respondent in GO (2D) No.877 Home (Pol.II) Dept. dated 31.12.2007 and consequential orders passed by the second respondent in Na.Ka.No.L(M)/24972/21487/2012 TDO No.501/2012 dated 20.07.2012 and quash the same.

W.P. No.20335 of 2013 filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorari, calling for the records of the respondents in connection with the impugned order passed by the first respondent in GO (2D) No.880 Home (Pol.II) Dept dated 31.12.2007, GO (2D) No.473, Home (Pol.V) Dept dated 27.11.2009 and consequential orders passed by the second and third respondents in RC No.076627/PRII(2)/2010 CPO No.2106/2011 dated 21.09.2011 and RC No.Esttl(2)/WZ/11503/2012 WZO No.9/2013 dated 08.01.2013 respectively and quash the same.

W.P. No.20444 of 2013 filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorari, calling for the records of the respondents in connection with the impugned order passed by the first respondent in GO (2D) No.878 Home (Pol.II) Dept dated 31.12.2007, and consequential orders passed by the second respondent in C.No.270/12135/Tr.PR/2010 T.Z.O.No.399/2010 dated 03.07.2010 and Na.Ka.No.L(VA)/3725/21486/2012 TDO No.458/2012 dated 06.07.2012 and quash the same.

W.P. No.33900 of 2018 filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, to call for the records of the respondent made in G.O.2D.No.516, Home (Police) Department dated 16.12.2016 and quash the same and consequently direct the respondent to treat the period of suspension of the petitioner from 18.03.2002 to 31.03.2005 as period spent on duty and pay the monetary and other attendant benefits.

For Petitioners: Mr.K.Venkatramani,
SC, for Mr.M.Muthappan
in WP 20316, 20317, 20335 & 20444/2013
Mr. N.Umapathi in WP No.33900/2018
For Respondents: Mr.A.N.Thambidurai, Spl. GP

COMMON ORDER

As all the writ petitions arise out of one and the same cause of action, they are disposed of by this common order.

2. The petitioners are members of the escort party, which was escorting two Muslim Fundamentalists, viz., Imam Ali and Hyder Ali from Chennai, who were accused under the TADA Act, from Chennai Central Prison to Madurai and Kovilpatti for their production before the concerned Magistrate Court in respect of the criminal cases pending against them. The said task was entrusted with the Assistant Commissioner, who was the Commander of the Escort Party. The team, escorting the prisoners left Chennai and reached Madurai on 07.03.02 and the prisoners were produced before the Addl. Sessions Judge, Madurai and after extension of remand, the accused prisoners were taken to Palayamkottai Central Prison for their remand for the night. For the purpose of taking their food and also for attending nature's call, the escort party stopped their vehicle inside the compound of Tirumangalam Police Station and since the accused desisted from taking food inside the police station due to the unhygienic condition and also due to non-availability of water, the accused were kept in the transit vehicle and were given food on the directions of the Assistant Commissioner of Police. The various escort personnel were guarding the vehicle and one of the police personnel was also stationed inside the vehicle to guard the prisoners/accused. Further, on the directions of the Assistant Commissioner of Police, who was heading the escort team, the various team members were asked to go to a nearby hotel to take food.

3. While the police personnel, who were members of the escort team were taking their food, they heard a deafening sound in front of the police station following which huge plumes of smoke surrounded the police station. Immediately the police personnel rushed near the vehicle only to find that the vehicle was damaged due to gun shots and that the accused, who were inside the vehicle had escaped due to the act of the aides of the accused, who had thrown country bombs on the police station and also attacked the police personnel and that the accused had also taken some of the automatic weapons kept in the escort vehicle. Two of the members of the police escort party, viz., Constable Kesavan and Grade-II Police Constable Babu suffered injuries while trying to prevent the accused escaping from their lawful custody.

