



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.03.2020

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P. (MD) .No.8001 of 2012

and

M.P. (MD) .No.1 of 2012

N.Senthilvel

... Petitioner

vs.

- 1.The Principal Secretary to the Government,
Govt. of Tamil Nadu,
Home Department, Secretariat, Chennai-9.
- 2.The Director General of Police,
Office of the Director General of Police, Chennai-4.
- 3.The Deputy Inspector General of Police,
Crime Branch Crime Investigation Department, Chennai.
- 4.The Superintendent of Police,
Kanyakumari District.
- 5.The Commissioner of Police,
Office of the Inspector General,
Trichy City.

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorari, calling for the records of G.O.(2D)No.199 of the first respondent dated 13.05.2011 confirming the order of the second respondent dated 13.08.2008 and quash the same as illegal.

For Petitioner : Mr.M.Mohan Sundram
For Respondents: Mr.J.Gunaseelan Muthiah
Additional Government Pleader

ORDER

This writ petition has been filed seeking for issuance of a writ of Certiorari, calling for the records of G.O(2D)No.199 of the first respondent dated 13.05.2011 confirming the order of the second respondent dated 13.08.2008 and quash the same as illegal.

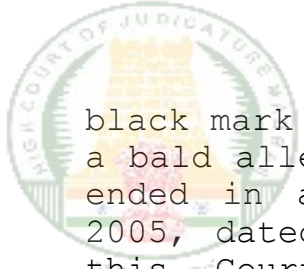
<https://hcservices.ecourts.gov.in/hcservices/>

2.The case of the petitioner is that while he was working as Inspector of Police, Crime Branch, Crime Investigation Department,



Karur, he was brought as an accused in Crime No.725 of 2003 dated 23.10.2003 for offences under Sections 323, 448 and 506(ii) IPC. One person viz., Somasundaram(P.W.6), who is collecting money in his chit fund from the public and not returned the said money on the due date. The petitioner's brother-in-law also one of the person, who has invested in the chit fund and therefore, he went to P.W.6 home seeking for refund of the money. Due to vengeance against the petitioner's brother-in-law, P.W.6 admitted himself in the Hospital. Only to give mental agony to the petitioner and to prevent his promotion, P.W.6 gave a false complaint with the help of P.W.1. Though the petitioner was present at Karur, at that time, the investigation Officer has announced him as an absconding accused and there is also no eye witness to the said incident that the petitioner came in a police jeep and entered into the house of P.W.6 and threatened him.

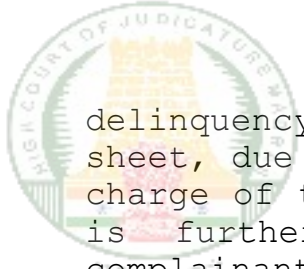
3. That apart, the case was charge sheeted and the trial was conducted by the Judicial Magistrate No.III, Trichy. After considering the oral and documentary evidence, the learned Magistrate came to a conclusion that the prosecution/de-facto complainant failed to prove the case beyond reasonable doubt and the benefit of doubt is given in favour of both the accused and both accused were acquitted. Against which, no appeal has been preferred by the State. It is further submitted that a show cause notice was issued on 11.06.2004 under 3(a) TNPSS (Discipline and Appeal) Rules, for which, the petitioner has submitted his explanation on 07.03.2005. Without considering the petitioner's explanation, the third respondent awarded the punishment on 02.01.2007. After investigation, charge sheet has been laid after 1 ½ years, which was sent to the Court after he was relieved from Srirangam Police Station on transfer. Therefore, there was inordinate delay in filing the charge sheet. Further, Section 506(ii)IPC is non bailable offence has also been incorporated in this case without any valid and acceptable reasons. The alleged occurrence has taken place at 07.00 hours on 03.10.2003 and the place of occurrence is 200 meters away from Srirangam Police Station, whereas, the complainant has not chosen to give complaint in the nearby police station, but, he got admitted in the Government Hospital which is 7 Kms away from his house, which shows that there is likelihood of exaggeration and embellishment. The petitioner has never assaulted P.W.6 along with his brother-in-law, which is false and the complainant/P.W.6 was involved in a chit fund case in EOW Trichy, in Crime No.02/01 wherein, the petitioner's brother-in-law and mother-in-law were witnesses. The said complainant was arrayed as an accused in the said case. While he was serving in CB CID Karur, he investigated a murder case in Thogamalai Police Station, in which, then sitting DMK Councillor viz., Uraiyr Nambi, was an accused and his Advocate has approached the petitioner's help for obtaining bail and he refused the same. On refusal of the said bail, the Advocate instigated P.W.6 to give false complaint against the petitioner. He further submitted that there was no allegation against the petitioner has misused his service position. The involvement of a criminal case would have a



black mark in service, when the criminal case ends in conviction. On a bald allegation, a case has been registered and the same was also ended in acquittal through the judgment passed in C.C.No.806 of 2005, dated 10.11.2010. Therefore, he filed a writ petition before this Court to direct the first respondent to consider his representation. Since orders were passed on his representation, he had withdrawn the said writ petition and thereafter, he filed an application for seeking promotion. Since no steps have been taken, the present writ petition has been filed.

