

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 29515 OF 2013

R.Amirthavel

.. Petitioner

- Vs -

1. The Superintendent of Police
Salem District, Salem.
2. The Deputy Inspector General of Police
Salem Range, Salem. .. Respondents

Writ petition 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 orders passed by the 1st respondent in PR No.165/H3/2012 dated 5.2.13 and RC No.B1/136/1578/2013 Appeal No.16/2013 dated 15.4.2013 of the 2nd respondent respectively and quash the same.

For Petitioner : Mr. K.Venkataramani, SC, for
Mr. M.Muthappan

For Respondents: Mr. A.N.Thambidurai, Spl. GP

ORDER

The petitioner entered the service as direct recruit Police Constable Grade-II and joined the Salem District Armed Reserve on 9.12.1988. After getting series of promotions over the course of his employment, the petitioner was finally upgraded as Head Constable in the year 2003 and was transferred to Law & Order Establishment in the year 2006.

2. It is the case of the petitioner that while serving with the Highway Patrol at Kondalampatti Police Station limits, on 3.10.12, while on highway patrol duty along with one Seenan, SSI/Patrol In-charge Officer, Krishnan, SSI and Head Constable 283, Balathandapani, who was driving the vehicle, the said Balathandapani stopped the vehicle and went to answer nature's

call urgently. At that time, on hearing the alarm raised by Balathandapani, all the police personnel alighted from the vehicle and rushed to the place, where they found the said Balathandapani lying on the road after being hit by a mini van while crossing the road. Message was conveyed by the in-charge officer to the higher authorities and the said Balathandapani was taken to the hospital. Enquiry was conducted on the happenings by the higher authorities.

3. It is the further case of the petitioner that to his surprise, on 4.11.12, he was placed under suspension and department action was initiated against him by framing two charges u/r 3 (b) of the Tamil Nadu Police Subordinate Service (D&A) Rules, which are as under :-

"i) On 31.10.2012 night at 0115 hours while the SSI Elumalai, SSU Krishnan, HC 283 Balathandapani and HC 131 Amirthavel were on duty in the Police Vehicle TN 27 G 1434 at Mangarangampalayam near Vivekanandha College, one TATA 407 (Pick Up Van) private vehicle caused simple injuries to HC 283 Balathandapani in the right leg and this fact was not informed to superior officers in time and hide the fact with ulterior motive and thus failed in his duties and accepted bribe and thus negligence and indiscipline in his duties.

ii) The above said four officials are in the habit of receiving bribe of Rs.140/- from the vehicles loaded with cattles passing through Sankagigi Highway and failed to inform the real facts and furnished false information with delay and thus disciplinary conduct."

4. On receiving the charges, the petitioner submitted his explanation denying the charges, which was not accepted by the disciplinary authority and enquiry was initiated. The enquiry officer, after conducting the enquiry after affording reasonable opportunity to the petitioner, held the charges proved. The report of the enquiry was furnished to the petitioner and further explanation was called for to which also the petitioner submitted his explanation. However, the disciplinary authority, viz., the 1st respondent, not being satisfied with the explanation offered, imposed the punishment of stoppage of increment for a period of one year with cumulative effect. Against the said punishment, the petitioner preferred appeal to the 2nd respondent, which was rejected confirming the order of punishment and aggrieved by the same, the present petition is filed.

5. Learned senior counsel appearing for the petitioner submitted that though two charges were framed against, one relating to non furnishing of information immediately to superiors and the other relating to receipt of bribe, though the enquiry officer held that both the charges were proved, however, the disciplinary authority imposed the punishment of stoppage of one increment for a period of one year with cumulative effect only in respect of the 1st charge. It is the submission of the learned senior counsel that though four witnesses were examined and 17 documents were marked to prove the charge against the petitioner, however, the witnesses are not related to the 1st charge and that the witnesses examined to substantiate the 2nd charge have not implicated the petitioner. Therefore, the charges framed against the petitioner have not been proved in a manner as is required of in a departmental proceeding, which aspect has not been considered by the respondents 1 and 2 and, therefore, the orders are liable to be set aside.

6. Per contra, learned Special Government Pleader appearing for the respondents submitted that not only against the petitioner, but also against all the other persons, who were in the patrol duty charge memo was issued and enquiry was conducted. It is the further submission of the learned Special Government Pleader that though the incident had occurred on the early morning hours at 01.15 a.m., the said incident was not informed to the superior officers for a considerable length of time. Further, there is a material discrepancy with regard to the time as mentioned by the petitioner and the injured delinquent, viz., Balathandapani. Though the petitioner had denied the charges, however, the petitioner has failed to produce the FIR registered for that incident. It is the further submission of the learned Special Government Pleader that as an employee of a disciplined force, the petitioner is expected to maintain the General Diary with all the happenings on the particular day. However, the General Diary has not been produced by the petitioner to disprove the prosecution case, which itself clinchingly establishes the case of the prosecution insofar as the charge framed against the petitioner. It is the further submission of the learned Special Government Pleader that though two charges were framed, the authorities, on careful analysis of the enquiry report, has imposed punishment only insofar as the first charge is concerned, taking a lenient view, which does not warrant interference at the hands of this Court.

