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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.17251 of 2017

S.Sivamoorthy

... Petitioner

vs.

1)The Additional Director
General of Police,
Inspector General of Prisons,
Whannels Road, Egmore,
Chennai 600 008.

2)The Superintendent of Prisons,
Central Prison,
Coimbatore 18.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, after calling for the concerned records from the respondents, quash the order of the 1st Respondent dated 06.03.2017 bearing No.45000/EW.1/2016 and the order of the 2nd Respondent dated 06.03.2017 bearing No.11324/Po4/2012-2 and consequently direct the Respondents to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits.

For Petitioner : Mrs.S.Sathia Chandran

For Respondents: Mr.C.Selvaraj,
Additional Government Pleader.

ORDER

On charges of alleged smuggling of certain contraband items into the Central Prison at Coimbatore on 24.06.2012, the petitioner herein, who was employed as a Grade II Warder at Central Prison, Coimbatore, was proceeded with departmental action and ultimately imposed with a punishment of 'dismissal from service' by the second respondent, through an order dated 06.03.2013, which came to be confirmed by the first respondent on 06.03.2017.



2. Along with the petitioner, two other co-delinquents namely R.Gnanasekaran and R.Dinesh, who were also employed as Grade II Warders were proceeded and imposed with the same punishment of 'dismissal from service'. When one of the co-delinquents namely R.Gnanasekaran/ Grade II Warder had challenged the punishment imposed by the Disciplinary Authority before this Court in Writ Petition No.21889 of 2017 in R.Gnanasekaran vs. the Additional Director General of Police and another, this Court by an order dated 02.11.2021 had allowed the writ petition by setting aside the order of punishment and directed the respondents therein to reinstate the co-delinquent together with continuity of service, but without back wages. The relevant part of the order reads as follows:-

"21. The order passed by the 2nd respondent is unsustainable inasmuch as there was neither direct nor indirect evidence available on record to conclude that the petitioner and the other delinquents were involved in the smuggling of contraband items into the prison in the manner in which it has been portrayed in the impugned orders.

22. During preliminary investigation, statements were given by P.W.6 - K.Lakshmanan, P.W.2 - S.Devarajan and P.W.4- Balasubramani. During cross examination, these witnesses have not confirmed their statements given by them during preliminary investigation which led to the initiation of the disciplinary proceedings against the petitioner and the two other delinquents.

23. The Enquiry Officer has also not considered the contradiction elicited by the petitioner during cross examination from the statements of the witness.

24. It is also noticed that the prison is well guarded. The entrance of the prison is monitored by the Tamil nadu Special Police Force. That apart, the prison is under a constant surveillance of the Prison Intelligence Wing.

25. The Prison Intelligence Wing consists of one Sub-Inspector of Police and Constable who are present round the clock. It is not only impossible but also improbable to throw 18 kgs of contraband items from out side in a bundle without it being noticed by these



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persons who guard the prison.

26. It is improbable that the contraband items weighing about 18 kgs consisting of several items which found their way into the prison would have been thrown from the outside the prison.

27. It is improbable that the contraband items were thrown in a bundle weighing 18 kgs from outside the prison periphery. Considering the fact that the prison is under constant surveillance and surrounded by Central Reserve Police Force and Tamil Nadu Special Police, it is quite possible that the contraband items moved into the prison from outside into the prison in active connivance of some of the other persons manning the prison entrance.

28. It is quite possible for such bulk quantity of contraband items weighing about 18 kgs would have passed only through regular entry and exits in the prison with the tacit knowledge of the Personnel's of the Tamil Nadu Special Police Force and the Prison Intelligence Wing.

29. The entire exercise carried out by the first and the second respondents indicate that the disciplinary proceeding against the petitioner and others appears was an attempt to cover up a well oiled network operating well within the prison. Before initiating disciplinary proceeding a high level enquiry ought to have been ordered to find out the connect modus operandi adopted to smuggle contraband and prohibited items to pander to the baser instincts of the prisoners contrary to the Prison Rules and Manual and to book every officer involved in such misconduct.

30. Since the Enquiry Officer has given a finding based on an improbable theory of smuggling of contraband items, i.e. throwing of the contraband items from outside prison wall of 18 ft. the conclusion arrived by the Enquiry Officer which was accepted by the 2nd respondent as the Disciplinary Authority is liable to be quashed.



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31. As there are no direct or indirect evidence to implicate the petitioner the alleged misconduct, impugned order is liable to be quashed.

32. There appears to be a well organized system is in place to smuggle contraband items into the prison directly through the normal entrance and exit points. There would have been several others who may have been involved and this would require a detailed probe independently and to sterilize precincts of the prison of such smuggling with the help of two other delinquents. Since several others may have been involved, a detailed probe independently by an higher official of the respondents to sterilize precincts of the prison is required to break the hegemony and nexus with the prisoners.

33. The first respondent as the Appellate Authority ought to have examined the appeal from the perspective of the statements of the witnesses who were examined before the Enquiry officer. Further, the first respondent as an Appellate Authority ought to have passed a speaking order. Both the first and second respondents failed to note that the Enquiry Officer simply confirmed the charges against the petitioner without any direct or indirect evidence against the petitioner. Therefore, finding the petitioner guilty of misconduct in absence of a preponderance of probability of the petitioner having committed the alleged misconduct cannot be sustained.

34. The respondents are directed to re-instate the petitioner into service with continuity of service. This exercise shall be carried out by the respondents within a period of three months from the date of receipt of a copy of this order. The respondents shall make suitable entry in the Service Register of the petitioner by reinstating the petitioner back to service with continuity of service alone. It is made clear that the petitioner shall not be entitled for any arrears of salary or increments. If necessary, the respondents shall depute the petitioner to any



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other non sensitive department and keep the petitioner under strict watch. The respondents shall strengthen the prison precinct and may depute only persons with clean and clear integrity.

35. This writ petition is allowed with the above observation. No costs. Consequently, connected miscellaneous petition is closed."

3. It is not in dispute that the charges as against the petitioner herein, as well as the other Grade II Warder, namely R.Gnanasekaran is one and the same. So also, the punishment imposed to this co-delinquent was the same as that of the petitioner herein. While that being so, the order passed by this Court in R.Gnanasekaran's case (cited supra), would be squarely applicable to the petitioner herein and consequently, he would be entitled to succeed.

4. By applying the ratio laid down by this Court in R.Gnanasekaran's case and considering the relief granted therein, the impugned order of the 1st respondent dated 06.03.02017 bearing No.45000/EW.1/2016 and the order of the 2nd respondent dated 06.03.2017 bearing No.11324/Po4/2012-2 are quashed. Consequently, there shall be a direction to the respondents herein to forthwith reinstate the petitioner herein back into service together with continuity of service, atleast within a period of three (03) months from the date of receipt of a copy of this order. However, the petitioner herein shall not be entitled for the back wages during his period of non-employment. The Writ Petition stands Allowed accordingly. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

sts/ ata

To:

1)The Additional Director
General of Police,
Inspector General of Prisons,
Whannels Road, Egmore,
Chennai 600 008.



2) The Superintendent of Prisons,
Central Prison,
Coimbatore 18.

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+1cc to Mr.Sathia Chandran, Advocate, S.R.No.6517

+1cc to the Government Pleader, S.R.No.66129

W.P.No.17251 of 2017

NMI (CO)
SB(22/12/2021)