

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

W.P.Nos.16744 & 16745 of 2007
(O.A.Nos.2835 & 2834 of 2003)

G.Manickam (H.C.1719)

...Petitioner in both WPs

Vs.

1.The Commissioner of Police,
City Police Office,
Madurai City,
Madurai.

2.Deputy Commissioner of Police,
City Police Office,
Madurai City,
Madurai.

...Respondents in WP.No.16744/2007

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

2.Director General of Police,
Chennai - 4.

3.The Commissioner of Police,
City Police Office
Madurai City,
Madurai.

...Respondents in WP.No.16745/2007

Prayer in WP.No.16744/2007 : Originally this petition has been filed as Original Application No.2835 of 2003 before the Tamil Nadu Administrative Tribunal at Chennai and after abolition of TNAT, petition has been transferred and numbered as W.P.No.16744 of 2007.

Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the second respondent herein passed in his proceedings No.Ka.Aa.Aa.No.723/2000 Na.Ka.No.T1(1)/Tha.Pa.210/96&223/96, dated 23.03.2000 for recovery of money, quash the same insofar as the applicant is concerned.

Prayer in WP.No.16745/2007 : Originally this petition has been filed as Original Application No.2834 of 2003 before the Tamil Nadu Administrative Tribunal at Chennai and after abolition of TNAT, petition has been transferred and numbered as W.P.No.16745 of 2007.

Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the second respondent herein passed in his proceedings No.2466207/Con.III(2)/95 dated 26.07.1999 imposing a penalty of reduction in time scale of pay by two stages for a period of one year without cumulative affect and the consequential proceedings passed by the third respondent in C.P.O.No.2923/2000, C.No.Di(i)/P.R.210-223/96 dated 25.11.2000 and C.P.O.No.168/2001, C.No.L.1/2426/2001 dated 15.01.2001 settling the suspension period of the applicant as eligible leave and further consequential order passed by the first respondent in his G.O.Ms.No.588 Home (Pol.VI) dept. dated 26.06.2001, confirming the orders of the second respondent and quash the same.

For Petitioner : Mr.M.Manivasagam
(in both Wps)

For Respondents: Mr.K.Magesh
(in both Wps) Special Government Pleader

ORDER

These two writ petitions have been filed by a retired constable, challenging the order passed by the second respondent who suo motu reviewed the order passed by the Enquiry Officer and imposed the punishment of reduction in time scale of pay by two stages for a period of one year without cumulative affect and also directed recovery of a sum of Rs.6,000/- from the petitioner.

2. It is averred in the writ petitions that the petitioner has filed the Original Applications before the Tamil Nadu Administrative Tribunal, Chennai. Subsequently, due to abolition of the Tribunal, these matters were transferred to this Court and renumbered as W.P.Nos.16744 & 16745 of 2007.

3. The case of the petitioner is that he joined the Police force as Police Constable Grade - II in the year 1976. He was given periodical promotions and as such, he was promoted to the post of Head Constable in the year 2002. While so, the petitioner was issued with the charge memo for the allegation

that he tortured and accused one Karuppasamy when he was in Police custody, as a result of which, the said accused died. An inquiry was conducted by the Revenue Divisional Officer who has given a report that the accused died only because of the injuries he sustained when he was under Police custody.

4. The petitioner was issued with a charge memo by the Police Department and an inquiry was conducted by the Deputy Commissioner of Police, Madurai City. On examination of witnesses, the Enquiry Officer held that the accused died due to heart failure and not because of the injuries that he sustained while in Police custody. The findings of the Enquiry Officer was upheld by the Inspector General of Police vide his proceedings dated 29.11.1997. However, the Director General of Police exercising the suo motu review jurisdiction, reviewed the order of the Appellate Authority and concluded that the petitioner was also responsible for the death of the accused and accordingly, imposed the punishment as aforesaid.

5. The Government of Tamil Nadu awarded compensation to the widow of the deceased and the said compensation was sought to be recovered from the Officers who were involved in the alleged custodial death of the said Karuppasamy. The said two orders of the second respondent are sought to be assailed in the present writ petition.

6. The Commissioner of Police, Madurai City, have filed their counter affidavit in both the writ petitions. The counter affidavit is absolutely of no use in aiding the case of the respondent. The third respondent has merely stated the facts of the case and not met any of the allegations made in the affidavit of the petitioner.

