

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.10.2020

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.8776 of 2013
and W.M.P.No.1 of 2013

A.John Paul (Deceased)

1. J.Gnanakumari
W/o.A.John Paul
2. J.Sweety Janate
D/o.A.John Paul
3. J.Emili
D/o.A.John Paul
4. J.Hepziba
D/o.A.John Paul

(P1 to P4 are substituted as LRs of deceased sole petitioner as per order dated 03.02.2020 made in W.M.P.No.31995 of 2019 in W.P.No.8776 of 2013 by DKKJ)

...Petitioners

VS

1. The Deputy Commissioner of Police,
Head Quarters, In-Charge AR,
Coimbatore City, Coimbatore.
2. The Commissioner of Police,
Coimbatore City, Coimbatore.
3. Tr.Sengodan,
Deputy Commissioner of Police, (AR)
Coimbatore City, Coimbatore.

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4. Rangattal,
Assistant Commissioner of Police,
Crime Record Bureau,
Coimbatore City, Coimbatore.

5. Tr.P.Muthuraj,
Assistant Commissioner of Police,
Enquiry Officer,
L & O Central, Coimbatore City,
Coimbatore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ, Order of Direction particularly in the nature of Writ of Certiorari, calling for the records of the respondents 1 to 2 in connection with the impugned orders passed by them in C.No.F4/PR48/2010 dated 10.08.2011 and C.No.F3/WP - 4207/2012 dated 19.03.2013 respectively and quash the same.

For Petitioners: M/s.K.Venkatramani, Senior Counsel
Mr.Muthappan

For Respondents: M/s.A.Kumar, Assistant Advocate General
Assisted by Mr.S.Thangavel, Spl.G.P.,

ORDER

The petitioner has filed the above Writ Petition praying to call for the records of the respondents 1 to 2 in connection with the impugned orders passed by them in C.No.F4/PR48/2010 dated 10.08.2011 and C.No.F3/WP - 4207/2012 dated 19.03.2013 respectively and quash the same.

2. The case of the petitioner is that he was directly recruited and appointed as Grade II Police Constable in the year 1982 and after serving for 11 years in various positions in the Department, the petitioner was promoted and posted as Head Constable on 25.07.2000. He was attached to the City Police Gas Service for the period from 06.09.2002 to 08.06.2010 and his duty is to supply Gas Cylinders to the consumers (Police Personnel) on indent and collect the sale proceeds and deposit in the bank. The gas cylinders is only for consumption of the police personnel and not for outside sale and all the transactions were recorded in the requisite register. However, on certain allegations that the petitioner has sold the gas cylinders to non-consumers for a higher price and misappropriated the differential amounts, the petitioner was

placed under suspension and departmental enquiry under rule 3(b) TNPSS (D & A) Rules in PR No.48/2010 F4 dated 10.08.2011 was initiated. Preliminary enquiry was conducted by the the Assistant Commissioner of Police, Crime Recorded Bureau, Coimbatore City and at that time, no opportunity was given to the petitioner, to put forth his contention which is in violation of the guidelines issued by the Government in Lr.No.1616/A81, P & AR (N3) Department dated 03.03.1982 and also another guidelines issued in Memo No.58361/L & O/82 dated 28.06.1982. Thereafter, the Assistant Commissioner of Police, L & O (Central), Coimbatore City was appointed as enquiry officer to conduct oral enquiry against the petitioner. On the side of the department, 15 witnesses were examined and the petitioner cross-examined all the witnesses. On behalf of the petitioner, in order to prove his innocence, he examined 4 witnesses. After conducting oral enquiry the petitioner submitted detailed written statement of defence on 25.02.2011. However, the enquiry officer without considering the evidence available on record and also the written statement of defence held the charges proved vide report dated 16.03.2011. The disciplinary authority, after furnishing a copy of the enquiry officer's report called for further explanation, which was submitted by the petitioner on 25.07.2011. However the disciplinary authority namely the Deputy Commissioner of Police, Head Quarters, in-charge AR, Coimbatore City, without considering any of the points raised by the petitioner imposed the punishment of dismissal from service by order dated 10.08.2011. Against the said order, the petitioner preferred appeal before the 2nd respondent/appellate authority. The appellate authority rejected the appeal against which the petitioner filed W.P. No.4207 of 2012 before this Court and this Court, vide order dated 13.03.2013 remanded the matter back to the appellate authority for fresh consideration. On remand, the appellate authority considered the case of the petitioner and while rejecting the appeal, however, modified the punishment of dismissal from service into one of compulsory retirement from service. Aggrieved by the same, the present petition has been filed.

