



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WEB COPY

Writ Petition (MD)No.13502 of 2017

G.Puvanendran

... Petitioner

Vs.

1.The Deputy Inspector General of Police,
Dindigul Range,
Dindigul.

2.The Superintendent of Police,
Theni District,
Theni.

3.The Deputy Superintendent of Police,
Uthamapalayam Sub Divison,
Theni District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records relating to the impugned final order proceedings passed by the second respondent in Na.Ka.No.F.2/Tha.Pa.No.58/2015, dated 07.08.2015 and confirmed the same by the first respondent in his proceedings dated 27.10.2015 in AP-36/A2/2015 and quash the same.

For Petitioner : Mr.A.Saravanan

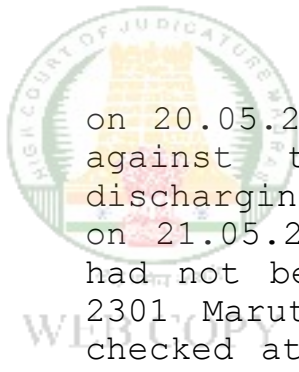
For Respondents : Mr.M.Jeyakumar

Additional Government Pleader

O R D E R

This writ petition has been filed challenging the order passed by the second respondent in Na.Ka.No.F.2/Tha.Pa.No.58/2015, dated 07.08.2015 and confirmed by the first respondent in his proceedings dated 27.10.2015 in AP-36/A2/2015 and quash the same.

2. The petitioner has joined the service of the respondent Police Department as a Grade-II Constable on 09.06.1993. Subsequently, he was promoted as Head Constable on 09.06.2008. While he was serving as a Head Constable in Gudalur North Police Station in Theni District, the second respondent has issued a show cause notice under Rule 3(1) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, and sought for ~~expansion~~ ^{expansion} in respect of the incident occurred from 20.00 hours



on 20.05.2015 to 8.00 hours on 21.05.2015. The main charge issued against the petitioner was that when the petitioner was discharging his duty on 20.05.2015 from 20.00 hours to 8.00 hours on 21.05.2015, the vehicles passed through the Kumuli Check Post had not been properly checked. However, the Vehicle Nos.KL-25/D-2301 Maruthi Swift Car and KL-21/E-4911 Maruthi Alto have been checked at Vandi Periyar Excise Toll Gate in Kerala State and on inspection, the Excise Department Officials found 10.950 Kgs. of ganja from one vehicle and 4.450 kgs. of ganja from another vehicle and the same were recovered and the said Excise Department of Kerala State has also registered a case. According to the respondents, the above said two vehicles have been passed through Kumuli Check Post. Therefore, the explanation was called for.

3. On 20.07.2015, the petitioner has submitted his explanation to the show cause notice. In the explanation, the petitioner has clearly stated that the said vehicles have not passed through Kumuli Check Post. Further, he has stated that the vehicle inspection register ledger entries maintained by the Kumuli Check Post also shows that the said vehicles have not passed through Kumuli Check Post. In the said Kumuli Check Post, four CCTV Cameras were installed in four different position to watch the vehicle movement and the number plate as well as the passengers those who are all inside the car. Even in the CCTV footage also no such alleged vehicle was passed through Kumuli Check Post. It is the further contention of the petitioner that the Excise Department of Kerala sought explanation from Kumuli Excise Department Check Post Police on the same day ie. on 20.05.2016, to find out whether the two vehicles have passed through Kumuli Check Post or not. According to the Excise Department Officials, no such vehicles in question have passed through Kumuli Check Post. In support of the said statement, the concerned register and CCTV Camera footage also furnished. Therefore, he contended that the said vehicles have not at all passed through Kumuli Check Post and false charges have been framed against the petitioner.

