

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 17-08-2020

Judgment pronounced on : 25-09-2020

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Writ Appeal No. 3110 of 2019

(Heard through Video-conferencing)

1. The Director General of Police/
Inspector General of Prisons
Chennai - 600 008
2. The Deputy Inspector General of Prison
Chennai - 600 008
3. The Superintendent of Prisons
Central Prison, Vellore
Vellore District .. Appellants/Respondents

Versus

K. Chidambaram .. Respondent/Petitioner

Appeal filed under Clause 15 of The Letters Patent against the Order dated 05.07.2018 passed in WP No. 14798 of 2012 on the file of this Court.

WP.No.14798 of 2012:Petition praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent in Proceedings No. 39163/EW2/2011 dated 16.11.2011 confirming the order passed by the second respondent in Proceedings No. 1221/Mu.U/2011 dated 2.9.2011 and the order passed by the third respondent in No.10190/Po-1/2010 dated 5.4.2011 and quash the said orders and direct the respondents to reinstate the Petitioner in service with all consequential benefits

For Appellants : Mrs. A. Srijevanthi
Special Government Pleader

For Respondent : Mr. Rajendran

JUDGMENT

R. SUBBIAH, J

This intra-court appeal is filed by the appellants aggrieved by the order dated 05.07.2018 passed by the learned single Judge in Writ Petition No. 14798 of 2012. By the order dated 05.07.2018, the learned single Judge allowed the writ petition filed by the respondent herein and remanded the matter back to the third respondent with a direction to moderate the penalty of dismissal from service imposed on the respondent/writ petitioner with any other punishment other than dismissal, removal and compulsory retirement on the petitioner.

2. For the purpose of disposal of this appeal, certain facts, which are germane and absolutely necessary are referred to herein-below.

3. The respondent herein/writ petitioner was appointed as Grade II Warder on 22.08.2005 and on such appointment, he was posted at Central Prison, Trichy. Subsequently, on 10.06.2010, he was transferred to Central Prison, Vellore on administrative grounds. The respondent also joined duty in the Central Prison, Vellore on 11.06.2010. During the course of such employment, on 18.10.2010, the respondent came to Central Prison, Vellore at about 1.10 pm (B Shift) for duty. When the respondent was frisked by the Gate Keeper, including the plastic bag carried by him, it was found that along with an unstitched six meters uniform cloth, the respondent concealed one mobile phone with dual sim facility without sim, with battery, which he attempted to smuggle inside the prison. On noticing the above contraband, he was made to appear before the Superintendent of Prisons, Central Prison, Vellore. When an intensive search was made in the presence of Superintendent of Prisons and the Jailor, it was further found that the respondent was in possession of one Charger (moulding removed) for the cellular phone at the bottom of his right leg socks. According to the appellants, as per Rule 298 (rr) and 126 of Prison Department Rules, mobile phone, battery charger and other allied articles are prohibited inside the prison. As the respondent contravened the aforesaid Rules, on the same day i.e., 18.10.2010, an order of suspension was passed against him by the third respondent. A statement of the

respondent was also recorded on the same day in which he admitted to have been in possession of the aforesaid contraband and attempted to smuggle it inside the prison.

4. In connection with the aforesaid incident, a charge memo dated 09.11.2010 was issued to the respondent by the third appellant herein under Section 17 (b) of The Tamil Nadu Civil Services (Discipline and Appeal) Rules. On receipt of the charge memo, the respondent/writ petitioner submitted his explanation on 24.11.2010 denying the charges. Not satisfied with the explanation offered by the respondent-writ petitioner, an enquiry officer was appointed. The enquiry officer commenced the enquiry on 22.01.2011 and concluded it on 17.03.2011. During the course of enquiry, witnesses were examined and opportunity of cross-examination of the witnesses was afforded to the respondent. On concluding the enquiry, the enquiry officer submitted a report to the third appellant on 15.03.2011, holding that all the charges levelled against the respondent are proved. The report of the enquiry officer was sent to the respondent on 17.03.2011 and he was called upon to submit his further explanation to the report of the enquiry officer. Accordingly, the respondent/writ petitioner submitted a further explanation on 29.03.2011. The third appellant, considering the report of the enquiry officer and the explanation offered by the respondent, passed an order dated 05.04.2011 dismissing the respondent from service for the proved misconduct. Assailing the order of dismissal, the respondent preferred an appeal to the second appellant which was also rejected on 02.09.2011. The review preferred by the respondent to the first appellant was also rejected on 16.11.2011. Challenging the aforesaid orders passed by the appellants, the respondent filed the writ petition before this Court, challenging the order of dismissal dated 05.04.2011 of the third appellant and the consequential orders of rejection passed by the respondents 1 and 2.

