



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition (MD)Nos.12074 and 12059 of 2009

and

M.P. (MD) .Nos.1 and 1 of 2009

WEB COPY

R.Mohan Kumar ...Petitioner in W.P.(MD).No.12074 of 2009

R.Maria Dhanaraj ...Petitioner in W.P.(MD).No.12059 of 2009

Vs.

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

2.The Superintendent of Police,
Kanyakumari District. ... Respondents in both W.Ps.

Prayer: Writ Petitions are filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned orders passed by the second respondent in his proceedings in L1/PR.15/2009, L1/PR.16/2009 dated 25.07.2009, and the consequential orders passed in the appeal by the first respondent in his proceedings in C.Nos.C4/AP.127/2009, C.Nos.C4/AP.128/2009 dated 21.10.2009, quash the same, and consequently, direct the respondents to pay all service and monetary benefits to the petitioners.

For Petitioner	:	Mr.T.Arul
For Respondents	:	Mr.M.Muthu Geethayan Special Government Pleader

C O M M O N O R D E R

These writ petitions have been filed challenging the impugned orders passed by the second respondent, dated 25.07.2009 and the consequential orders passed by the first respondent dated 21.10.2009 and to quash the same and consequently, direct the respondents to pay all service and monetary benefits to the petitioners.

2. Since the issue involved in these writ petitions is one and the same, these writ petitions are taken up together and disposed of by this common order.

3. The case of the petitioners is that while they were working as Head Constables in South Tamaraikulam Police Station, a charge memo was issued against them on 03.02.2009, alleging that on 01.05.2008 they arrested one Assaithambi, S/o. Antony Muthu and



compelled him to meet the hire charge of auto Rs.300/- and also demanded and received Rs.1,500/- from his wife Tmt. Malarvizhi at her house, on the same day, assuring his release, knowing fully well that the said accused Aasaithambi had already been granted anticipatory bail in Crime No.115 of 2008 for the offence under Section 379 of I.P.C., on the file of South Tamaraiikulam Police Station, for smuggling of illicit sand. Based on the said charges, the petitioners were subjected to disciplinary proceedings and the disciplinary authority has ordered to conduct a domestic enquiry. The Enquiry Officer has filed a report on 08.05.2009, holding that the charges were not proved. However, the second respondent has issued a dissenting minute on 19.06.2009 and the petitioners have submitted their explanations and requested the second respondent to drop the proceedings, based on the findings of the Enquiry Officer. However, the second respondent independently arrived at a conclusion and awarded the punishment of reduction in rank from Head Constable to Grade-I Police Constables, without properly appreciating the enquiry report and the explanations offered by the petitioners. Against which, the petitioners have preferred an appeal before the first respondent, on 17.08.2009. However, the first respondent mechanically rejected the petitioners' appeal on 21.10.2009. Challenging the same, the present writ petitions have been filed.

4. The learned counsel appearing for the petitioners would submit that admittedly, the case in Crime No.115 of 2008 was registered against one Assaithambi, S/o. Antony Muthu, for the offence under Section 379 of I.P.C., and he was granted anticipatory bail. Even after the anticipatory bail, the petitioners had secured the accused and compelled him to meet the hire charge of auto Rs.300/- and also demanded and received a sum of Rs.1,500/- from his wife. He would further submit that there is no specific complaint against the petitioners. However, based on the oral complaint, the charge memos were issued against the petitioners. Thereafter, an Enquiry Officer was appointed and in the preliminary enquiry, the said Assaithambi and his wife were examined as P.Ws.1 and 2 and other police officials were also examined on behalf of the Department and after conducting detailed enquiry, the Enquiry Officer has filed unproven minute in favour of the petitioner and the same was forwarded to the second respondent to pass appropriate orders. But the second respondent, without considering the enquiry report submitted by the Enquiry Officer, issued a dissenting note and based on the dissenting note, the second respondent has issued a show cause notice, calling for explanation from the petitioners and the petitioners have also submitted their explanation. However, the second respondent has passed the order of reduction in rank from Head Constables to Grade-I Police Constables, which is unsustainable one and the dissenting view of the second respondent is without any material and evidence. He would also submit that admittedly, several cases are pending against the said accused Assaithambi and his appearance was required in the said cases and for the purpose of



investigation, the petitioners secured the accused Assaithambi and some ten rupees notes were recovered from him and immediately, the same were handed over to the accused and all those details were submitted in their explanation, but the same was not considered by the second respondent and imposed the punishment of reduction in rank. Therefore, the order passed by the second respondent is unsustainable one and hence, he prayed for allowing this petition