4. The learned counsel appearing for the petitioner submitted that the second respondent has not accepted the explanation given by the petitioner that the vehicles in question have not passed through Kumuli Check Post, the CCTV footage also not proved and the vehicles should have passed through some other route, and passed the final order on 27.10.2015. By virtue of the said final order, the second respondent has imposed the major punishment of postponement of next increment for two years and this shall not operate to postpone his future increment. When such a punishment was imposed, the second respondent should have passed a speaking order and explain the reason as to how he has arrived at a conclusion. The Enquiry Officer has arrived at the conclusion as if that the vehicles were passed through Kumuli Check Post, when



the petitioner was in duty at the Kumuli Check Post and no explanation was provided. Further, the learned counsel appearing for the petitioner submitted that the charging officer as well as the punishing officer are one and the same, which is totally against the settled principles of law. Further, in the appeal, the first respondent also not considered all these aspects, in a mechanical manner, passed an order dated 27.10.2015, confirming the order passed by the second respondent, dated 07.08.2015.

5. On the other hand, Mr.M.Jeyakumar, learned Additional Government Pleader appearing for the respondents submitted that the respondents 1 and 2 have received the reports from the Sub Inspector, Inspector and the Deputy Superintendent of Police, Uthamapalayam Gudalur Circle and relying upon the said reports, the second respondent has passed the impugned order, holding that the petitioner was responsible for not checking the vehicles, when they have passed through Kumuli Check Post, while he was in duty. He also submitted that based on oral enquiry as well as the reports, the second respondent has passed the order and it is not necessary to conduct any detailed enquiry. Subsequently, in the appeal also the first respondent has dealt with all these aspects and confirmed the order passed by the first respondent. Therefore, he submitted that there is no illegalities on the part of the respondents 1 and 2, while passing the impugned orders and accordingly, the present writ petition is liable to be dismissed.

6. Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents and perused the materials available on records.

7. This Court has perused the impugned orders passed by the respondents and upon perusal of the impugned orders, *prima facie* it appears that the second respondent has passed the impugned order, based on the oral enquiry conducted as well as the reports received from the Sub Inspector, Inspector and the Deputy Superintendent of Police, Uthamapalayam, Gudalur Circle. These reports have not been furnished to the petitioner, so as to provide appropriate reply to the said reports and they have also not given any opportunity to the petitioner to explain his case in person. Contrarily, relying on these three reports, the second respondent wrongly come to the conclusion. Further, the petitioner, in his explanation dated 20.07.2015, has categorically stated that the vehicles are not passed through Kumuli Check Post and alternative routs are available to reach Vandi Periyar in Kerala State. Further, in the CCTV footage also, there is no movement of these vehicles. The Excise Department Police of Kumuli Check Post also confirmed the non-movement of the vehicles through Kumuli Check Post and when all these facts have been brought to the knowledge of the Enquiry Officer, it is the duty of the



Enquiry Officer to conduct a detailed enquiry and should have given a finding on these aspects. On perusal of both the impugned orders passed by the respondents 1 and 2, nowhere it has been mentioned anything about the CCTV footage and no materials available whether the Excise Department Police of Kumuli Check Post was examined and further, with regard to the alternative routes, which are available to reach Vandri Periyar at Kerala State and without examining all these aspects the second respondent has passed the non-speaking order and the first respondent has also confirmed the same by the impugned order. Therefore, this Court is of the opinion that the impugned orders are liable to be set aside. Accordingly, the impugned orders passed by the respondents 1 and 2 dated 07.08.2015 and 27.10.2015 are set aside and the Writ Petition is allowed and the matter is remanded back to the second respondent to conduct a fresh enquiry and pass appropriate orders, after providing opportunity to the petitioner to explain his case and also providing all the reports received from various authorities, which were relied in the impugned order passed by the second respondent. No costs.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

AKV

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Deputy Inspector General of Police,
Dindigul Range,
Dindigul.

2.The Superintendent of Police,
Theni District,
Theni.



3.The Deputy Superintendent of Police,
Uthamapalayam Sub Divison,
Theni District.

+1 CC to SGP (SR-23909[F] dated 03/12/2020)

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MJ(CO)

KM (21.12.2020) 5P 5C