

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.18805 of 2014

T.Santhakumar

...Petitioner

vs.

1. The Principal Secretary (Home)
Government of Tamil Nadu,
Fort St. George,
Chennai 600 009.
2. The Director General of Police,
Tamil Nadu Police Head Quarters,
Mylapore,
Chennai 600 004.
3. The Commissioner of Police,
Greater Chennai Police,
Vepery,
Chennai 600 007.
4. The Deputy Commissioner of Police,
Ambattur District,
Chennai 600 053.

...Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus calling for the records in connection with the Charge Memo Tha.Koo.No.14/2009, dated 03.02.2009 issued by the 4th Respondent herein and the order of punishment PR No.14/PR.1/08; CSPO.No.1268/2009, dated 10.11.2009 passed by the 4th Respondent herein and the order of rejection on Appeal C.No.H1/1000/59193/2009; Appeal No.42/H1/2009, dated 23.11.2009 passed by the 3rd Respondent herein and the order of (Modified) punishment Rc.No.207885/AP.3(3)/2009, dated 29.01.2011 passed by the 2nd Respondent herein and the order of rejection on Review Application G.O.(2D) No.313, dated 16.07.2013 passed by the 1st Respondent herein and quash the same and consequently direct the Respondents to extend all service benefits including promotion

with his batch mates and regularisation of suspension period, etc.

For Petitioner : Dr.R.Sampathkumar
For Respondents : Mr.A.N.Thambidurai,
Special Government Pleader

ORDER

Petitioner has come up with this Writ Petition seeking to quash the order dated 03.02.2009 passed by the 4th Respondent herein; the order of punishment dated 10.11.2009 passed by the 4th Respondent herein, the order of rejection on Appeal dated 23.11.2009 passed by the 3rd Respondent herein and the order dated 29.01.2011 passed by the 2nd Respondent herein and the order of rejection on Review Application G.O.(2D) No.313, dated 16.07.2013 passed by the 1st Respondent herein and for a consequential direction to the Respondents to extend all service benefits including promotion on par with his batchmates and to regularize the period of suspension.

2. According to the Petitioner, he joined the services of the Police Department in the year 1981 as a Grade II Police Constable. He was upgraded to the post of Grade I Police Constable in the year 1991 and in 1996, he was promoted to the post of Head Constable. While, the Petitioner was working as a Head Constable in the office of the Social Justice and Human Rights Mount Unit, there was power clash between two higher Police Officers and the Commissioner of Police, Chennai Suburban directed the Inspector of Police, T11, Thiruninravur Police Station to send an adverse Special Report against him vide Memo 360/COP/Camp/2008, dated 22.12.2008. On that basis, the Inspector of Police, Human Rights Wing had prepared a false Special Report against the Petitioner, based on which, he was suspended from service on 03.02.2009 vide order in RC.No.H1/85/5073/2009, CSPO No.154/2009 passed by the 4th Respondent herein. Subsequently, a Charge Memo dated 03.02.2009 was also issued by the 4th Respondent herein for the following charges:

(i) Having received Rs.2000/- on 05.10.2008 as bribe from Tr.Bakiyam, S/o.Chinnapan who is working in National Insurance Company, Anna Nagar, for helping him to register FIR on his Petition on 05.10.2008, is a reprehensible conduct.

(ii) Having received a sum of Rs.500/- on 25.10.2008 from Tmt.Janifar Sagar, No.87/5,

Manoharan Street, South Boag Road, T.Nagar, Chennai-17 for not taking action against her on a complaint filed by her son-in-law Tr.Rajasekaran, is a reprehensible conduct.

3. It is stated by the Petitioner that, he received the Enquiry Report on 16.10.2009 and that, he submitted his explanation to the same in time. But, the 4th Respondent rejected his explanation and accepted the conclusion made by the Enquiry Officer and imposed the punishment of "dismissal from service" vide order dated 10.11.2009. Aggrieved by the same, the Petitioner preferred an Appeal before the 3rd Respondent herein on 18.11.2009. But, the said Appeal was rejected by the 3rd Respondent vide order dated 23.11.2009, without assigning any reasons. Thereafter, on 11.02.2010, the Petitioner preferred a further Appeal before the Additional Director General of Police and the same was considered and the punishment of 'dismissal from service' was modified vide order dated 29.01.2011 as "three stage reduction in pay for three years to affect future emoluments".

4. Aggrieved by the said order dated 29.01.2011, the Petitioner preferred a Review Application dated 29.03.2011 before the 1st Respondent herein. However, the said Review Application was rejected mechanically without any sustainable reason. Hence, having no other alternative, challenging the orders passed against him and for a consequential direction to the Respondents to extend all service benefits to him including promotion on par with his batchmates and to regularize the period of suspension, the Petitioner has come up with the present Writ Petition.