7. It is noted that when the writ petition was taken up for hearing on 06.04.2011, there was no representation on behalf of the petitioner and therefore, both the writ petitions were dismissed for non-prosecution. Subsequently, the petitioner moved an application for restoration of the writ petitions and they were allowed and thus, the writ petitions are taken up again for hearing.

8. Heard learned counsel for the petitioner and learned Special Government Pleader for the respondents.

9. It is seen that there were 14 Police Personnels who were charged for the alleged custodial death of the detainee under Police custody, however, charges were pressed only against a few persons. Four such delinquent filed original application before the Tamil Nadu Administrative Tribunal and the Tribunal was pleased to pass an order, exonerating the applicants therein and

punishment imposed was ordered to be set aside. The Tribunal also set aside the amount ordered to be recovered from the applicants therein.

10. The learned counsel for the petitioner brought to the notice of this Court, the G.O.(2D)No.11 dated 09.01.2007, wherein, the Government has passed an order in respect of Head Constable Mr.P.S.Kumaran. The said P.S.Kumaran was also one of the delinquents in the said alleged custodial death. However he has not filed any application before the Tamil Nadu Administrative Tribunal challenging the punishment imposed on him and not filed any writ petition before this Court. However, the Government, based on the order passed by the Tamil Nadu Administrative Tribunal, applied the same order in the case of Karrupasamy and set aside the punishment imposed on him.

11. This Court is of the considered view that when the Government set aside the punishment imposed on the delinquents even without the punishment being challenged either before the Tribunal at that point of time, or before this Court by way of writ petition, the same benefit should be extended to the petitioner herein also. The Government has allowed the petitioner to run from pillar to post when the co-delinquents have been found to be innocent and the punishment imposed on them have been set aside and the recovery said to be made against them was also set aside.

12. The learned counsel for the petitioner brought to the notice of this Court, the judgment dated 17.06.2009 in W.P.No.42807 of 2006. This Court while dealing with the writ petition filed by co-delinquent, has set aside the punishment imposed on the petitioner therein holding that the Director General of Police, the second respondent herein, cannot exercise suo motu power of review. The relevant paragraph No.6 of the said order is extracted hereinunder for ready reference :-

" Referring to Rule 15(A) (I) (ii) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules 1955. Mr.M.S.Suondararajan, Learned counsel for the petitioner submitted that the Director General of Police, Chennai, the first respondent being the Appellate Authority and not being subordinate to the Head of the Department, cannot exercise suo moto power of review under the said rules. He further submitted that the Government alone is competent to exercise the power of review, under rule 15(A) of the said rules. In this context, he placed reliance on a Division Bench of this Court in P.Sabasan Vs. The State of Tamil Nadu represented by the Secretary to Government, Home Department, Madras and another reported in 1984

W.L.R.557, and an unreported judgment of this Court in W.P.No.9394 of 2000, dated 20.11.2003 and a recent judgment in A. Arunagiri Vs. Principal Commissioner and Commissioner of Revenue Administration, Chepauk, Madras and another reported in (2009) 3 MLJ 991."

13. Therefore, this Court has no hesitation to allow the writ petition filed by the petitioner by following the order of this Court stated supra and also taking into consideration the Government Order in G.O.(2D) No.11 dated 09.01.2007, which was passed even to a delinquent who has not challenged his punishment either before the Tamil Nadu Administrative Tribunal or before this Court.

14. In the result, these Writ Petitions are allowed. The respondents shall pass appropriate orders, within a period of three months from the date of receipt of a copy of this order. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sni

To

- 1.The Commissioner of Police,
City Police Office,
Madurai City, Madurai.
- 2.Deputy Commissioner of Police,
City Police Office,
Madurai City, Madurai.
- 3.The Secretary to Government,
Home Dept. (Pol. VI)
Fort St.George, Chennai - 9.
- 4.Director General of Police,
Chennai - 4.
- 5.The Commissioner of Police,
City Police Office
Madurai City, Madurai.

+2 Ccs to Mr.M.Manivasagam, Advocate sr 35807 & 35808.
+1 CC to The Government Pleader sr 36099.

W.P.Nos.16744 & 16745 of 2007

SPD (CO)
SP (09/12/2020)



WEB COPY