4. It is further averred that a criminal case in Crime No.84/02 was registered on the file of the Thirumangalam Police Station on 7.3.02 with respect to the escape of the accused and another case in crime No.86/2002 was registered against some of the members of the escort party u/s 225 and 4 (b) IPC for aiding the escape of the accused from their lawful custody. After investigation, charge sheet was laid in both the cases before the competent court and Crime No.86/02 registered against the members of the escort party was however referred to as mistake of fact. However, the department initiated departmental proceedings against the petitioners herein u/r 3 (b) of the Tamil Nadu Police Subordinate Service (D&A) Rules by placing the petitioners under suspension and also calling for explanation. Not satisfied with the explanation submitted by the petitioners, charges were framed and enquiry was initiated. The enquiry officer submitted his report holding the charges proved against the petitioners without taking into consideration the evidence placed before him in the enquiry. Furnishing a copy of the enquiry report to the petitioners, show cause notice was issued calling for explanation to which the petitioners submitted their further explanation. The disciplinary authority, without independent application of mind to the materials placed before him and on total non-application of mind, concurred with the report submitted by the enquiry officer with regard to the delinquency against the petitioners and, accordingly, imposed a punishment of stoppage of increment for a period of two years with cumulative effect. Aggrieved by the said order of punishment, some of the petitioners filed review before the Government, which was rejected. As against the said order of punishment, the present writ petitions have been filed.

5. Learned senior counsel appearing for the petitioners submitted the task of production of the accused before the concerned Court at Madurai and Kovilpatti was entrusted to the petitioners, who were members of the escort party and that the accused were produced before the Madurai Court and after extension of their remand, the accused were to in the process of being taken to Kovilpatti for their production before the concerned Court. However, enroute to Kovilpatti, the escort party had stopped at Thirumangalam Police Station to take food and also to attend nature's call. It is the further submission of the learned senior counsel that the escort party had travelled non-stop for more than 12 hours from Chennai to Madurai and after production of the accused at Madurai Court, they had, following the procedure, stopped within the complex of Thirumangalam Police Station for taking food, on the instructions of the Assistant Commissioner of Police, who was the commander of the escort party. Therefore, when the escort

vehicles were stopped inside the campus of Tirumangalam Court, it is incumbent upon the personnel manning Thirumangalam Court to provide the necessary protection to the accused and the members of the escort team. However, the attention of this Court was drawn to the materials in the enquiry, wherein it is found that there was interaction of the police personnel of the Thirumangalam Police Station with some other persons, who had come in the Tata-Sumo, from which bombs were thrown. However, no action has been taken against any of the police personnel manning the Thirumangalam Police Station. Further, it is submitted no enquiry by the Revenue Divisional Officer was conducted in order to find out the happenings on the said day, which resulted in the escape of the accused, only to be apprehended later by the same police personnel and remanded to judicial custody. It is the further submission of the learned senior counsel that though it is the duty of the petitioners to give adequate police protection to the accused persons and they have to secure the accused from the attack of other hooligans, however, it is equally the duty of Taluk police to provide adequate police protection, more so when the escort vehicle is parked inside the campus of the police station. It is submitted that all these aspects have not been taken into consideration in proper perspective by the authorities while inflicting the punishment and, therefore, the same requires interference. Alternatively, it is submitted by the learned senior counsel for the petitioners that in the event this Court comes to the conclusion that the petitioners are delinquent in the discharge of their duties, in that case, the punishment imposed on the petitioners is too excessive and the same requires to be modified.

6. Per contra, learned Special Government Pleader appearing for the respondents, while reiterated the averments made in the counter, further submitted that it is the duty of the escort team to provide adequate protection to the accused and secure them from the onslaught of the hooligans, which the petitioners have miserably failed. It is the further submission of the learned Special Government Pleader that the act of the petitioners taking food outside and also allowing the accused to take food inside the vehicle is against the protocol and, therefore, the delinquency of the petitioners cannot be merely brushed aside, considering the fact that the accused in the said case are hardcore criminals, who are trying to destabilise and sabotage the country. The authorities below, on a careful consideration of the materials placed before them and properly appreciating the materials, have independently arrived at the conclusion, which does not warrant any interference at the hands of this Court.

7. This Court bestowed its best attention to the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

8. Before proceeding to analyse the facts of the present case to find out whether the punishment awarded to the petitioner is just and reasonable, the ratio laid down with regard to matters in which punishment has been imposed, which is impugned under Article 226 of the Constitution.

9. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415), the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by

the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

10. True it is that the records reveal that the respondents have followed the procedure contemplated for proceeding with the disciplinary enquiry by serving the petitioner duly and in his absence affixing the notice on the door of his house. The petitioner having not partaken in the enquiry proceedings, the petitioner was set exparte resulting in the culmination of the enquiry report. The disciplinary authority imposed the punishment of termination from service, which has received the seal of approval from the higher authorities by rejection of the petitioner's appeal and mercy petition.