5. Per contra, the learned Special Government Pleader appearing for the respondents would submit that when the petitioners were working in South Tamaraikulam Police Station, in connection with the allegations against them, a detailed enquiry was conducted by the Deputy Superintendent of Police, Kanyakumari Sub Division and he has submitted his report on 15.11.2008 and the preliminary enquiry reveals that the petitioners secured one Asaithambi on 01.05.2008 and brought him to South Tamaraikulam Police Station in an auto and took out Rs.1,500/- from his pocket and compelled him to meet the hire charge of the auto also. Further, both the petitioners connived and went to the house of Asaithambi at Vijayanagari and received Rs.1,500/- from his wife Malarvizhi also by threatening that if the demanded amount was not paid, her husband would not be released from police custody. The act of demand and acceptance of illegal gratification by the petitioners by misusing their official position tarnished the reputation of the disciplined force. It is also not in dispute that the Enquiry Officer held that the charges were not proved against the petitioners. However, the original authority viz., the second respondent perused the entire record submitted by the Enquiry Officer and based on the record and the complaint given by the accused viz., Asaithambi and his wife, arrived a different conclusion and issued a dissenting note. Based on the dissenting note, further explanation was called for from the petitioners and after considering the petitioners' explanation, the punishment of reduction in rank from Head Constable to Grade-I Police Constables was imposed, which was confirmed by the appellate authority and the said punishment is very meagre, which cannot be interfered with. Hence, he prayed for dismissal.

6. Heard the learned counsel for the petitioners, learned Special Government Pleader for the respondents and perused the materials available on record.

7. The facts in the present case are not in dispute. Admittedly, the petitioners have entered into service as Grade - II Police Constables and while they were working in South Tamaraikulam Police Station, some allegations have been made against them. Hence, a detailed enquiry was conducted by the Deputy Superintendent of Police, Kanyakumari Sub Division and based on the preliminary enquiry report, charge memos were issued against the petitioners. The sum and substance of the charge memo is as follows:

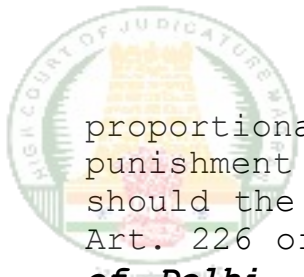
"Charge: *Highly reprehensible and indisciplinary*



conduct in having extracted a sum of Rs.1,500/- from one Tr.Asaithambi, S/o. Antonimuthu, Vijaya Nagari on 01.05.2008 at South Thamaraikulam P.S. and also compelled him to meet the hire charge of auto Rs.300/- in joining hands with HC 1705 Maria Dhanaraj when Asaithambi was secured and brought in auto to the station for enquiry and also demanded and received Rs.1,500/- from his wife Tmt.Malarvizhi at her house on the same day by threatening her that the secured Asaithambi would not be released if the demanded amount was not paid."

8. The petitioners have extracted a sum of Rs.1,500/- from one Tr.Asaithambi, S/o. Antonimuthu, at Vijayanagari on 01.05.2008 and also compelled him to meet the hire charge of auto Rs.300/- in joining hands. Thereafter, they demanded and received Rs.1,500/- from his wife Tmt.Malarvizhi at her house on the same day. On perusal of the records, it appears that P.Ws.1 and 2 were examined and their statements were also recorded by the Enquiry Officer. Before the Enquiry Officer, P.W.1 and P.W.2 deposed that P.W.1 was in possession of Rs.2,500/-, out of which, Rs.1,500/- was recovered by the petitioners. However, subsequently, P.W.1 Asaithambi and P.W.2-his wife turned hostile and denied the earlier allegations. Based on the above said evidences, the Enquiry Officer held that the charges were not proved. However, the said enquiry report was not accepted by the second respondent. This Court has perused the second respondent's dissenting minute. A perusal of the dissenting minute reveals that P.W.1 Asaithambi has given a oral complaint and based on the statements given by P.Ws.1 and 2, the second respondent has arrived at a conclusion that there was a *prima facie* case against the petitioners, for which, he issued the dissenting note. Based on the dissenting note, the punishment of reduction in rank from Head Constables to Grade-I Police Constables was imposed and the said order of punishment was challenged before the appellate authority and the appellate authority has also confirmed the same. However, the crucial issue is that the petitioners have filed a reply and in their reply, they have clearly stated that few ten rupee currency notes were removed from the said Assaithambi and later handed over to him, on a proper record. Admittedly, the petitioners are the Law Enforcing Agency and they have to maintain proper records by way of seizure mahazar and their action is enumerated in the Criminal Procedure Code. Though the Department filed several documents and examined nearly five witnesses, no document as admitted by the petitioners was marked before the Enquiry Officer, that itself shows the attitude of the petitioners. Hence, there is no clear explanation to that effect and without marking any document, the innocence of the petitioners cannot be claimed.

9. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be



proportionate to the act of the delinquency. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In **Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415)**, the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

10. In the light of the above said decision and for the reasons discussed above, both the Writ Petitions, being devoid of merits, are dismissed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

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

2.The Superintendent of Police,
Kanyakumari District.

+2 CC to M/s.T.ARUL, Advocate (SR-2324[F] dated 29/01/2021)

+1CC to M/s. SPL GP,SR.No.2380 dated 29/01/2021

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27.01.2021

PM(CO)

KB(11.03.2021) 6P 6C