3. The learned Senior Counsel appearing for the petitioners submitted that though the department examined fifteen witnesses and they were also cross examined by the petitioner to prove his innocence and further the petitioner has also examined four witnesses. However, without considering the defence witnesses examined by the petitioner, the disciplinary authority came to the conclusion only based on the evidence placed by the department. Further, no procedural lapse has been pointed out by the enquiry officer in his report and the documents placed by the department relating to maintenance of ledger, vindicate the stand of the petitioner. The above aspects, though were not

properly taken note of by the disciplinary authority and the appellate authority and punishment was inflicted, which was also confirmed, however, the order of the appellate authority was set aside as the same was passed without proper application of mind by this Court in the earlier round of litigation at the behest of the petitioner. Thereafter the present order has been passed, which also reflects total non-application of mind on the part of the appellate authority, as he has not adverted to the materials placed before him and, therefore, the punishment inflicted on the petitioner deserves to be set aside, as the order of punishment against the petitioner is excessive and disproportionate and liable to be interfered.

4. Per contra, learned Special Government Pleader appearing for the respondents submit that the modification of punishment imposed by the appellate authority clearly reveals that the appellate authority has applied its mind to the materials independently and arrived at a subjective decision. It is the further submission of the learned Special Government Pleader that even the enquiry report has held the charges proved against the petitioner. Such being the case, imposition of punishment for the delinquency cannot be said to be unsustainable and in such a scenario it is stressed that unless this Court comes to the conclusion that the punishment imposed on the petitioner is shocking the conscience and disproportionate to the charges levelled against the petitioner, this Court shall not interfere with the same in exercise of its jurisdiction. Therefore, he prays for dismissing the present petition.

5. This Court paid its undivided attention to the submissions advanced by the learned counsel on either side and also 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 directions given in the various Government Orders have not been followed, however, the same could only be said to be a technical and procedural irregularity. That by itself cannot be a ground to hold that the whole enquiry proceeding is vitiated. Further, it is to be pointed out that not only the department has adduced both oral and documentary evidence, but the petitioner has also placed oral evidence by examining four witnesses. While the department has examined 15 witnesses besides submitting documentary evidence pertaining to the ledger maintained by the petitioner, those witnesses were cross examined by the petitioner to substantiate his case. The enquiry officer, after taking into consideration both the oral and documentary evidence, has drawn the enquiry report holding the charges

proved against the petitioner. The disciplinary authority as well as the appellate authority have gone into the whole crux of the issue and have independently appreciated the case to arrive at the punishment to be imposed on the petitioner. Further, it is to be pointed out that it is within the powers of the disciplinary authority to act on the report by applying his mind independently to the materials and arrive at a subjective decision. In the case on hand, the disciplinary authority after proper appreciation of the case, has inflicted the punishment on the petitioner on the proved set of charges. This Court, sitting under Article 226 of the Constitution shall not interfere with the same unless it is shown that it is arbitrary, mala fide and not based on the materials available on record. In the above background, this Court is of the considered view that the disciplinary authority has acted within its jurisdiction and, therefore, the decision taken by the authority insofar as the delinquency of the petitioner is concerned and imposing the punishment on the petitioner, cannot be found fault with.

9. In the appeal filed by the petitioner, the appellate authority, on an independent application of mind to the materials placed before it, considering the gravity of the delinquency, had thought it fit to modify the punishment from one of dismissal from service to compulsory retirement, which in effect safeguards all the benefits to which the petitioner is entitled. The said act of the appellate authority in modifying the punishment clearly reveals application of mind.

10. The only point that is left for this Court to decide is whether the punishment imposed on the petitioner is disproportionate to the charges framed and shocks the conscience of the Court.

11. 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.

12. 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/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gbi

To

- 1.The Deputy Commissioner of Police,
Head Quarters, In-Charge AR,
Coimbatore City, Coimbatore.
- 2.The Commissioner of Police,
Coimbatore City, Coimbatore.
3. Deputy Commissioner of Police, (AR)
Coimbatore City, Coimbatore.
4. Assistant Commissioner of Police,
Crime Record Bureau,
Coimbatore City, Coimbatore.
5. Assistant Commissioner of Police,
Enquiry Officer,
L & O Central, Coimbatore City,
Coimbatore.

+1 cc to M/s.M.Muthappan, Advocate Sr.No. 32861

+1 cc to The Government Pleader, Sr.No. 32890

W.P.No.8776 of 2013

PP (CO)
RMP (09/11/2020)

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