7. This Court bestowed its best attention to the contentions advanced by the learned counsel 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. In the case on hand, a perusal of the materials available on record reveal that though two charges have been

framed against the petitioner of which the 2nd charge is grave, however the disciplinary authority, on the materials placed before him, including the enquiry report, has imposed punishment only for the 1st charge, which has been confirmed by the appellate authority in the appeal filed by the petitioner. A careful perusal of the report of the enquiry officer reveal that very many discrepancies in the evidence tendered by the petitioner to substantiate his case has been noted by the enquiry officer. The enquiry officer has held that though it is the stand of the delinquents that they were away from the place where Balathandapani met with an accident and arrived at the place only on hearing his alarm, however, the report filed by them reveal that van, which had caused the accident. Further there is a also a material discrepancy in the time as spoken to by the delinquent and by the injured Balathandapani, when he was admitted at the hospital, which are at variance, thereby casting a serious doubt as to the veracity of the case projected by the delinquents. Similarly, it is evident from the Accident Register that the wife of the injured had admitted him at the hospital, whereas it is the case of the delinquents that the petitioner had accompanied the injured to the hospital. These discrepancies, coupled with many other discrepancies, which have been clearly mentioned by the enquiry officer in his detailed and exhaustive enquiry report leads this Court to the inexplicable conclusion that the enquiry has been conducted in a proper manner and enquiry report has been prepared. However, witnesses, who were examined to speak about the bribe received by the delinquents have not supported the case of the prosecution, which has weighed with the disciplinary authority in taking a lenient view to impose the punishment on the petitioner as stated above. The appellate authority, on an overall analysis of the materials and the basis on which the disciplinary authority has imposed the punishment has concurred with the decision of the disciplinary authority and dismissed the appeal.

11. On a holistic consideration of the entire issue, this Court is of the considered view that pursuant to proper enquiry and based on the enquiry report and the materials, the disciplinary authority has imposed the punishment on the petitioner, which has been confirmed by the appellate authority, which punishment, could in no way be said to be disproportionate or shocking the conscience of the Court warranting interference. The petitioner has not proved that the punishment imposed on him is arbitrary or bad or the punishment is disproportionate to the gravity of the proved charges and is in contravention of the rules. In such circumstances, this Court is of the considered view that the punishment imposed on the petitioner is just and reasonable and the same does not warrant any interference at the hands of this Court.

12. For the reasons aforesaid, this writ petition is devoid of merits and deserves to be dismissed. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

GLN

To

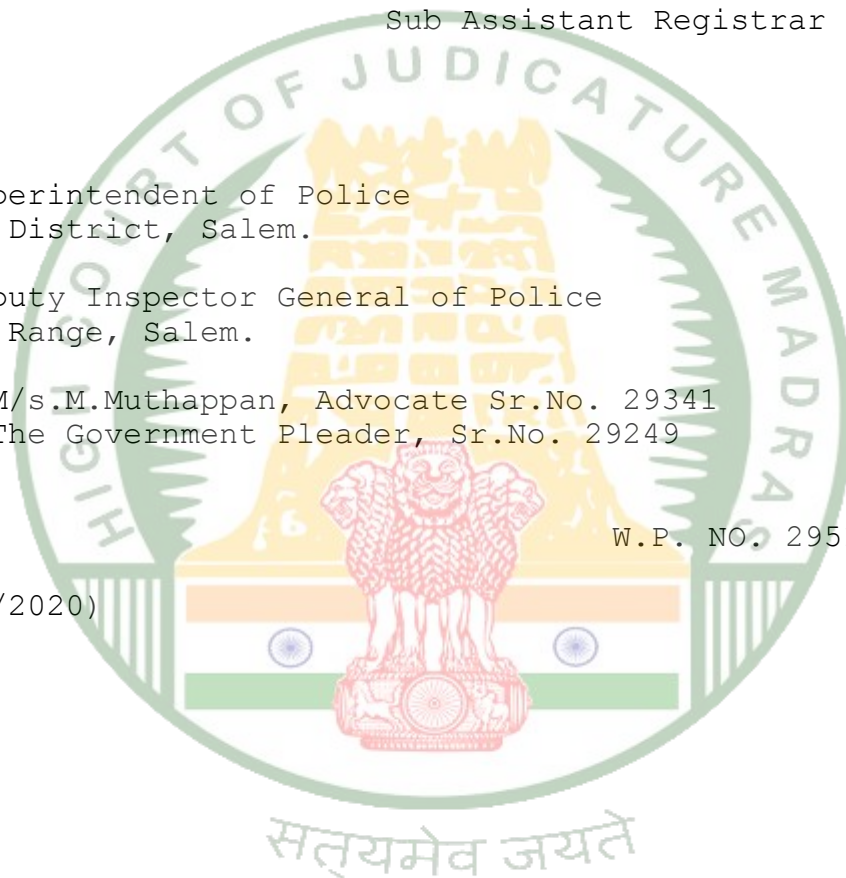
1. The Superintendent of Police
Salem District, Salem.
2. The Deputy Inspector General of Police
Salem Range, Salem.

+1 cc to M/s.M.Muthappan, Advocate Sr.No. 29341

+1 cc to The Government Pleader, Sr.No. 29249

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VD(CO)
RMP (29/10/2020)



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