5. Before the Writ Court, it was mainly contended on behalf of the respondent that the enquiry officer himself has cross-examined the witness and thereby he acted as a prosecutor. Therefore, it was sought to be projected that the enquiry was not conducted in accordance with law and it is vitiated. According to the respondent, when once the enquiry is vitiated, all the orders passed by the appellants will have no force of law. Above all, it was contended on behalf of the respondent that even assuming that the respondent had committed the delinquency, the punishment of dismissal from service is grossly disproportionate and excessive.

6. The writ petition was contested by the appellants herein by filing a counter affidavit. According to the appellants, the charges levelled and proved against the respondent are serious in nature and it warrants imposition of capital punishment. It was also contended by the appellants that the enquiry was conducted in accordance with law and it is not vitiated, as alleged by the respondent/writ petitioner. In any event, according to the appellants, the punishment of dismissal from service is proportionate to the charges and it cannot be said to be excessive.

7. The learned single Judge, on consideration of the rival submissions and the material records made available, recorded a finding that the punishment of dismissal imposed on the respondent is shockingly disproportionate to the gravity of misconduct alleged against the respondent. Useful reference to Para Nos. 12 to 15 of the order dated 05.07.2018 shall be quoted hereunder:-

"12. Be that as it may, there appears to be some force in the arguments advanced on behalf of the petitioner that the enquiry was not properly conducted and which probably might have resulted in negation of correct appreciation of evidence which was available for the petitioner. In any event, this Court considering the overall circumstances of the case, is of the considered view that the punishment, which was imposed on the petitioner i.e., dismissal from service, is shockingly disproportionate to the gravity of misconduct alleged against the petitioner. In fact, as rightly contended by the learned counsel for the petitioner that when the petitioner had pleaded for lenient view to be taken in the matter before the revisional authority, the same was not considered in proper perspective and the revision petition came to be mechanically rejected by the first respondent on 16.11.2011.

13. This Court apart from holding the punishment as disproportionate, was not satisfied with the conduct of the enquiry against the petitioner which in the opinion of this Court, is flawed enquiry and therefore, the findings cannot be entirely relied on for the purpose of imposition of penalty, that too, penalty of dismissal from service on the petitioner. In any event, since there is an admission of fact by the petitioner that there appears to be criminal negligence of duty on the part of the petitioner, for which, a suitable punishment has to be imposed.

14. In the entirety of circumstances, this Court is of the considered view that the penalty of dismissal from service has to be moderated and therefore, the impugned order of the first respondent in proceedings No. 39163/EW2/2011 dated 16.11.2011 and the order passed by the second respondent in proceedings No.1221/Mu.U/2011 dated 02.09.2011 and the order passed by the third respondent in No.10190/Po-1/2010 dated 05.04.2011 are hereby set aside. The matter is remanded back to the third respondent to moderate the penalty and impose any other punishment on the petitioner other than dismissal, removal and compulsory retirement on the petitioner. The moderated penalty to be imposed on the petitioner shall take effect from the date of original order of dismissal from service.

15. Consequently, the petitioner is directed to be reinstated in service and it is made clear that the petitioner is not entitled to any back wages during the period of his non-employment. But however, entitled to all other notional benefits as admissible to the petitioner on the penalty being moderated. The third respondent is directed to pass appropriate orders as indicated above, within a period of eight weeks from the date of receipt of a copy of this order."

8. Assailing the order passed by the learned single Judge, the learned Special Government Pleader appearing for the appellants contended that the appellants, on consideration of the nature of delinquency committed by the respondent, his admission of the guilt and the report of the enquiry officer, have come to a definite conclusion no other punishment will be commensurate to the proved misconduct committed by the respondent except the punishment of dismissal from service. Further, when the disciplinary authority, the appellate authority as well as the revisional authority have come to a conclusion that the respondent has to be imposed only with the punishment of dismissal from service, such a conclusion cannot be brushed aside by the learned single Judge by substituting his own view. According to the learned Special Government Pleader, the learned single Judge, in a case of this nature, ought not to have exercised his discretionary relief to interfere with the order of punishment imposed by the appellants and it calls for interference by this Court. The learned single Judge did not consider that the order of dismissal from service has been preceded by a valid enquiry in which all due opportunity has been given to the respondent to cross-examine the witnesses.