5. In the counter Affidavit filed by the Respondents, it is stated that, on receipt of a Petition from the Inspector General of Police, Social Justice and Human Rights on 05.10.2008, one Bakkiam was enquired by the Sub-Inspector of Police in the Office of the Protection of Civil Rights Wing, and sent. Subsequently, the then Commissioner of Police, erstwhile Chennai Suburban Police, Chennai-16, in his Memo dated 22.12.2008, directed G.Sundaramurthy, Inspector of Police to enquire into the allegations against the Petitioner herein and submit a Report. Accordingly, the Inspector of Police, viz. Sundaramurthy enquired the said Bakkiam on 30.01.2009 and sent a Report, dated 02.02.2009.

6. It is further stated in the counter that, the said Bakkiam in his statement during the oral enquiry, deposed that, he came on 05.10.2008 to the Office and the Petitioner herein demanded a sum of Rs.2000/- for registering the case and that,

he paid the said amount to him. During the cross-examination of the said Bakkiam by the Petitioner, Bakkiam straightaway answered to him that, the Petitioner received a sum of Rs.2,000/- as bribe from her, for registering the case. Hence, the first charge alleged against the Petitioner was held to be proved.

7. As regards the second charge alleged against the Petitioner, it is stated by the Respondents that, P.W.3-Inspector of Police, G.Sundaramurthy has deposed that, during the oral enquiry held on 30.01.2009, he enquired the witness viz. Jenifer Sagar, who has given a statement alleging that, the Petitioner has visited her house on the ground that, her son-in-law has lodged a complaint against her under Protection of Civil Rights Act and in order to avoid registering a case against her, he threatened and received bribe of Rs.500/-, by cheating her. However, P.W.2 - Jenifer Sagar did not turn up for the enquiry in the Punishment Roll against the Petitioner, in spite of communications sent to the given address, and that, her whereabouts are not known. Hence, the Oral Inquiry Officer dispensed with the witness of P.W.2 - Jenifer Sagar and proceeded the enquiry based on her statement given before the Preliminary Inquiry Officer. It is also stated in the counter that, the Petitioner did not raise any question to the Preliminary Inquiry Officer (P.W.3) during his cross-examination to prove that, he has not received any bribe from Jenifer Sagar on 25.10.2008. In the absence of P.W.2 -Jenifer Sagar, the Oral Inquiry Officer, by taking into account the statement given by her before the Preliminary Inquiry Officer and the deposition of P.W.3 - Sundaramurthy (Preliminary Inquiry Officer), held the charge in Count No.2, as proved.

8. It is argued by the learned counsel for the Petitioner that, though, the Charge Memo was issued against the Petitioner alleging that, he received bribe from one Bakiyam, examined as P.W.1 and one Jenifer Sagar, examined as P.W.2, the said Jenifer Sagar was not examined by the Enquiry Officer and hence, the allegation that, the Petitioner received bribe from her cannot be held to be proved by the Enquiry Officer. As far as the first Charge is concerned, learned counsel submitted that, the Inspector of Police, Human Rights Wing viz. Sundaramurthy, examined as P.W.3, had sent a false Report against the Petitioner that, he enquired P.W.1-Bakiyam on 05.10.2008. He pointed out that, on 05.10.2008, P.W.3 was not working in Human Rights Wing and that, the presence of the said Inspector in the Human Rights Wing was not specified in the General Diary (G.D.) maintained in the Office. Furthermore, P.W.3- Inspector of Police, Sundaramurthy has also accepted during the cross-examination that, he has not met P.W.1 - Bakiyam on 05.10.2008. Hence, according to the learned counsel, the Special Report

given against the Petitioner stating that, the enquiry was conducted on 05.10.2008 is totally false and untrue. On the above grounds, learned counsel for the Petitioner contended that, the impugned orders are liable to be set aside.

9. Per contra, learned Special Government Pleader appearing for the Respondents submitted that, the Petitioner did not turn up for the oral Inquiry on 16.06.2009 in spite of Summons being sent. Hence, oral enquiry was proceeded and statements of witnesses were recorded. Further, on the Petitioner's request on 08.08.2009, he was allowed to cross-examine the witnesses on 16.09.2009.

10. He further submitted that, during the oral enquiry on 30.01.2009, the Inspector of Police enquired the witness viz. Jenifer Sagar, who has given a statement alleging that, the Petitioner has visited her house on the ground that, her son-in-law has lodged a complaint against her under Protection of Civil Rights Act and in order to avoid registering a case against her, he threatened and received a sum of Rs.500/- as bribe, by cheating her. As she did not turn up for enquiry before the Inquiry Officer, her oral statement was taken on record and the second charge against the Petitioner was held to be proved.

