

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 6990 OF 2013

C.Uthayakumar

.. Petitioner

- Vs -

1. The Additional Director General of Police/  
Director General of Prisons, Chennai-600 008.

2.The Deputy Inspector General of Prisons,  
Coimbatore- 641 018.

3.The Superintendent,  
Central Prison, Coimbatore-641 018.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified Mandamus, calling for the records relating to the impugned order of the first respondent in No.5022/W-1/2012 dated 11.07.2012 confirming the order passed by the second respondent in Proceedings NO.1193/Mu.U.2011 dated 24.12.2011 and the order of the third respondent in Proceedings No.711/Po.4/2010 dated 18.01.2011 and quash the said orders and direct the respondents to reinstate the petitioner in service with all attendant benefits.

For Petitioner : Mr. P.Rajendran

For Respondents: Mr.A.N. Thambidurai, Spl.Govt. Pleader

ORDER

This Writ Petition filed by the petitioner to quash the impugned order and to reinstate the petitioner in service with all attendant benefits.

2. The case of the petitioner is that the petitioner was appointed as Grade II Warder at the Central Prison, Coimbatore in the year 2002. While he was in service, a criminal case was registered against the petitioner in Crime No.1932 of 2004 on the file of the B-4, Race Course Police Station, Coimbatore,

under Section 20 (b) (1) of the NPDS Act on the allegation that the petitioner was found in possession of 140 grams of Ganja and sought to transport the same into the Central Prison, Coimbatore. Thereafter, he was arrested and remanded to judicial custody and further disciplinary proceedings were initiated against the petitioner by placing him under suspension by order dated 08.11.2004. A charge memo was issued by the 3<sup>rd</sup> respondent on 19.11.2004, stating that the petitioner has violated Rule 20 of the Tamil Nadu Government Servants Conduct Rules (hereinafter called 'the Rules') which attracts punishment under Rule 54(1) of the Tamil Nadu Prison Manual. The petitioner submitted his explanation on 11.12.2004 denying the charges and stating that on the same set of facts a criminal case was also instituted against the petitioner. The enquiry officer conducted the enquiry. It is the case of the petitioner that all the witnesses were examined on the same day and the petitioner was directed to immediately cross examine all the witnesses, even though the petitioner had requested for assistance of a lawyer. However, the said request was denied and the enquiry was closed on the same day, without any opportunity given to the petitioner for cross examining the witnesses produced by the prosecution. In the meanwhile the criminal case instituted by the prosecution agency ended in acquittal. On the submission of the enquiry report, the disciplinary authority accepted the report and imposed the punishment of dismissal from service on 18.01.2011.

3. Against the order of the disciplinary authority, the petitioner preferred appeal before the appellate authority. However, the appellate authority, without applying his mind independently to the materials placed on record, confirmed the findings and confirmed the punishment passed by the disciplinary authority by dismissing the appeal vide order dated 24.12.2011. Against the said order, the petitioner preferred revision before the Additional Director General of Police/first respondent herein on 16.02.2012. The 1<sup>st</sup> respondent rejected the revision by order dated 11.07.2012, and confirming the order passed by the disciplinary authority as confirmed by the appellate authority. Aggrieved by the said orders, the present petition has been filed.

4. Mr. Rajendran, learned counsel appearing for petitioner submitted that the enquiry Officer did not afford any opportunity to the petitioner to cross examine the prosecution witnesses, but submitted the report, which has been mechanically accepted by the disciplinary authority and imposed a major punishment of dismissal from service. The appellate authority as well as the revisional authority also, without appreciating the materials on record, which stared on their face, confirmed the punishment awarded to the petitioner by the disciplinary

authority. The said act of the authorities not only reveals non-application of mind, but also vitiates the order of punishment inflicted on the petitioner. It is the submission of the learned counsel for the petitioner that the order passed by the appellate authority and revisional authority are non-speaking orders, which renders their order unsustainable and, therefore, their orders are liable to be set aside and the order of the disciplinary authority being not based on cogent and convincing reason and findings for arriving at a decision, the said order is also liable to be set aside and the petitioner be directed to be reinstated in service.