The respondent did not raise his little finger as to the manner in which the enquiry was conducted either in his appeal or review, while so, for the first time, such a plea was raised before the learned single Judge as if the enquiry was not conducted properly. Thus, it is submitted that the order of dismissal from service is adequate and proper, befitting the nature of delinquency committed by the respondent and therefore, the learned Special Government Pleader prayed for allowing this appeal.

9. Per contra, the learned counsel for the respondent would contend that the learned single Judge rightly found that the enquiry is vitiated and the report of the enquiry officer cannot form the basis for imposition of punishment against the respondent. The learned single Judge, in exercise of the power under Article 226 of The Constitution of India has concluded that the punishment of dismissal from service is shockingly disproportionate and therefore, directed the third appellant to impose any other punishment other than the punishment of dismissal, removal or compulsory retirement. According to the learned counsel for the respondent, the order passed by the learned single Judge does not warrant any interference by this appellate Court and therefore, he prayed for dismissal of the appeal.

10. We have heard the counsel for both sides and perused the order passed by the appellants, which are impugned in the writ petition, including the order passed by the learned single Judge.

11. On 18.10.2010 in the afternoon, when the respondent attended B duty, he was subjected to physical frisking and at that time, he was found in possession of cellular phone, battery and charger, concealed in a plastic bag and also in his right leg socks, purportedly with an intention to smuggle them inside the prison. According to the appellants, as per Rule 298 (rr) and 126 of Prison Department Rules, mobile phone, battery, charger and other allied articles are prohibited inside the prison. As the respondent attempted to smuggle those articles inside the prison, by concealing them in a bag as also in his right leg beneath the socks, purportedly to supply those contraband to the prisoners, he was suspended from service on the same day. Following his suspension, an enquiry was conducted. During the course of enquiry, four witnesses were examined on the side of the Department and they were subjected to cross-examination by the respondent. The enquiry officer held the charges as proved which was also communicated to the respondent. The respondent was called upon to submit his

further explanation based on the report of the enquiry officer and accordingly an explanation was submitted. The third appellant, not satisfied with the explanation offered by the respondent and the fact that the respondent himself had admitted his guilt soon after the occurrence, concluded that the punishment of dismissal from service will be commensurate to the charges. Such a conclusion reached by the disciplinary authority was also accepted by the appellate authority as also the revisional authority while rejecting the appeal/review as the case may be filed by the respondent herein.

12. On the fateful day when the respondent was caught red handed, with the contraband in his possession, he was produced before the third appellant. On such appearance, the respondent had voluntarily given a statement in writing, admitting his guilt. Notwithstanding such an admission of guilt on the part of the respondent, in compliance with the principles of natural justice, an enquiry was conducted. During the course of enquiry, the Department examined four witnesses and they were subjected to cross-examination by the respondent. However, before the Writ Court, it was contended that the enquiry officer himself has posed question to the witnesses besides cross-examined them and thereby the enquiry officer acted as a prosecutor. But to our dismay, we find that such a plea was never raised by the respondent before the appellants, but it was raised for the first time only before the Writ Court. Therefore, we see no force in such a submission on the part of the respondent that the enquiry is vitiated. Above all, when the respondent himself has admitted his guilt, in writing, no amount of further evidence would over weigh the admission. However, to comply with the principles of natural justice, an enquiry was conducted and adequate opportunity was given to the respondent to defend the charges. Thus, apart from the admission of the respondent, evidences were brought on record to prove the guilt of the respondent during the course of enquiry.

13. As regards the quantum of punishment, we feel that the appellants, as employer, have lost the confidence in the respondent in discharge of his duties especially when he contravened the Prison Rules in attempting to supply mobile phone and other accessories to the prisoners. The respondent is working as a Warder and if he himself indulges in such an act to facilitate the prisoners to establish contact outside the prison through the cellular phone, it requires a serious outlook. Having regard to the above, the disciplinary authority, appellate authority and revisional authority, in unison, have formed an opinion that punishment of dismissal from service will be commensurate to the charges against the respondent. Such an

opinion was formed not only on the basis of the material records collected during the course of the enquiry but also on the strength of the admission of guilt made by the respondent in writing. The fact that the respondent has admitted his guilt in writing was also recorded by the learned single Judge. It is well settled that an admitted fact need not be proved. In such a circumstance, we are of the opinion that the punishment imposed on the respondent is adequate and it is not shockingly disproportionate to the charges. Therefore, taking a lenient view in the matter of imposition of punishment, in the given facts and circumstances, is not warranted. When the order of dismissal from service is preceded by a valid enquiry, this Court, in exercise of power under Article 226 of The Constitution of India, cannot interfere with such an order. In this context, we are fortified by the decision of the Honourable Supreme Court in the decision reported in *State Bank of Bikaner & Jaipur versus Nemi Chand Nalwaya* reported in 2011 4 Law Weekly 769 wherein it was held that in exercise of the powers conferred under Article 226 of The Constitution of India, the High Court cannot interfere with an order of dismissal preceded by a valid enquiry, unless it is noticed that such enquiry is perverse and the conclusion arrived at is contrary to the evidence available on record.