11. The facts in the present case are not in dispute. The materials available on record reveal that escorting of the accused from Chennai to Madurai and further to Palayamkottai Central Prison are admitted. The production of the accused before the concerned Court at Madurai is not in dispute. Further, it is also the admitted case of the parties that after the production of the accused before the Addl. Sessions Court at Madurai, the accused were taken to Thirumangalam Police Station enroute to Kovilpatti for production before the concerned Court. The escort party along with the accused had parked their vehicle inside Thirumangalam Police Station, on the instructions of the Asst. Commissioner of Police, while some of the members of the escort party went to have their food, the other members of the escort party were guarding the accused and the accused were provided with food inside the vehicle, as the accused were not inclined to come inside the police station and take their food due to the unhygienic condition of the police station and also due to inadequacy of water. Whiles, the incident is said to have occurred, which led to the escape of the accused, only to be later apprehended and remanded.

12. As already stated above, the vehicle was parked inside the police station when the incident had occurred. It is further evident from the materials available on record, that while the vehicle was parked inside the police station, a Tata Sumo vehicle had come near the police station, and one of the police personnel from the Thirumangalam Police Station had spoken with the persons in the Tata Sumo vehicle, whereinafter, the country made bombs were thrown enabling the accused to escape from the vehicle. It is nowhere the case of the respondents that any of the members of the escort party had

interaction with the members of the Tata Sumo vehicle; on the contrary, it is only the police personnel of Thirumangalam Police Station, who had interaction with the members of the Tata Sumo vehicle. However, curiously, no action had been taken against the police personnel in-charge of Thirumangalam Police Station. It is to be pointed out that once the vehicle is parked within the police station, it is duty of the police personnel in the said police station to provide adequate security to the said vehicle, more so, when it is known that the vehicle had two hardcore fundamentalists, who had rampaged the country and, who were under shackles to avoid them from perpetrating any further crime. However, the incident only showcases the negligent act of the police personnel employed at Thirumangalam Police Station.

13. True it is that the members of the escort party are also required to be vigilant and thwart any attempt by unscrupulous elements to aid the escape of the accused and the attempt made had resulted in success leading to the escape of the accused. However, it is evident from the record that apart from the persons, who were allowed to have food, the persons who were guarding the vehicle were vigilant and tried in vain to prevent the escape of the accused and in the said attempt, they suffered injuries, which is borne out by record. Against some of the persons, who had suffered injuries, no action has been taken. It is not the case of the respondents that the other police personnel belonging to the escort party did not attempt to stop the escape of the accused and, in fact, had aided the accused in escaping. It is the admitted case of the respondents as well that some of the members of the escort party had been taking food and they rushed to the spot on hearing the deafening blast.

14. Further, one more aspect which also stares on the face of the record is the fact that the escort party was bringing the accused under heavy security all through the night from Chennai to Madurai. There had been no mishap during the night hours when the accused were being brought to Madurai. In fact, the whole episode had happened during the halt of the vehicle within the police station premises at Thirumangalam. Had the petitioners been the persons, who had aided the escape of the accused, nothing prevented the petitioners from creating a scene, where the accused would have made good their escape during the night hours. However, they were produced before the Court at Madurai and only when the vehicle was stationed within the police station campus at Thirumangalam, the incident had occurred. Therefore, the whole delinquency cannot be fastened on the escort party alone and definitely, the respondents ought

to have taken some action against the police personnel attached to Thirumangalam Police Station. But for reasons best known, no action has been taken against any police personnel attached to Thirumangalam Police Station. The above facts have not been appreciated in proper perspective by the disciplinary as well as the appellate authority, while imposing and confirming the punishment.

15. It cannot be gainsaid that there is no delinquency on the part of the petitioners. But the delinquency could only be to the extent of there being some negligence, but even in that scenario, every attempt was made by the petitioners to apprehend the accused, which went unsuccessful initially. However, it should not be lost sight of that while discharging their work, definitely the members of the escort party should also be requiring food and places to attend the nature's call. In that scenario, precautions were taken by the escorting team to park the vehicle with the accused inside the police station premises at Thirumangalam. May be, more police personnel could have been deployed to guard the vehicle, while few members could have been allowed to take turns in having their food. However, it is to be pointed out that country made bombs were hurled to aid the escape of the prisoners and in such a situation, increasing the number of police personnel would have no effect against such an attack. Such being the admitted position of facts, this Court is of the considered view that the punishment of stoppage of increment for a period of two years with cumulative effect does not go in tandem with the delinquency committed by the petitioners.

