



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD)No.9718 of 2012

and

M.P. (MD)No.1 of 2012

WEB COPY

N.Sundararaj

... Petitioner

Vs.

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

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

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records relating to the proceedings in C.No.:C4/review150/2011, dated 04.05.2011 of the first respondent modifying the order passed by the second respondent in PR No. 93/2010, dated 13.01.2011 and quash the same .

For Petitioners : Mr.S.Siva Thilakar

For Respondents : Mr.C.M.Marichelliah Prabhu
Additional Government Pleader

ORDER

The Writ Petition is filed seeking for issuance of a writ of Certiorari to call for the records relating to the proceedings in C.No.:C4/review150/2011, dated 04.05.2011 of the first respondent modifying the order passed by the second respondent in PR No. 93/2010, dated 13.01.2011 and quash the same .

2. The case of the petitioner is that the petitioner was working as Head Constable at Ottapidaram police station, Tuticorin District. He joined the duty as Constable Grade -II in the year 1982. Subsequently, he was promoted as Constable Grade-I and thereafter, he was promoted as Head Constable by considering his sincerity and experience in the work. While doing so, one Meena - Sub-Inspector of Police attached to Prohibition and Enforcement Wing, Tiruchendur made a complaint to the higher officials against the petitioner as if the petitioner used unparliamentary words (in singular) against her, while he was on election duty during the recent Election, without obliging her words and the



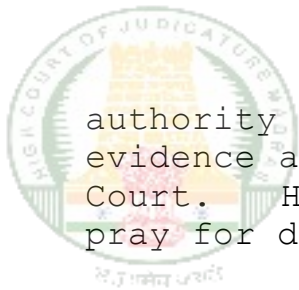
further charge is that the petitioner, without permission, took leave for 90 days and he did not appear before the Medical Board and lastly he took leave for another 21 days from 12.08.2009 to 01.09.2009 without prior permission. Based on her complaint and other three charges, a charge memo was issued against him. The minute drawing officer, ie., the Deputy Superintendent of Police, Srivaikundam Sub Division, Tuticorin District conducted an enquiry and filed a report by holding that the first, second and fourth counts of charges were proved and the third count of charge was not proved.

3. Based on the proven minute drawn by the Enquiry Officer, a second show cause notice was issued. The punishing authority, viz., the Superintendent of Police agreed with the findings of the Enquiry Officer and awarded a punishment of postponement of next increment for three years without cumulative effect, vide his order dated 13.01.2011.

4. As against the finding of the second respondent, the first respondent *suo motu* received the award passed by the second respondent and modified the same into postponement of increment for two years without cumulative effect. Challenging the same, the present writ petition is filed.

5. Learning Counsel appearing for the petitioner would submit that in order to prove the charge, the prosecution examined five witness and the statement and the witness of the first witness viz., Meena-Sub Inspector of Police is an interested one and except her statement, no witness was examined to support the allegation of the said Sub-Inspector of Police and for unauthorised absence of 90 days and 21 days, except this witness, one Mahesh Kumar was also examined and he clearly deposed that he did not know anything with regard to the alleged misbehaviour with the Sub-Inspector of Police and in the absence of any witness and document, imposing the punishment against the petitioner is unsustainable one and hence, the said punishment is disproportionate and the same is liable to be set aside and accordingly, the learned Counsel would pray for appropriate orders.

6. Per contra, learned Additional Government Pleader appearing for the respondents would submit that even a bare perusal of the statements of the witnesses and the documentary evidences, it would clearly show that the petitioner was unauthorizedly absent for 90 days and 21 days and the said unauthorized absence was established by examining the witnesses, except one Mahesh Kumar. Except the third charge, all other counts were established before the original authority and the same was also modified by the appellate authority. Since the original



authority and the appellate authority appreciated the entire evidence and imposed the punishment, it need not interfere by this Court. Hence, the learned Additional Government Pleader would pray for dismissal of the writ petition.

7. Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials placed on record.

8. 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 delinquent. 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."



9. This Court, keeping in mind the ratio laid down by the Hon'ble Apex Court in relation to interfering with the punishment imposed by the disciplinary authority, would now proceed to dissect the materials available on record to find out whether the punishment imposed on the petitioner is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court requiring interference.

10. The facts in the present case are not in dispute and the allegations against the petitioner is that he used unparliamentary words against the superior officer viz., the Sub-Inspector of Police and no doubt, that statement was established only through the aggrieved person viz., the Sub-Inspector of Police. Except her statement, no other witness would support her statement. Further, for the absence of 90 days and 21 days, it was established by other witnesses and further, the petitioner took unauthorized leave without prior permission and he did not appear before Medical Board. Though the third count was not established before the Enquiry Officer and the Enquiry Officer has drawn the unproven minute in favour of the petitioner, the other charges were proved and the Enquiry Officer has drawn the proven minute. The petitioner did not establish his case that he was not unauthorizedly absent and all those leave were taken in the manner of law. In the absence of any plausible evidence, this Court cannot interfere with the findings of the original authority as well as the appellate authority.

11. For the reasons aforesaid, this writ petition sans merit and, accordingly, the same is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

Sd/-

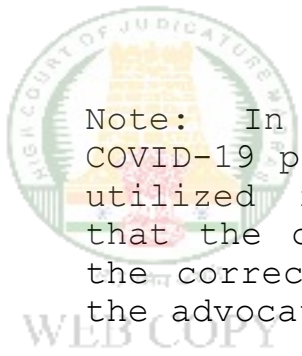
Assistant Registrar ()

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/ /2021

Sub Assistant Registrar (CS)

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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,
Office of the Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli.

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

+1 CC to SPL GP (SR-6679[F] dated 23/02/2021)

W. P (MD) No. 9718 of 2012
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KM (03.03.2021) 5P 4C