14. The power of judicial review under Article 226 of The Constitution of India to interfere with the order of punishment recorded by the disciplinary authority by re-appreciating the materials on record, came up for consideration of the Honourable Supreme Court in the case of *High Court of Judicature at Bombay through its Registrar vs. Udaysingh and others* reported in AIR 1997 Supreme Court 2386 wherein it was held that by the Honourable Supreme Court that the High Court, in exercise of power under Article 226 of The Constitution of India, has no power to entrench on the jurisdiction of the disciplinary authority and to re-appreciate the evidence. All that is permissible is to ensure that the conclusion arrived at is based on evidence supporting the finding or whether the conclusion is based on no evidence.

15. In the present case, the appellants have taken note of the admission of guilt made by the respondent soon after the occurrence supported by the evidence recorded during the course of enquiry to impose the punishment of dismissal from service. It is in those circumstances, the plea of the respondent for taking a lenient view, was not considered by the revisional authority while rejecting the review filed by him. Having regard to the above circumstances, we are of the view that the appeal filed by the appellants deserves to be allowed by setting

aside the order passed by the learned single Judge.

16. In the result, we set aside the Order dated 05.07.2018 passed in WP No. 14798 of 2012. The Writ Appeal is allowed. No costs.

Sd/-
Asst.Registrar (CS III)

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Sub Asst. Registrar

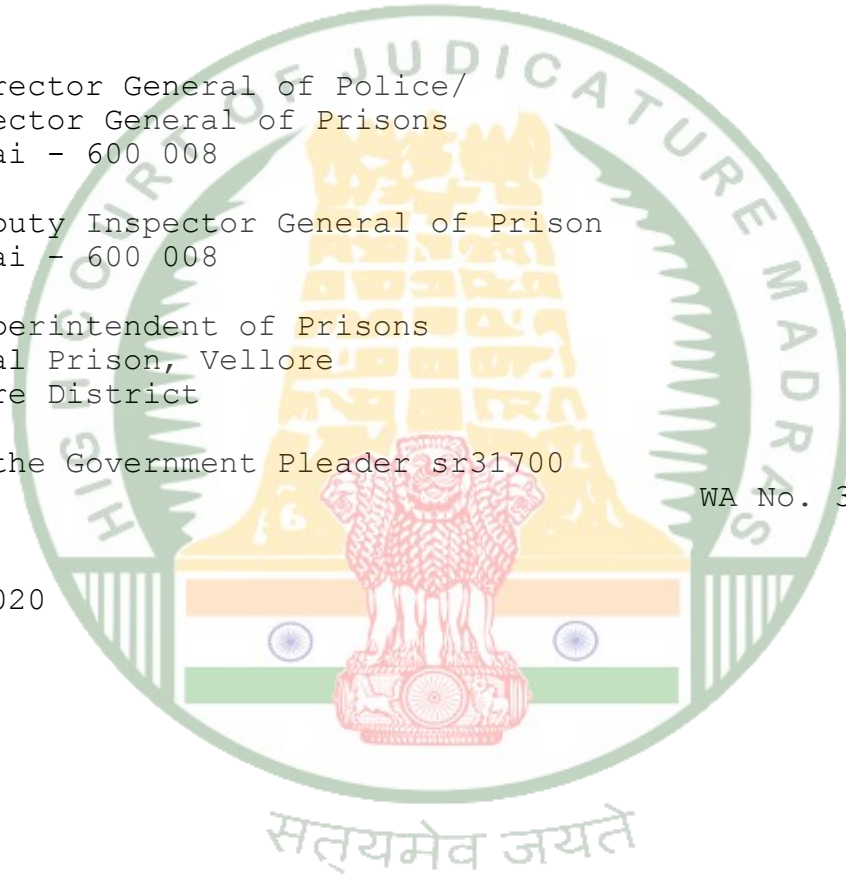
To

1. The Director General of Police/
Inspector General of Prisons
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Central Prison, Vellore
Vellore District

+1 cc to the Government Pleader sr31700

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