16. In the above backdrop the question that falls before this Court is the punishment that would be just and reasonable to the delinquency of the petitioners.

17. Once this Court has come to the conclusion that the delinquency of the petitioners is only to the extent of negligence, definitely the punishment imposed by the respondents, to the conscience of this Court, is unreasonable, arbitrary, and shockingly disproportionate to the charges levelled against the petitioners. On the materials, which has been discussed above, this Court is of the considered opinion that the punishment of stoppage of increment for a period of two years with cumulative effect is shocking the conscience and disproportionate to the charges levelled against the petitioners, more so when the petitioners have tried their best to thwart a calculated attack. This Court, on an overall consideration of the entire aspect of the issue, while is in agreement that punishment deserves to be inflicted on the

petitioners for their negligent act, however, is of the considered opinion that the punishment imposed by the disciplinary authority, as confirmed by the appellate authority deserves to be modified as the said punishment is wholly disproportionate and shocks the conscience of this Court. This Court in the fitness of things, deems it appropriate to modify the punishment imposed on the petitioner from of stoppage of increment for a period of two years with cumulative effect to one of stoppage of increment for a period of two years without cumulative effect, which would meet the ends of justice.

18. Accordingly, this writ petition is allowed by modifying the punishment imposed on the petitioners from of stoppage of increment for a period of two years with cumulative effect to one of stoppage of increment for a period of two years without cumulative effect. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

GLN

To

- 1.The Secretary to Government
Home (Police II) Department
Fort St George, Chennai - 9.
- 2.The Additional Commissioner of Police
Traffic Division
Chennai City Police सत्यमेव जयते
Kilpauk, Chennai - 10.
- 3.The Deputy Commissioner of Police
Headquarters,
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- 4.The Joint Commissioner of Police
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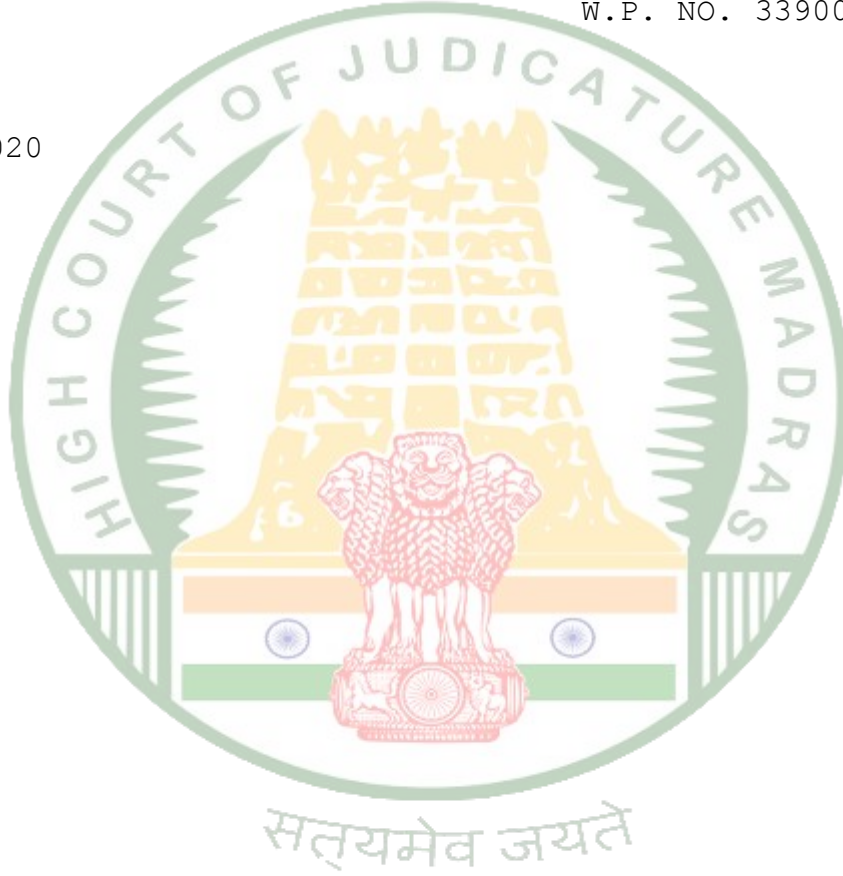
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5.The Principal Secretary to Government
Home Department
Secretariat.

+4 cc to M/s.M.Muthappan Advocate sr32856 to 32859
+1 cc to Ms.Annamma K. Advocate sr32784

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