5. Learned counsel placed reliance on the decision of this Court in V.P.Chellappa - Vs - Superintending Engineer & Ors. (WP. No.15608/2001, dated 9.11.09), wherein in identical situation, this Court held as under :-

"8. It is well settled that the disciplinary as well as appellate authorities are the fact finding authorities and therefore, when the right of appeal is a substantive right, the appellate authority ought to have passed a reasoned order dealing with the contentions raised in the appeal. Atleast the appellate authority, in the interest of justice, should have been indicated his mind while disposing of the statutory appeal. Consideration of the factors by the disciplinary as well as appellate authorities are conspicuously absent in the impugned orders. After recording the sequence of events from the date of formulation of the charges, the Disciplinary Authority, in his three line order, has simply concluded that the petitioner had committed the act of misconduct. In his order, the Disciplinary Authority has recorded as follows:

"On perusal of the representation and all connected records, it is found that Thiru.V.P.Chellappa has not put forth any fresh points requiring consideration. Hence, the undersigned has come to the conclusion that Thiru.V.P.Chellappa, Junior Engineer, should be awarded with punishment for the proven charges."

9. There is absolutely no discussion on any one of the points raised by the writ petitioner regarding the correctness of the findings recorded by the enquiry officer nor there is any discussion regarding impropriety in the procedure adopted by the enquiry officer in the domestic enquiry. Perusal of the appellate

order also does not indicate as to whether he had applied his mind to the appeal memorandum, dated 25.01.2001, excepting to state that no fresh points have been raised.

10. As regards the manner in which the appellate authority has to consider the statutory appeal, this Court, after considering a catena of decisions, in *N.Sivakumaran v. State of T.N.*, reported in 2009 (1) MLJ 701, has held as follows:

"In the case of an appeal against the order of imposing any penalty under Rules 8 and 9 of Rule 23 gives a mandate to the appellate authority to consider (a) whether the factors on which the order was passed have been established (b) whether the facts established afford sufficient ground for taking action and (c) whether the penalty is excessive, adequate or inadequate and pass orders confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty, with such direction as it may be deemed fit in the circumstances of the case. Clause II of Rule 23 (1) any error or defect in the procedural violation in imposing penalty may be disregarded by the appellate authority if such authority considers for the reason to be recorded in writing that the error or defect was not material and had neither caused injustice to the person concerned or affect the decision of the case. The order of the Appellate Authority must therefore *ex facie* show that the matters referred to Rule 23 have been considered by the Appellate Authority. Penalty suffered by a government servant affects his service promotion and monetary benefits and casts a stigma in his career

The Appellate Authority must not only give a hearing to the government servant concerned but also pass a reasoned order dealing with the contention raised in the appeal.

In the interest of justice, the delinquent officer is entitled to know atleast the mind of the appellate or revisional authority in disposing of the appeal or revision.

If the Appellate Authority merely confirmed the order of the Disciplinary

Authority stating no new points had been urged without considering the contentions raised by the appellant by application of independent mind, such order cannot be sustained.

The right of appeal is a substantive right and the appellate authority is the final fact finding authority and essentially an appeal is at continuation of the original proceedings. A judicial review under Article 226 of the Constitution is restricted to the decision making process and the High Court cannot substitute the findings of the disciplinary or appellate authority.

If there is a statutory provision dealing with the exercise of powers by the original or appellate authority, the same has to be examined in the manner provided in the statute and not otherwise."

6. Per Contra, Mr. A.N.Thambidurai, learned Special Government Pleader appearing on behalf of respondents submitted that the enquiry officer had granted ample opportunity to the petitioner to put forth his case and also to cross examine the witnesses, which the petitioner did not utilise, but had been seeking for frequent adjournments only with a view to drag the proceedings and, therefore, the enquiry officer submitted the report with his findings. It is the further submission of the learned Special Government Pleader that the disciplinary authority/3<sup>rd</sup> respondent, after perusing the entire evidence recorded by the enquiry officer and so also the findings arrived at in the enquiry, after duly and independently applying his mind to the materials available on record has awarded the punishment to the petitioner. The appellate authority and the revisional authority have appreciated the materials placed before them in proper perspective and have concurred with the findings recorded by the disciplinary authority for awarding the said punishment and, therefore, the said orders does not warrant interference at the hands of this Court.

7. This Court heard the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

8. Though very many contentions have been advanced with regarded to providing reasonable opportunity to the petitioner to put forth his defence and also for cross examining the witnesses before the enquiry officer and the bias shown by the disciplinary authority in awarding the punishment without

properly appreciating the materials available on record, however, at the time of hearing, learned counsel for the petitioner submitted that he is restricting his defence only to the limited extent of non-application of mind exhibited by the appellate and the revisional authorities in arriving at the decision without properly appreciating the materials and, thereby, giving a non-speaking order. Therefore, it is submitted that it would suffice if the orders of the appellate and the revisional authorities are set aside and the matter be remitted back to the appellate authority to consider the case afresh from the stage of appeal.

