



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.10054 of 2021

and

W.M.P (MD)Nos.7769 & 7770 of 2021

and

W.P (MD)No.8147 of 2021

and

W.M.P (MD)Nos.6202 & 6203 of 2021

R.Santhanam

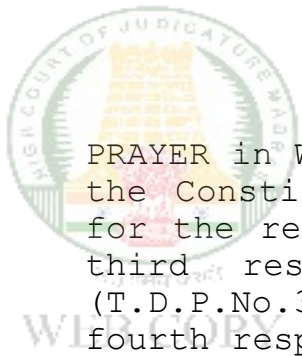
... Petitioner
(in both writ petitions)

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Additional Chief Secretary,
Home Department,
Secretariat,
Chennai.
- 2.The Director General of Police,
O/o.The Director General of Police,
Chennai-600 004.
- 3.The Commissioner,
O/o.Tribunal for Disciplinary Proceedings,
Opp. To Central Jail,
Trichy City,
Trichy District.
- 4.The Commissioner of Police,
O/o.The Commissioner of Police,
Trichy City,
Tiruchirappalli District.
- 5.The Assistant Commissioner of Police,
Traffic South,
Trichy District.

... Respondents
(in both writ petitions)

PRAYER in W.P(MD)No.10054 of 2021: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned G.O., issued by the first respondent vide G.O.(2D) No.69, Home (Police-IV) Department, dated 09.03.2021 and quash the same as illegal.



PRAYER in W.P(MD)No.8147 of 2021: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned Charge memo issued by the third respondent in his proceedings in e.f.vz;.246/2007/m1, (T.D.P.No.33) and consequential show cause notice issued by the fourth respondent in C.No.H1-PR 16/2008 dated Nil.04.2011 along with the enquiry report annexed therewith and quash the same as illegal.

For Petitioner : Mr.Ajmal Khan
(in both W.Ps) Senior Counsel
for M/s.Ajmal Associates

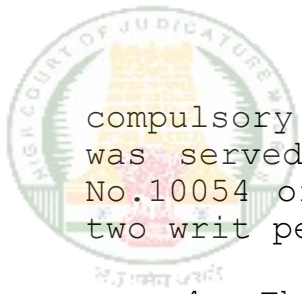
For Respondents : Mr.P.Subbaraj
(in both W.Ps) Government Advocate

ORDER

W.P(MD)No.10054 of 2021 is filed to quash the impugned G.O., issued by the first respondent vide G.O.(2D) No.69, Home (Police-IV) Department, dated 09.03.2021.

2. The petitioner was appointed as Grade-II Police Constable on 25.10.1993 and promoted as Grade-I Police Constable on 28.10.2004 and transferred to Traffic Investigation South, Trichy City. While he was working as Grade-I Police Constable, a chargememo was issued by the third respondent on 28.11.2007, alleging that he along with one R.M.Selvam, Inspector of Police, demanded a sum of Rs.1,000/- as a bribe from one Mr.Manikandan while checking his vehicle. An Enquiry Officer was appointed and enquiry was conducted. During the enquiry, the said Manikandan was examined as P.W.1 and he has deposed that he has not seen the petitioner at the place of occurrence and the allegation does not relates to the petitioner. The said Manikandan was treated as hostile witness. The third respondent relying on the evidence of P.W.7, Inspector of Police, Vigilance and Anti Corruption and the statement recorded under section 161(3) Cr.P.C., erroneously held that charges levelled against the petitioner are proved and filed a report on 30.09.2010. The enquiry report has been served on the petitioner in April 2011. The petitioner has submitted his explanation on 01.06.2011.

3. The learned Senior Counsel appearing for the petitioner submitted that there was no progress in the conclusion of disciplinary proceedings and no order was passed by the disciplinary authority for more than 10 years. Hence, the petitioner has filed a writ petition in W.P(MD)No.8147 of 2021 challenging the chargememo, dated 28.11.2007 and the consequential show cause notice dated April 2011. After being taken notice by the learned Government Advocate appearing for the respondents in the said writ petition in W.P(MD) No.8147 of 2021, the first respondent imposed a punishment of



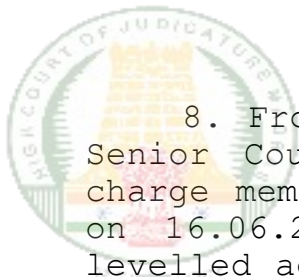
compulsory retirement by the impugned order dated 09.03.2021, which was served on the petitioner on 18.05.2021 challenged in W.P(MD) No.10054 of 2021 and hence, the petitioner has come out with these two writ petitions.

4. The learned Senior Counsel appearing for the petitioner submitted that the witnesses examined by the enquiry officer turned hostile and relying on their evidence, the enquiry officer held that the charge leveled against the petitioner is proved. The said finding is erroneous. The disciplinary authority has to prove the charge levelled against the petitioner by acceptable evidence. Here is the case where there is no evidence at all to prove the charges leveled against the petitioner.

5. The learned Senior Counsel appearing for the petitioner further submitted that the respondents cannot keep the disciplinary proceedings idle for years together without any further progress and hence, the impugned order is liable to be set aside on the ground of delay in concluding the disciplinary proceedings. He further submitted that the first respondent has not given any independent reason while imposing punishment. Not giving independent reasons would vitiate the order imposing the punishment by the first respondent. The finding can be given based on the preponderance of probabilities, but there must be some evidence to prove the charges. The conclusion cannot be on the basis of mere surmises and conjectures and prayed for setting aside the orders and allowing the writ petitions.

