

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.34249 OF 2013

M.Nagarajan

.. Petitioner

- Vs -

1. The Superintendent of Police
Nilgiris District, Nilgiris.
2. The Addl. Director General of Police (L&O)
Chennai.
3. The Secretary to Government
Home (Pol. VI) Department
Fort St. George, Chennai - 9. .. 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 1 to 3 in connection with the impugned order passed by them in PR No.61/2007 u/r 3 (b) dated 22.1.2009, RC No.26377/Con.III(1)/2007 dated 30.4.2011 and G.O. (2D) No.471, Home (Pol. VI) Department, dated 20.8.2013 and quash the same.

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

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

ORDER

It is the case of the petitioner that he entered into service as Grade-II Police Constable in Ooty District Armed Reserve on 16.11.1971 and after obtaining several promotions, was functioning as Sub-Inspector of Police. It is the further averment of the petitioner that while functioning as Head Constable, one of the accused arrested with a case in Crime No.907.2001 and the said accused committed suicide leaving behind a suicide note implicating the petitioner and other constables as persons responsible for his death. Enquiry was conducted by the Revenue Divisional Officer, who submitted a report stating that the police personnel were not the cause of

the suicide committed by the accused. In spite of the said report, the Government initiated departmental action against the petitioner u/r 3 (b) of the Tamil Nadu Police Subordinate Service (D&A) Rules. It is the further averment of the petitioner that ignoring the report of the Revenue Divisional Officer, on the basis of another report given by the District Collector, the departmental action was initiated against the petitioner. Further to the initiation of departmental action, explanation was called for from the petitioner for which the petitioner submitted his explanation and being not satisfied with the explanation offered, enquiry was proceeded with and after enquiry, the enquiry officer submitted his report holding the charge proved against the petitioner. Furnishing a copy of the report to the petitioner, show cause notice was issued, to which the petitioner submitted his explanation. Being not satisfied with the explanation, the disciplinary authority, viz., the 1st respondent imposed the punishment of reduction in time scale of pay by two stages for two years without cumulative effect by order dated 22.1.09.

2. Against the said order of punishment, the petitioner preferred appeal before the 2nd respondent, who though did not consider the materials in proper perspective, however, while dismissing the appeal, modified the punishment into reduction in time scale of pay by one stage for one year without cumulative effect by order dated 30.4.11. Further, the petitioner was directed to pay a compensation of Rs.50,000/- which was recovered from his salary. The petitioner initially filed W.P. No.14451/2012 challenging the imposition of punishment inflicted by the 1st and 2nd respondents, but, however, withdrew the same, obtaining liberty from the Court to file a revision before the 3rd respondent. Pursuant to the revision filed by the petitioner, the 3rd respondent, on consideration of the same, modified the punishment into one of reduction in time scale of pay for one year without cumulative effect. It is the averment of the petitioner that the case put forth by the petitioner was not considered in proper perspective by the 3rd respondent. Aggrieved by the said orders, the present writ petition has been filed.

3. Learned senior counsel appearing for the petitioner, while reiterated the grounds raised by the petitioner in the affidavit filed in support of the petition, vehemently submitted that while the Revenue Divisional Officer had absolved the police personnel and submitted report that the police personnel were not the cause of death of the accused, however, without any material, the District Collector had given a report, which resulted in the initiation of departmental proceedings against the petitioner, which is highly unsustainable. It is the further submission of the learned senior counsel that the

appellate authority as well as the revisional authority have not adverted to the materials placed before them and considered them in proper perspective, but mechanically, passed the order, modifying the punishment against the petitioner, when the records before them clearly reveal that the petitioner was in no way involved in the death of the accused. On the whole, the whole enquiry is flawed and non-consideration of the materials by the authorities on appeal and revision, renders the impugned order liable to rejection and, accordingly, prays for allowing the petition.

4. Per contra, learned Special Government Pleader submitted that the initial report of the Revenue Divisional Officer, which was sent to the District Collector was returned for certain clarifications and on return, a full fledged enquiry was conducted by the new Revenue Divisional Officer, who had taken charge and the report was the basis of the District Collector submitting his report to the Government, on the basis of which action was initiated. It is the further submission of the learned Special Government Pleader, that the enquiry was conducted in a fair and proper manner and the enquiry report pointed the finger on the petitioner as one of the persons responsible for the death of the accused, which resulted in initiation of departmental proceedings. It is further submitted that the disciplinary authority though awarded a higher punishment, the appellate authority and the revisional authority, taking a lenient view, have modified the punishment, which clearly reveals their application of mind to the materials and, therefore, no interference is warranted with the well considered order passed by the respondents.

5. This Court bestowed its best attention to contentions advanced by the learned counsel on either side and perused the materials available on record.

6. 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.