9. The facts in issue are not in dispute. The main ground of attack spearheaded by the learned counsel for the petitioner is that the order passed by the respondents is a non-speaking order. This Court has applied its mind independently to the orders passed by the appellate and the revisional authorities. A cursory perusal of the impugned order reveals that the plea as raised by the petitioner deserves to be accepted. The authorities, without adverting to the materials and forming an opinion to cause punishment on the petitioner, has, in a routine manner, passed the order, without giving any reasons for coming to the said view. When a major punishment, such as the one inflicted on the petitioner, is sought to be given, it is incumbent on the part of the appellate and revisional authorities to consider threadbare all the findings and analyse the same and give reasons for arriving at a finding, which is one of the basic requirements in law and only on the basis of the reasons cited therein, the order could be tested. However, as pointed out above, no reasons whatsoever, has been given by the appellate and the revisional authorities. The orders passed by the appellate and the revisional authorities show that they have not appreciated the materials available on record by giving reasoned orders. The orders clearly demonstrate that the said authorities have simply recorded the findings enumerated by the disciplinary authority in arriving at their decision. The said act of the appellate and revisional authorities vitiates the orders passed by them. It is expected of the appellate and revisional authorities to independently apply their mind to the findings and give a reasoned order either concurring or differing with the findings recorded by the disciplinary authority, which the said authorities have miserably failed to do.

10. In the above circumstances, this Court has no hesitation to set aside the orders passed by the appellate as well as the revisional authorities. Accordingly, the orders passed by the appellate and the revisional authorities are set aside and the matter is remitted back to the appellate authority for fresh consideration of the entire matter from the stage of appeal

filed before him. The appellate authority is directed to consider the materials placed before him afresh and pass orders thereon on the said appeal as expeditiously as possible.

11. The petition is allowed to the extent indicated above with the aforesaid observations and directions. In the circumstances of the case, there shall be no order as to costs.

Sd/-  
Assistant Registrar (ADI MDU)

//True copy//

Sub Assistant Registrar

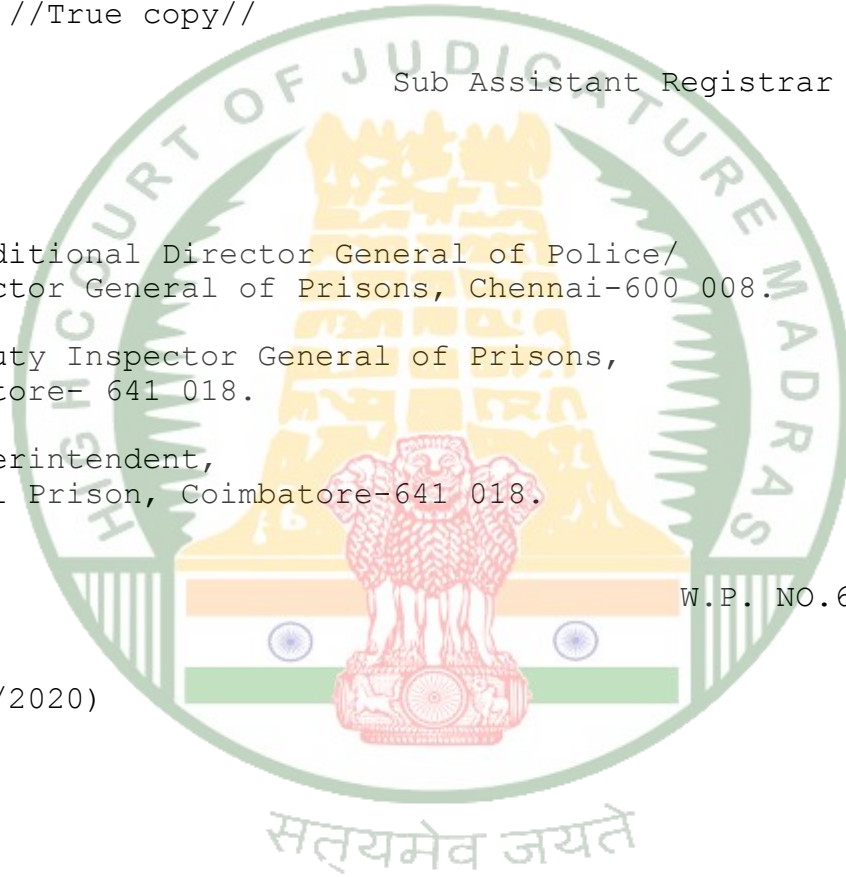
jrs/GLN

To

1. The Additional Director General of Police/  
Director General of Prisons, Chennai-600 008.
2. The Deputy Inspector General of Prisons,  
Coimbatore- 641 018.
3. The Superintendent,  
Central Prison, Coimbatore-641 018.

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BR (CO)  
GMY (09/09/2020)



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