



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.06.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P. (MD)No.8200 of 2009

and M.P(MD)No.1 of 2009

WEB COPY

B.Balraj

... Petitioner

Vs.

1.The Director General of Police,
Tamil Nadu, Chennai - 600 004.

2.The Deputy Inspector General of Police,
Ramanathapuram Range,
Ramanathapuram,
Ramanathapuram District.

... Respondents

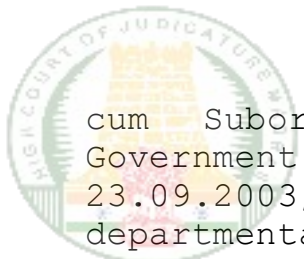
PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the first respondent in Rc.No.216140/Con.V(2)/2003 dated 12.03.2009 and quash the same and consequently restore his pay to the earlier original stage with all consequential benefits.

For Petitioner	: Mr.T.Antony Arul Raj
For Respondents	: Mr.J.Gunaseelan Muthiah, Additional Government Pleader.

ORDER

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent in Rc.No.216140/Con.V(2)/2003 dated 12.03.2009 and to quash the same and consequently restore his pay to the earlier original stage with all consequential benefits.

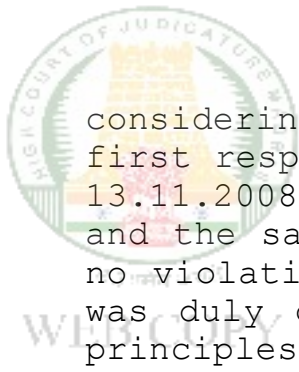
2.The case of the petitioner is that when the petitioner was serving as Head Constable in the Prohibition Enforcement Wing, Kulithalai, he was issued with a charge-memo under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. The charge was that on 22.11.2001 at about 16.00 hours, the police personnel of the Prohibition Enforcement Wing including the petitioner demanded bribe from one K.Silumbayee and a case in Crime No.11 of 2001 has also been registered. The Inspector of Police, Vigilance and Anti-Corruption, after investigation, had dropped the further action in the matter and



cum Subordinate Court, Karur on 06.01.2004. However, the Government issued G.O(2D)No.316, Home (Pol.II) Department, dated 23.09.2003, directing the first respondent to institute departmental disciplinary proceedings against the concerned officials. An enquiry was conducted and the enquiry officer gave a finding that the charges levelled against the petitioner were proved. Thereafter, the petitioner submitted a detailed representation on 22.12.2006 to the second respondent. The second respondent, vide order dated 02.02.2007, disagreed with the findings of the enquiry officer and proceeded to hold the charges against the petitioner as not proved and dropped further action against the petitioner. Thereafter, the first respondent had taken up the matter by way of *suo motu* review and issued a show-cause notice to the petitioner on 13.11.2008 stating that as to why any one penalties referred to in Rule 2 should not be imposed on him. The petitioner submitted a detailed representation to the first respondent on 15.12.2008. Thereafter, the first respondent passed the impugned order dated 12.03.2009 holding that the charges against him stood proved and awarded a punishment of reduction in time scale of pay by one stage for two years with cumulative effect from future increment. Aggrieved over the same, the petitioner filed the present Writ Petition.

3.The respondents have filed the counter-affidavit and stated that while the petitioner was working in Prohibition Enforcement Wing, Kulithalai on 22.11.2001, one Rengasamy of the same unit had demanded a sum of Rs.2,500/- on behalf of the petitioner and other police personnel and in furtherance of the said demand, on 26.11.2001, the said Rengasamy had demanded and accepted Rs.3,600/- as bribe from the complainant Silumbayee inside the Prohibition Enforcement Wing, Kulithalai and thus failed to maintain their absolute integrity. On the above allegations, an oral enquiry was conducted and on the proved minute drawn by the enquiry officer, according to the deposition of Pws and prosecution exhibits, the second respondent held that the charge against the petitioner 'not proved' by disagreeing with the findings of the enquiry officer and dropped the further action. On review, the first respondent issued show cause notice to the petitioner by holding the charge as proved on perusal of connected records and the findings of the enquiry officer and rightly awarded the punishment of reduction of time scale of pay by one stage for two years and the effect on future increment.