7. 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)

8. The materials available on record reveal that the enquiry has been conducted in accordance with law as per the procedure contemplated under the relevant rules. There is no quarrel with regard to the same by the petitioner. Though it is the contention of the petitioner that the initial report submitted by the Revenue Divisional Officer absolved the petitioner from the delinquency, however, the materials reveal that the District Collector, requiring certain clarifications, referred the matter back to the Revenue Divisional Officer, after which a full fledged enquiry has been conducted and a report was submitted, which culminated in the departmental enquiry. Therefore, the act of the respondents in requiring certain clarifications and then proceeding with the enquiry cannot be found fault with.

9. Though there are certain discrepancies in the departmental proceedings as pointed out by the petitioner in the petition, however, it is to be pointed out that departmental proceedings is not a judicial proceeding requiring stern following of legal requirement and what is required in the departmental proceeding is procedural requirement, which, on the face of the records, stood completely satisfactory. There are certain discrepancies in the departmental proceedings, but the said discrepancies in no way affects the report submitted by the enquiry officer. Once the report has been accepted by the disciplinary authority and punishment imposed on the petitioner, this Court is only left with the task to determine whether the punishment imposed on the petitioner is disproportionate to the charges framed and shocks the conscience of the Court.

10. To the above, it can be held without a second thought that the answer of this Court is in the negative. The punishment imposed on the petitioner, in no way could be termed to be disproportionate to the delinquency and further it cannot also not be said that it shocks the conscience of this Court. The task entrusted on this Court is only to find out whether the authorities have applied their mind to the materials before passing the order of punishment. This Court, on a perusal of the materials placed is of the firm opinion that the punishment imposed on the petitioner could in no way be said to be disproportionate and shocking to the conscience of this Court. The punishment, in the considered view of this Court is just and reasonable and, this Court is of the opinion that no interference is warranted with the impugned order of punishment passed by the respondents.

11. For the reasons aforesaid, this writ petition is devoid of merits and, accordingly, the same is dismissed. However, there shall be no order as to costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Superintendent of Police
Nilgiris District, Nilgiris.

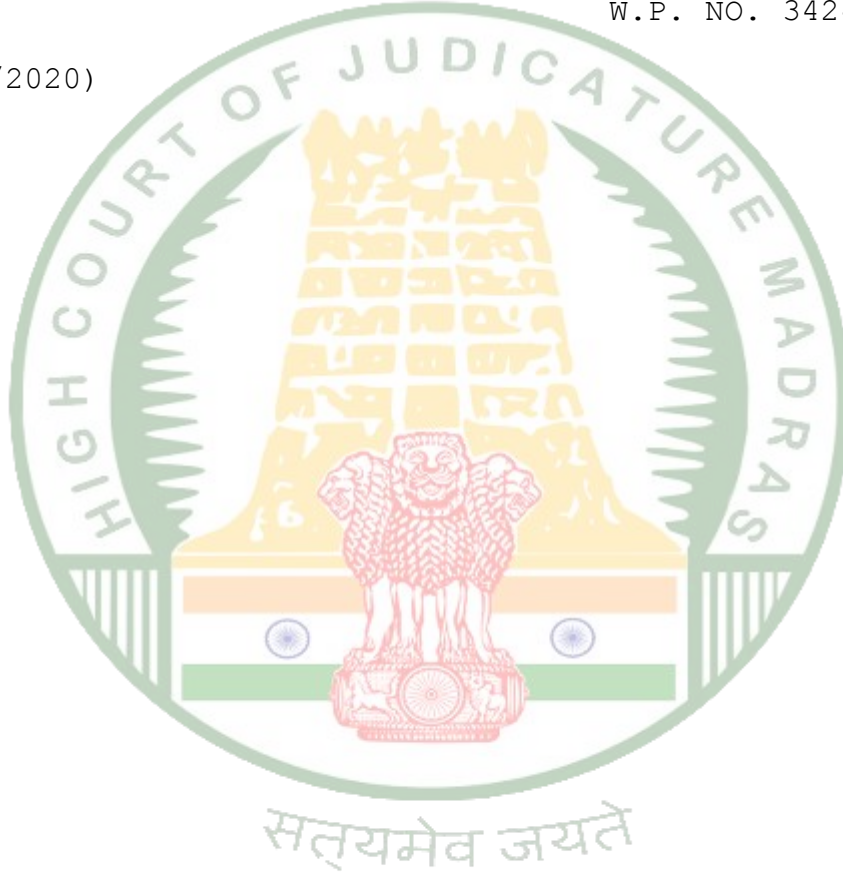
2. The Addl. Director General of Police (L&O)
Chennai.

3. The Secretary to Government
Home (Pol. VI) Department
Fort St. George, Chennai - 9.

+1 cc to M/s.M.Muthappan, Advocate Sr.No. 31450
+1 cc to The Government Pleader, Sr.No. 31506

W.P. NO. 34249 OF 2013

VSNII(CO)
RMP(14/10/2020)



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