4.The learned Additional Government Pleader appearing for the respondents have filed a counter affidavit and submitted that while the petitioner was working as Inspector of Police, Crime Branch Criminal Investigation Department, Karur, a case was registered against him at Srirangam Police Station in Crime No.725/2003 under Sections 323, 448 and 506(ii) IPC on 23.10.2003. Since the petitioner was involved in the said criminal case, disciplinary action was taken against him under Rule 3(a) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 in P.R.No.8/2004. A show cause notice was issued to him and Enquiry Officer was also appointed. After the enquiry, the Enquiry Officer held that the charges against the petitioner was proved. The Deputy Inspector General of Police, Crime Branch, Criminal Investigation Department, the third respondent based on the proved minute has awarded the punishment of "postponement of increment for three years which shall not operate against his future increments" in his order in P.R.No.8/2004 under Rule 3(a) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, dated 10.11.2006. The petitioner did not prefer any appeal before the Appellate Authority against the above said order. After a lapse of 8 months from the date of receipt of the order of punishment, he submitted a mercy petition on 23.07.2007 before the Director General of Police, the second respondent herein, The said mercy petition was rejected by the second respondent in proceedings Rc.No.154433/AP.IV(2)/2007, dated 13.08.2007.

5.It is also submitted that even though the petitioner was acquitted for the criminal case, the evidence proved that the petitioner was involved in the criminal case and the departmental enquires are clearly different from that of the criminal proceedings. Even if he is acquitted in criminal case, departmental proceedings can be initiated. It is clear that he was charged under Rule 3(a) of TNPSS (Discipline and Appeal) Rules, 1955, for misconduct of having involvement of any criminal case and on the proved, Minutes the Drawing Officer has awarded the punishment of Postponement of increment for three years without cumulative effect which shall not affect his future increments on 10.11.2006. A mercy petition was filed before the second respondent and the same was rejected on the ground that the punishment is commensurate with the gravity of the charge. The Punishing Authority, after going through the Enquiry Officer's report as well as the explanation of the petitioner had imposed the punishment against him for the



delinquency committed by him. There was delay in filing charge sheet, due to the death of the Sub-Inspector of Police, who has in-charge of the case, died in a motor bike accident on 24.01.2004. It is further submitted that the petitioner cannot expect the complainant to prefer a complaint against the police personnel to the nearest police station and the complainant in this case had got admitted himself for taking treatment in the hospital with regard to the assault by the police personals at a hospital at Trichy will not absolve the petitioner in any way.

6. In the affidavit, the petitioner has submitted that the petitioner helped his mother-in-law and brother-in-law to get back money from the said Somasundaram, who was alleged to have been assaulted by him. It is also not clear, how the Court below had come to the conclusion that the said Somasundaram is not connected to the said case. From his own admission, in Para No.4 of its petition that the criminal case in Srirangam PS Cr.No.725 of 2003 for the offences under Sections 323, 448 and 506(ii)IPC, was registered on the motive of money transaction matter between the petitioner's brother-in-law and P.W.6 Somasundaram, who is collecting money for his chit fund scheme from the public and not returned the money on the due date. The petitioner has filed a mercy petition and the same was rejected by the Director General of Police on 13.08.2007. The Government has rejected his petition dated 06.05.2010 wherein para Nos.3 and 4 are extracted hereunder:

"3. Thiru.N.Senthilvel, Inspector of Police has submitted a petition to Government with a request to set aside the punishment of "Postponement of increment for three years which shall not operate to postpone his future increments" imposed on him in PR No.8/2004.

4. The Government have examined the petition of Thiru.N.Senthilvel, Inspector of Police, carefully and independently along with the relevant records. In the criminal case, benefits of doubt is given in favour of the petitioner and the petitioner has been acquitted on the basis of benefit of doubt and it is not a honourable acquittal. The preponderance of probability of the incident (assault) indicates that the petitioner was involved in it, even though he is acquitted in the criminal case. The charge for gross misconduct has been held proved by Inquiry officer. He has not put forth any valid reasons for consideration. The Government have therefore, decided to reject the petition of Thiru.N.Senthilvel, Inspector of Police as devoid of merits. Accordingly, the Government order that the petition of Thiru.N.Senthilvel, Inspector of Police against the punishment of "Postponement of increment for 3 years which shall not operate to postpone his future increment" imposed on him in PR.8/2004 be rejected as devoid of merits."

7. The petitions dated 06.05.2010 and 25.11.2010 filed by the petitioner has been considered properly and order of punishment of



postponement of increment for three years which shall not operate to postpone his future increments, was imposed on him.

8. For the same prayer, earlier a writ petition was filed by the petitioner and withdraw the same without any liberty. Once again the petitioner has filed the present writ petition without obtaining any leave of this Court and the petitioner has not made out any cause for interfering with the said order passed by the respondent.

9. The petitioner's claim that the complaint was due to wreck vengeance, at the instigation of a political person and his lawyer this case was foisted against him, is not proved with substantive valid materials. That being the case, the petitioner was not in a position to prove his innocence before the authorities concerned.

10. Due to the above said facts and reasons, the punishment awarded by the authorities is only a minor punishment for the criminal act done by the petitioner and the impugned order passed by the respondents need not be interfered with.

11. In the result, this Writ Petition stands dismissed. No costs. Consequently, connected M.P is closed.

Sd/-

Assistant Registrar (Crl.Side)

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/ /2020

Sub Assistant Registrar(CS)

To

1. The Principal Secretary to the Government,
Govt. of Tamil Nadu, Home Department,
Secretariat, Chennai-9.
2. The Director General of Police,
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3. The Deputy Inspector General of Police,
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4. The Superintendent of Police,
Kanyakumari District.
5. The Commissioner of Police,
Office of the Inspector General, Trichy City.

+1 CC to M/s. Special Govt. Pleader (SR-10325[F]
+1 CC to M/s. M. MOHANASUNDARAM, Advocate (SR-10391[F]