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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.10.2020

PRONOUNCED ON : 20.10.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.29423 of 2005

and

W.P.M.P.No.32232 of 2005

N.Rajendran

..Petitioner

Vs

1. Additional Director General of Prisons,
Tamil Nadu,
Chennai - 8.

2. Deputy Inspector General of Prisons,
Coimbatore Zone,
Coimbatore.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking issuance of a writ of certiorari calling for the records pertaining to the order passed by the 1st respondent in his proceedings No.1808/EW.1/2005 dated 9.2.2005 and quash the same.

For Petitioner : Mr.P.Ganesan

For Respondents : Mr.K.Magesh
\\ Special Government Pleader

O R D E R

This writ petition has been filed seeking for issuance of writ of certiorari to quash the order dated 9.2.2005 passed by the first respondent in his proceedings No.1808/EW.1/2005.

2.According to the petitioner, he has joined as Grade II Warden in Central Prison, Salem on 15.10.1981. While he was in



service, the second respondent issued a Charge Memo dated 30.11.2002 holding that on 08.06.2002, during night hours while he was discharging his duty as Patrol Constable, one Dr.A.Thangaraj met the accused Dr.Rajkumar, who was in Prison Hospital and gave cell phone to the accused for conversation and the same was not prevented by the petitioner. To which, the petitioner submitted a detailed explanation on 13.11.2003, denying the charge framed against him. Thereafter, an enquiry was conducted on 31.3.2004 and after analysing the entire documents in detail, the Enquiry Officer gave a finding that the charge framed against the petitioner was not proved. Being dissatisfied with the findings of the Enquiry Officer, the second respondent issued a second show cause notice dated 03.09.2004, differing with the views of the Enquiry Officer on the ground that (i) the said Dr.A.Thangaraj, Assistant Medical Officer on 08.06.2002 came to the Prison at 22.40 hours and to that effect entry has been found in the in-register maintained in the Gate of the Prison; (ii) after, the said Thangaraj came inside the prison at 21.59.23 hours a call was made from Dr.Thangaraj's Cell Phone No.9842725122 to Cell Phone No.9842755466 which has been proved by the details furnished by the Aircel Company ; (iii) on the basis of the information furnished by the Aircel Company in their letter dated 1.9.2004, it is to be noted that the said Cell Phone No.9842725122 was registered in the name of Thangaraj and used by him from 8.2.2002 onwards and to that effect a Xerox copy has been enclosed ; (iv) prior to 8.6.2002 and after 8.6.2002 certain calls were made from 9842725122 to 9842755466; as per call statement Cell Phone No.9842755466 is a known person to Dr.Thangaraj; on 8.6.2002 at 21.59.23 hours the accused No.5352 Dr.Rajkumar has spoken from the Prison Hospital to Cell Phone No.9842755466; (v) the accused, who was in Prison has been prohibited from using cell phone as per prison rules and it is not important that nobody has seen the using of Cell Phone by the said accused; (vi) Cell Phone is prohibited inside the prison, there is no necessity that there should be guidelines from the Inspector General of Prisons, that too, it is effected and therefore, the findings of the Enquiry Officer that the proceedings dated 12.6.2002 issued by the first respondent cannot be put against the petitioner which is not acceptable and ; (vii) it cannot be accepted that no where it has been mentioned in the charge memo that the use of Cell Phone which is basic for the charge because in the enclosure 3 of the charge memo, Cell Phone No.9842725122 has been mentioned.

3. In the light of the above, the second respondent called for further explanation, to which, the petitioner also submitted his detailed explanation on 07.10.2004. However, the second respondent without considering his explanation and the materials



available on record, by order dated 30.11.2004 awarded a punishment of reduction in the scale of pay at minimum stage in the special grade basic pay for a period of three years from 1.12.2004 without cumulative effect. Aggrieved over the same, the petitioner preferred an appeal before the first respondent. By order dated 09.02.2005, the first respondent modified the punishment into one of reduction in the present scale of pay by one stage for a period of two years without cumulative effect. Challenging the order dated 09.02.2005 passed by the first respondent, the petitioner has come forward with the present writ petition.

4. Admittedly, the second respondent issued a Charge Memo dated 30.11.2002 holding that on 08.06.2002, during night hours while he was discharging his duty as Patrol Constable, one Dr.A.Thangaraj met the accused Dr.Rajkumar, who was in Prison Hospital and gave cell phone to the accused for conversation and the same was not prevented by the petitioner. The petitioner also submitted a detailed explanation on 13.11.2003, denying the charge framed against him. Enquiry was conducted. The views of the Enquiry Officer is that Dr.A.Thangaraj, Assistant Medical Officer on 08.06.2002 came to the Prison at 22.40 hours and to that effect entry has been found in the in-register maintained in the Gate of the Prison. At 21.59.23 hours a call was made from Dr.Thangaraj's Cell Phone No.9842725122 to Cell Phone No.9842755466 and the same has been proved by the details furnished by the Aircel Company. The said Cell Phone No.9842725122 was registered in the name of Thangaraj and used by him from 8.2.2002 onwards and to that effect a Xerox copy has been enclosed. Prior to 8.6.2002 and after 8.6.2002, certain calls were made from 9842725122 to 9842755466. As per call statement, Cell Phone No.9842755466 is a known person to Dr.Thangaraj. On 8.6.2002 at 21.59.23 hours the accused No.5352 Dr.Rajkumar has spoken from the Prison Hospital to Cell Phone No.9842755466. The above records are clear and service provider furnished the entire details. Therefore, the above record entries make it clear that the petitioner not prevented the use of cell phone inside the prison. As per Prison Rules, no one should use the cell phone inside the prison. The petitioner being the Patrol Constable has not prevented the use of cell phone inside the prison. The use of cell phone inside the prison at the time of duty of the petitioner is clearly proved. Enquiry records make it crystal clear that the petitioner was negligent. In such circumstances, the respondents, by duly following the principles of natural justice, conducted enquiry and on a finding that the charges are proved, awarded the punishment. The punishment awarded cannot be said to be disproportionate or unsustainable. The petitioner, who is not diligent in his duties, does not deserve for any leniency. This court does not



find any merit in the writ petition. Accordingly, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Ms/nvsri

To

1. The Additional Director General of Prisons,
Tamil Nadu,
Chennai - 8.
2. The Deputy Inspector General of Prisons,
Coimbatore Zone,
Coimbatore.

+1cc to Mr.P.Ganesan, Advocate, S.R.No.53747

+1cc to the Government Pleader, S.R.No.54273

W.P.No.29423 of 2005
and
W.P.M.P.No.32232 of 2005

SV-I (CO)
SU (22/11/2021)