6. Mr.P.Subbaraj, learned Government Advocate appearing for the respondents submitted that during vehicle check up, the petitioner and the Inspector of Police have demanded and accepted the bribe of Rs.1,000/- from one Manikandan. The petitioner tampered with entries made in the vehicle diary, which was kept in the police jeep, driven by him. P.W.7, the Inspector of Police, Vigilance and Anti Corruption, Trichy deposed that the petitioner and the Inspector of Police one Selvam demanded and accepted illegal gratification from Manikandan for non-production of driving licence. The enquiry officer relying on the evidence of P.W.7 Inspector of Police, Vigilance and Anti Corruption, held that the charge is proved. The occurrence took place on 16.06.2005; the charge memo was issued on 28.11.2007; enquiry was completed on 30.09.2010 and the enquiry officer submitted his report in April 2011. The petitioner submitted his explanation on 01.06.2011. Due to administrative reason, the first respondent has passed the impugned order on 09.03.2021. There is no error in the impugned order and prayed for dismissal of the writ petitions.

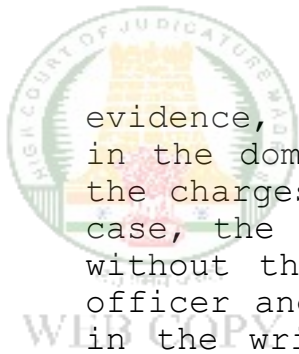
7. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.



8. From the above materials and the submissions of the learned Senior Counsel appearing for the petitioner, it is seen that a charge memo was issued on 28.11.2007 for the occurrence took place on 16.06.2005. Domestic enquiry was conducted for the charge levelled against the petitioner. The Enquiry Officer concluded the enquiry and submitted his report on 30.09.2010. The respondents served the copy of the enquiry report in April 2011. According to the petitioner, he has submitted his explanation on 01.06.2011. The learned Government Advocate has not disputed the above dates and events as narrated by the learned Senior Counsel appearing for the petitioner.

9. From the above facts, it is seen that the disciplinary proceeding was initiated on 28.11.2007 by issuing charge memo; enquiry was concluded on 30.09.2010 and the impugned order was passed on 09.03.2021, after ten years from the date of the enquiry report. The enquiry officer has submitted his report as early as on 30.09.2010. The said report was served on the petitioner in April 2011. The petitioner has submitted his explanation on 01.06.2011. According to the learned Government Advocate, due to administrative reasons, the delay has occurred in concluding the proceedings. The said submission is erroneous. From the year 2011, the disciplinary authority has not passed any orders till 09.03.2021 and concluded the disciplinary proceedings only on 09.03.2021, keeping the disciplinary proceedings pending for such a long time. The disciplinary authority has not given any explanation for inordinate delay of 10 years in not passing order concluding the disciplinary proceedings. Further, the witnesses examined in the domestic enquiry have not supported the case of the department. P.W.1, the complainant has stated that the petitioner was not present in the place of occurrence. P.W.2 accompanied with P.W.1 also stated that he was not aware, who are there in the occurrence place and cannot identify the person due to passage of time. The enquiry officer relying on the evidence of P.W.7, Investigating Officer- the Inspector of Police, Vigilance and Anti Corruption and the Statement of 161(3) Cr.P.C., concluded that the charge levelled against the petitioner was proved.

10. From the materials on record, it is seen that the enquiry officer has given a finding on the basis of mere surmises and conjectures and the judgment of the Hon'ble Apex Court relied on by the enquiry officer is on different set of facts, as it was a trap case and relying on the report of the enquiry officer, the delinquent employee was found guilty. In view of the same, the ratio laid down in the judgment relied on by the enquiry officer, is not applicable to the facts of the present case. Further, the disciplinary authority has also accepted the report of the enquiry officer and imposed punishment. P.Ws.1 & 2 turned hostile. The enquiry officer has stated that from the evidence of P.Ws.1 & 2 the charge leveled against the petitioner is proved. The said finding is erroneous. It is no doubt true that the strict proof of



evidence, as in the case of criminal proceedings is not applicable in the domestic enquiry, but, there must be some evidence to prove the charges leveled against the delinquent employee. In the present case, the finding of the enquiry officer and punishment imposed are without there being any evidence. When the finding of the enquiry officer and punishment are imposed without any evidence, this Court in the writ proceedings under Article 226 of the Constitution of India can interfere with the said findings and punishment and set aside the impugned order.

11. For the above reason, the impugned order passed in W.P(MD) No.10054 of 2021, is set aside and writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

12. In view of setting aside the impugned order in W.P(MD) No.10054 of 2021 imposing punishment, the writ petition in W.P(MD) No.8147 of 2021, challenging the charge memo, has become infructuous.

13. In the result, W.P(MD)No.8147 of 2021 is dismissed as infructuous. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

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/ /2021

Sub Assistant Registrar(CS)

am

To

1.The Additional Chief Secretary,
Home Department,
Secretariat, Chennai.

2.The Director General of Police,
Chennai-600 004.

3.The Commissioner,
Opp. To Central Jail,
Trichy City,
Trichy District.

4.The Commissioner of Police,
Trichy City,
Tiruchirappalli District.



5.The Assistant Commissioner of Police,
Traffic South,
Trichy District.

+2 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-23286 & 23289[F] dated
20/07/2021)

+1 CC to Mr. Special Government Pleader, SR.No. 23308

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and
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W.P (MD)No.8147 of 2021
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