11. As regards examination of P.W.1 is concerned, learned Special Government Pleader, referring to paragraph 10 of the counter Affidavit submitted that, the Inspector of Police viz. Sundaramurthy examined as P.W.3, himself has admitted that, he joined the Protection of Civil Rights Wing on 10.10.2008 and the witness Bakkiam was initially enquired by the Sub Inspector of Police on 05.10.2008 regarding his complaint, and that, on 30.01.2009, he enquired the witness Bakkiam. During the preliminary enquiry, the witness Bakkiam clearly deposed about the payment of bribe of Rs.2000/- to the Petitioner herein and hence, the first charge against the Petitioner was held to be proved.

12. According to the learned Special Government Pleader, the evidence of P.W.1 and P.W.3 have been considered carefully and the punishment of 'dismissal from service' was imposed on the Petitioner. Subsequently, based on the Mercy Petition submitted by the Petitioner, the punishment was modified into that of 'three stages reduction of pay for three years to affect future emoluments', and the Petitioner was reinstated into service on 11.02.2011. Since the Petitioner was awarded a statutory punishment, the period of suspension and out of employment period have been settled as eligible leave and Extraordinary leave without pay and allowances, to the extent necessary, as per Rules. Hence, he prayed for dismissal of the Writ Petition.

13. Heard the learned counsel on either side and perused the material documents available on record.

14. In the case on hand, for the charge of receiving bribe from P.W.1 viz. Bakkiyam and P.W.2 viz. Jenifer Sagar, the Petitioner was issued Charge Memo and based on the Enquiry Report, he was imposed with the punishment of 'dismissal from service'. Subsequently, on considering the Petitioner's Appeal Petition, the 2nd Respondent modified the punishment imposed on him into that of "three stage reduction in pay for three years to affect future emoluments" vide order dated 29.01.2011. Seeking to quash the same and to regularize the period of suspension, the Petitioner has approached this Court.

15. Though according to the Petitioner, he is innocent of the charges alleged against him, as regards the first charge of receiving a sum of Rs.2000/- from P.W.1 - Bakkiyam, it is seen that, even during the oral enquiry made by the Sub-Inspector of Police, Human Rights Wing on 05.10.2008 and during the enquiry made by the Inquiry Officer and also during the cross-examination by the Petitioner, the said witness, Bakkiyam has clearly stated that, the Petitioner received a sum of Rs.2000/- as bribe from her and no contradictory statement was made by him. Hence, the Enquiry Officer held the first charge against the Petitioner, as proved.

16. Coming to the second charge of receiving a sum of Rs.500/- from one Jenifer Sagar, examined as P.W.2, it is seen that, she has given such statement during the oral enquiry made by the Preliminary Enquiry Officer and she did not appear for the enquiry before the Inquiry Officer, in spite of Summons being sent to her. However, recording the statement made by her before the Preliminary Enquiry Officer, the second charge against the Petitioner was held to be proved.

17. The Disciplinary Authority has extensive discretion, when it comes to imposition of punishment for proven delinquency, subject to the principles of proportionality and impartiality. Here, the Petitioner was imposed with the punishment of 'dismissal from service' mainly for the charge proved in respect of receiving bribe from P.W.1 - Bakkiyam and the said punishment was modified by the Appellate Authority into that of "three stage reduction in pay for three years to affect future emoluments" and he has been reinstated into service.

18. 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 the conscience,

the Courts interfere with the same, in exercise of powers under Article 226 of the Constitution of India. In Prem Nath Bali - Vs - High Court of Delhi reported in (2015 (16) SCC 415), the Hon'ble Supreme Court has 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)

19. On an overall consideration of the materials, this Court is in consensus with the punishment modified by the Appellate Authority, as the modified punishment is certainly not

disproportionate to the misconduct on the part of the Petitioner, and he cannot expect showers of mercy. The Petitioner, having been found guilty of the charges has been dealt with promptly in accordance with law and this Court, sitting under Article 226 of the Constitution of India, is not inclined to interfere with the same in exercise of its powers of judicial review, which, as stated above, has to be exercised with caution and the present case does not fall under the category where the exercise of judicial review is warranted.

In fine, the Writ Petition stands dismissed as devoid of merits. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Principal Secretary (Home)
Government of Tamil Nadu,
Fort St. George,
Chennai 600 009.
2. The Director General of Police,
Tamil Nadu Police Head Quarters,
Mylapore,
Chennai 600 004.
3. The Commissioner of Police,
Greater Chennai Police,
Vepery,
Chennai 600 007.
4. The Deputy Commissioner of Police,
Ambattur District,
Chennai 600 053.

+1cc to The Government Pleader, SR36970

W.P.No.18805 of 2014

CO (AD)
BDL/18/01/2021