

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:19.07.2021

Coram:

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.42902 of 2016
and
WMP.No.36797 of 2016

1. Rajasekaran
2.Sankaranarayanan

... Petitioners

Vs.

1.The Deputy Inspector General of Prison,
Coimbatore Circle,
Coimbatore.

2.The Superintendent,
Central Prison,
Coimbatore.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the record in No.3894/mu/2016 and No.3895/mu/2016 both orders dated 12.09.2016 on the file of the first respondent and quash the same and consequently issue a direction to reinstate the petitioners with continuity of service, backwages and suitable promotion on for excellence with the petitioners junior most person.

(Prayer Amended vide order or court dated 19.07.2021 made in Wmp No.15906/2021 in WP.42902/2016 by MSRJ)

For Petitioner : Mr.C.Elamurugan

For Respondents : Mr.K.V.Sajeev Kumar
Government Counsel

ORDER

This Writ Petition is filed to call for the record in No.3894/mu/2016 and No.3895/mu/2016 both orders dated 12.09.2016 on the file of the first respondent and quash the same and consequently issue a direction to reinstate the petitioners with continuity of service, backwages and suitable promotion on for excellence with the petitioners junior most person.

2. The petitioners herein, while employed as a Grade-II Police Constables, were levelled with certain charges to the effect that they had impersonated as police officers and demanded Rs.500/- from Mr.S.Arunkumar and Mr.P.Subash. Pursuant to an enquiry conducted, the disciplinary authority had imposed the punishment of dismissal from service on 15.10.2015. The appeal against the same was dismissed by the first respondent on 12.09.2016. These orders are put under challenge in the present Writ Petition.

3. The legal grounds raised by the petitioner challenging the orders of punishment is that the findings of the Enquiry Officer as well as the punishment imposed by the disciplinary authority was based on "no evidence". The scope of interference to an order of punishment by the High Court exercising its power under Article 226 of the Constitution of India is very limited. One among the exceptions for interference with such the punishment is on the ground of "no evidence", as laid down by a Constitutional Bench of the Hon'ble Supreme Court in the case of Union of India Vs. H.C.Goel reported in AIR 1964 SC 364. The relevant portion of the order in paragraph No.20 is extracted hereunder:

"This conclusion does not finally dispose of the appeal. It still remains to be considered whether the respondent is not right when he contends that in the circumstances of this case, the conclusion of the Government is based on no evidence whatever. It is a conclusion which is perverse and therefore, suffers from such an obvious and patent error on the face of the record that the High Court would be justified in quashing it. In dealing with writ petitions filed by public servants who have been dismissed, or otherwise dealt with so as to attract Art. 311 (2), the High Court under Art. 226

has Jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order; nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charge framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings which is the basis of his dismissal is based on no evidence. In fact, in fairness to the learned Attorney-General, we ought to add that he did not seriously dispute this, position in law."

4. The aforesaid extract is self- explanatory. As such, when the findings of the Enquiry Officer that the charges are proved is based on "no evidence" at all, the consequential punishment cannot be sustained. This proposition has been adopted in various other decisions of the Hon'ble Supreme Court, as well as this Court.

5. In the instant case, the petitioners herein were levelled with charges that they had demanded Rs.500/- from Mr.S.Arunkumar and Mr.P.Subash. Before the Enquiry Officer, these two persons namely, S.Arunkumar and P.Subash, were examined as PW2 and PW3, who had deposed that they do not remember the delinquency. In spite of such a statement, the enquiry officer, disciplinary authority as well as the appellate authority have come to the conclusion that the charges against the petitioner of having demanded Rs.500/- from Mr.S.Arunkumar and Mr.P.Subash, are proven.

6. Incidentally, the PW1 is the Sub-Inspector of Police, who had registered the FIR against the petitioners herein and framed the criminal charges. Apart from that, PW1 does not support the department's case in any other manner. It is now brought to the notice of this court that even the criminal case

registered against the petitioners herein, had ended in an order of honourable acquittal through the judgment passed by the learned Judicial Magistrate-III, Coimbatore, in C.C.No.274 of 2015 dated 07.03.2016.

7. Thus, the entire disciplinary proceedings, commencing from the inception of the enquiry, till the order passed by the appellate authority, is based on "no evidence." By applying the ratio laid down by the Hon'ble Supreme Court, in the case of Union of India Vs. H.C.Goel, (cited supra), the impugned order of punishment cannot be sustained.

8. Though this court intends to interfere with the order of punishment, it has also taken into account of the fact that the petitioners had given a room for being implicated in a criminal case, as well as the departmental action and therefore, if the backwages payable to them from the date of the dismissal till the date of their reinstatement is withheld, the ends of justice could be secured.

9. In the light of the above observation, the impugned order passed by the second respondent in Proceedings No.6667/Po4/14 dated 15.10.2015, in so far as the first petitioner herein/P.Rajasekar is concerned and the impugned order in Proceedings No.6668/Po4/14 dated 15.10.2015 passed by the second respondent, in so far as the second petitioner viz., K. Sankaranarayanan, as well as the order passed in the appeal by the first respondent in his Proceedings No.3895/mu/2016, 12.09.2016 in so far as it relates to P. Rajasekar is concerned and the order passed by the first respondent in Proceedings No.3894/mu/2016 relating to K.Sankaranarayanan, are quashed. Consequently, the petitioners herein are directed to be reinstated into service, together with all consequential service benefits, from the date of the order of the dismissal i.e., from 15.10.2015 onwards. It is made clear that the petitioners shall not be entitled for any monetary benefits during their period of non-employment, viz., between 15.10.2015, to the date of reinstatement, including backwages.

10. In the result, the Writ Petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

// True Copy //

Sub Assistant Registrar

gv

To

1.The Deputy Inspector General of Prison,
Coimbatore Circle,
Coimbatore.

2.The Superintendent,
Central Prison,
Coimbatore.

+1CC to The Government Pleader, SR.No. 34972

W.P.No.42902 of 2016
and
WMP.No.36797 of 2016

PMK(CO)
B.VC (26/08/2021)