



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **06.03.2020**
CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

WEB COPY

W.P(MD)NO.8069 of 2012

S.Esakki

:Petitioner

.vs.

1.The Secretary to Government,
Home Department,
Secretariat,
Chennai-9.

2.The Director General of Police,
Kamarajar Salai,
Chennai-4.

3.The Additional Director General of Police
(Law and Order),
Chennai-4.

4.The Deputy Inspector General of Police,
Tirunelveli.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to the order passed by the second respondent by his proceedings dated 6.11.2008 in R.C.No.210524/AP2 (1)/2008 confirming the order passed by the third respondent dated 3.3.2008 in R.C.No.35936/AP2(1)/08 and the order of the fourth respondent dated 31.12.2007 in C.NO..C1/PR 32/2007(Range Office)PR.No.145/2007 of Tirunelveli District and to quash the same.

For Petitioner :Mr.V.Sasikumar

For Respondents :Mr.J.Gunaseelan Muthiah
Addl.Govt.Pleader

O R D E R

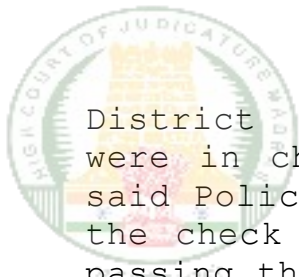
This Writ Petition has been filed seeking issuance of a Writ of Certiorari to quash the order passed by the second respondent by his proceedings dated 6.11.2008 in R.C.No.210524/AP2(1)/2008 confirming the order passed by the third respondent dated 3.3.2008 in R.C.No.35936/AP2(1)/08 and the order of the fourth respondent dated 31.12.2007 in C.NO..C1/PR 32/2007(Range Office)PR.No.145/2007 of Tirunelveli District.

<https://hdcrecords.courts.gov.in/0607>



2.It is seen from the records that the Petitioner was appointed as a Constable and promoted as Sub-Inspector of Police and retired from service on 31.1.2008. While working in V.K.Pudur Police Station, the Petitioner was directed to attend the check-post duty at Puliarai on 7.5.2007. It was surprised to note that the Petitioner was for the first time deputed to attend the check-post duty and report duty at 20.00 hours on 7.5.2007 at PEW check-post at Puliarai. It is further submitted that after detailing the duties to the subordinates at the check-post, the Petitioner took rest in the check post office. At about 5.20 hours in the early morning of 8.5.2007, the Deputy Superintendent of Police, Tenkasi make a surprise visit to the check post. The Deputy Superintendent of Police did not ask anything on the Petitioner and returned from the check-post before the Petitioner equip himself to attend the surprise visit of the Deputy Superintendent of Police. During his surprise visit which is termed as a lightning visit, the Deputy Superintendent of Police, Tenkasi has secured the pocket money from two personnel and had sent a report as if the money available with the subordinate ranks were the amount illegally collected from the vehicles passing through the check-post. But to his misfortune, the Petitioner was placed under suspension on 18.5.2007 to 3.1.2008 at the fag end of his service and was inflicted with punishment of Reduction by one stage for one year which shall not operate to postpone the Petitioner's future increment. He would further submit that due to the said suspension order, the monetary value of the punishment only would have been recovered from the Petitioner and the pensionary benefit would not have been affected permanently. Hence the Petitioner prayed this Court to quash the punishment imposed on him and has filed the present Writ Petition.

3.A detailed counter affidavit has been filed by the fourth respondent stating that while the Petitioner was serving as Sub-Inspector of Police, V.K.Pudur Police Station, Tirunelveli District, he was allotted the puliyarai Check post duty and he was the officer in charge of the check post on 7.5.2007 at 20.00 hours. On that day, Head Constable 1020 Thangaraj and 1867 Varadharajan and 1764 Gurusamy were also on duty at Puliarai Check-post. While the police personnel performed the check post duty, the Deputy Superintendent of Police Tenkasi, who is the jurisdictional Officer went on night rounds and reached the Puliarai check post on 8.5.2007 at 5.20 hours and he found that the said police personnel were indulging in collection of money illegally from the vehicles passing through the Puliarai Check-post and seized illegal gratification of Rs.450/- from the said persons. In this connection the Deputy Superintendent of Police Tenkasi sent a report to the Superintendent of Police, Tirunelveli



District stating that the Petitioner and his subordinates who were in check post duty had connived with the activities of the said Police personnel and also the Petitioner who was in-charge of the check post had not properly checked the vehicles which were passing through the police check post and was on rest in his room. Hence the Deputy Superintendent of Police, Tenkasi also sent recommendation to take appropriate departmental action against the petitioner and other subordinate police officials for the lapses committed by them. On the basis of the said report, the Petitioner along with the other officials were placed under suspension and departmental action was also initiated against them after full-fledged preliminary enquiry over the delinquencies committed by them. The Petitioner has been dealt with on a charge in PR.145/2007 under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955. The Deputy Superintendent of Police, Sankarankoil has conducted an oral enquiry and held that the charges were proved and deserves for deterrent punishment for a charge of bribing, the disciplinary authority took a lenient view towards the Petitioner and imposed a punishment of reduction of time scale of pay by one stage for one year which shall not operate to postpone his future increment on the ground that the Petitioner was due to retire on superannuation in the near future. The Petitioner preferred an appeal and also a review petition to the Additional Director General of Police, Law and Order, Chennai and the Director General of Police, Chennai respectively and the same were rejected on the grounds that the punishment imposed on the Petitioner is commensurate with the charges levelled against him. Aggrieved over the said punishment, the Petitioner has filed this Writ Petition to quash the same.

4. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

5. On going through the materials placed before this Court and after hearing the arguments of both sides, it is clear that a Police officer should be vigilant in his service 24 hours and cannot state that for the first time, the Petitioner was deputed for the check-post duty when he was in service as Sub Inspector of Police and cannot say that because of the im-matured action and report of the Deputy Superintendent of Police, Tenkasi, he was placed under suspension. From his own statement, it is clear that he is taking rest at the early hours of 8.5.2007, without guiding his subordinate police officials in attending their duty. He would further state that the most inexperienced officer assumed charge of Tenkasi Sub division just two months prior to surprise visit conducted by him at the early hours of 8.5.2007. The Deputy Superintendent of Police, Tenkasi stopped his vehicle at a distant place and went to the Check-post in a Kerala Lorry and he found that these persons are in collection of illegal gratification



from the vehicles passing through the check-post even without checking the vehicles which is an act of misconduct as per the Service Rules. The Police officer/The Deputy Superintendent of Police found that no note book regarding the work done by them on duty was maintained by the Petitioner and also found in the said room of the Petitioner, cigarette and Beedi buds were found thrown on the floor and he had failed to keep the room neat and tidy. The Petitioner has failed to keep the working place neat, as the working place is to be treated as it is a place for worship. From the statement of the Petitioner, it is clear that the Petitioner has underestimated an officer who is superior to him ie., the Deputy superintendent of Police, Tenkasi and think that he is above all the officers and had said in the Petition that because of the im-matured action and report, he was placed under suspension. That apart, he had further stated that an inexperienced officer who assumed charge in the Tenkasi Sub-division just two months prior to the surprise visit, only for publicity he has done so.

6.Considering the fact that the Petitioner is going to retire in near future, a punishment of *'reduction in time scale of pay by one stage for one year which shall not operate to postpone his future increments'* was imposed on him without cumulative effect and the monetary loss suffered by him is only Rs.3,804/-. On going through the charges levelled against the Petitioner, it is clear that a person who had shown disrespect on his superior officers and also by saying that he was on rest in the free hours and do not know the procedure while he was deputed to an important duty ie., the check post duty to check the vehicle which cross the State of Tamil Nadu. The above facts would show the careless and indiscipline attitude of the Petitioner towards his superiors and the respect shown towards his work. Hence the orders passed herein imposing punishment on the Petitioner, need not be interfered with.

7.This Court while dealing with the case of similar nature in ***N.Pasupathy .vs. The Deputy Inspector of Police Disciplinary Authority and others made in W.P.No.25706 of 2010, dated 7.6.2011*** held that:

'12.In this context, it is necessary to refer to the judgment of the Supreme Court in Praveen Bhatia . vs. Union of India MANU/SC/0357/2009 : 2009(4) SCC 225 wherein the Supreme Court had forewarn the authorities being conversant in dealing with such matters. In this regard, it is relevant to extract the following passage found in Paragraph 12,13 and 14 of the Judgment.



17. The range of activities which may amount to acts which are on consistent with the interest of public service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct as closed. It has, therefore, to be noted that the work 'misconduct' is not capable of precise definition. But at the same time though incapable of precise definition, the word 'misconduct' on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject matter and the context wherein the term occurs having regard to the scope of the statute and the public purpose it seeks to serve.

18. In *Union of India .vs. Harjeet Singh Sandhu* in the back ground of Rule 14 of the Army Rules, it was held that any wrongful act or any act of delinquency which may or may not involved moral turpitude would be 'misconduct' under Rule 14.

19. In *Baldev Singh Gandhi .vs. State of Punjab* it was held that the term 'misconduct' may involve moral turpitude. It must be improper or wrong behavior, unlawful behavior, wilful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character.

21. 'Misconduct' as stated in *Batt's Law of Master and Servant* (4th Edition at Page 63) is 'comprised positive acts and not mere neglects or failures'. The definition of the word as given in *Ballentine's Law Dictionary* (148th Edition) is 'A transgression of some established and definite rule of action, where no discretion is left except what necessary may demand, it is a violation of definite law, a forbidden act. It differs from carelessness.'

22. It may generally stated that the conduct rules of the Government and public sector corporations constitute a code of permissible acts and behavior of their servants.

23. The scheme of the Conduct Rules, almost invariably, is to first of all enunciate a general rule of conduct and behavior followed by specific prohibitions and restrictions. For example, Rule 3 of



the Central Civil Services (Conduct) Rules, 1964 which occurs under the heading "General" provides that every Government servant shall at all times:

- (i) maintain absolute integrity
- (ii) maintain devotion to duty; and
- (iii) do nothing which is unbecoming of a Government Servant.

The aforesaid aspects were highlighted in M.M.Malhotra .vs. Union of India, SCC at pp.362-63 Paras 16-23."

8. For all these reasonings, the Writ Petition is devoid of merit and accordingly, the same stands dismissed. No costs.

Sd/-

Assistant Registrar (Record)

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/ /2020

Sub Assistant Registrar (CS)

vsn

To

1. The Secretary to Government,
Home Department,
Secretariat,
Chennai-9.

2. The Director General of Police,
Kamarajar Salai,
Chennai-4.

3. The Additional Director General of Police
(Law and Order),
Chennai-4.

4. The Deputy Inspector General of Police, Tirunelveli.

+1 CC to M/s.SPL.GP (SR-10540[F] dated 09/03/2020)

+1 CC to M/s.V.SASIKUMAR, Advocate (SR-10619[F] dated 09/03/2020)

ORDER MADE IN

W.P (MD) No. 8069 of 2012

06.03.2020

SM/ (08.05.2020) 6P 7C

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