4.Further, it is stated that though P.W.1-Silambayee has been treated as hostile witness during oral enquiry, she has filed her earlier statements viz., Exs.P.1 and P.9 as prosecution exhibits and attested the same as correct, in which she has clearly stated that the petitioner had demanded bribe from her, but the second respondent came to the conclusion without



considering the above facts and issued orders is incorrect. The first respondent had issued show cause notice to the petitioner on 13.11.2008 after reviewing the connected records of the PR file and the same was issued as per Rule, under his power and there is no violation of Rules. Further, the explanation of the petitioner was duly considered and awarded the punishment according to the principles of natural justice.

5.The first contention putforth by the learned counsel appearing for the petitioner is that when the second respondent on appreciating the discrepancies in the statement given by Silambayee, who did not incriminate the petitioner in her deposition during the oral enquiry as well as in the cross-examination, has deposed that the petitioner did not demand any money from her and as the complainant has been shifting her stand against the complaint during the cross-examination, the second respondent has rightly dropped the charges as not proved and the first respondent has taken a contrary view and *suo motu* disagreed with the report of the second respondent and had not agreed with the petitioner's claim, the petitioner ought to have been heard before passing such order. The second contention putforth by the learned counsel appearing for the petitioner is based on the evidence that was let in during the enquiry.

6.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

7.With regard to the first contention putforth by the learned counsel for the petitioner, as per the Tamil Nadu Police Service (Discipline and Appeal) Rules, 1955, the *suo motu* power is vested with the first respondent and it would be against the service jurisprudence, if this Court has to accept the arguments of the learned counsel for the petitioner. There is no necessity for the first respondent to hear the petitioner before disagreeing with the findings of the second respondent. There is no violation of principles of natural justice. When the first respondent has disagreed with the orders passed by the second respondent, there is no necessity for giving an opportunity to the petitioner / delinquent before passing the said order. After deciding with the second respondent order, a show cause notice is given to the petitioner putting him on notice that the order on disagreement by the first respondent.

8.The learned counsel for the petitioner argued that on a *prima facie* reading of the evidence given by the complainant Silambayee, it is clear that Silambayee had not incriminated the petitioner. When that being the case, the first respondent ought to have agreed with the second respondent's view who had



exonerated the petitioner and the second contention putforth by the learned counsel appearing for the petitioner cannot be accepted.

9. On going through the materials available on record, it is seen that merely because the complainant shifted her stand during the cross-examination, does not vitiate the entire proceedings or cannot be the only ground for the petitioner to be exonerated, as the documents filed by the complainant will also corroborate with the complaint. There is much gap between the filing of the complaint and the enquiry and there are all possibilities when an enquiry is conducted at a later stage, the delinquent being a person attached to a uniform service may influence the complainant to turn hostile and these things has to be taken into consideration and in this situation, the documents filed by the complainant much before the enquiry should be taken into consideration for deciding the issue on hand. Though the petitioner has taken a stand that he was not present on 22.11.2001 when the bribe was demanded from the complainant Silambayee, but Ex.P.10 which was filed during the enquiry proves the presence of the petitioner at Prohibitory Enforcement Wing on 22.11.2001 when he demanded the bribe.

10. On a careful consideration of the materials available, the prosecution side has produced sufficient materials to prove the delinquency committed by the petitioner. Merely because the complainant turned hostile during the examination, the materials filed by the prosecution cannot be brushed aside and cannot be a ground on which the petitioner can seek exoneration.

11. Under these circumstances, based on the sequence of charges when tallying with the statement of P.W.1 along with the prosecution exhibits, which is sufficient to prove the charges levelled against the petitioner, this Court does not find any valid reason to interfere with the impugned order passed by the first respondent and the Writ Petition deserves to be dismissed and accordingly, the same is dismissed. No costs.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



To

WEB COPY

1.The Director General of Police,
Tamil Nadu,
Chennai - 600 004.

2.The Deputy Inspector General of Police,
Ramanathapuram Range,
Ramanathapuram,
Ramanathapuram District.

+1 CC to SPL GP (SR-13076[F] dated 04/06/2020)

Order made in
W.P. (MD) No.8200 of 2009
Dated:
03.06.2020

KM (10.06.2020) 5P 4C