

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
01.07.2021	09.07.2021

CORAM:
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI
W.A. (MD) No.1082 of 2020
and
C.M.P. (MD) Nos.5899 of 2020 & 2139 of 2021

- 1.The Additional Director General of Police-cum-Inspector General of Prison
Chennai
 - 2.The Deputy Inspector General of Police (Prisons)
Madurai Division, Madurai
 - 3.The Superintendent of Prison
The Central Prison
Palayamkottai
Tirunelveli District
- ... Appellants
- vs-
- S.Pagamu ... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 18.03.2019, passed in W.P.(MD) No.4758 of 2017, on the file of this Court.

Prayer in WP(MD). 4758/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus to call for the records on the files of the 3rd respondent pertaining to its order bearing No.10618/Po1/2010-4 dated 26.02.2013 and the consequently order passed by the 2nd respondent in appeal petition bearing No.1438/Muo/2013 dated 23.10.2013 and the consequential order passed by the 1st respondent in review petition bearing No.52394/EW.1/2013 dated 22.09.2016 and to quash the same.

For Appellants : Mr.A.K.Manickam
Government Counsel
For Respondent : Mr.S.C.Herold Singh



J U D G M E N T

T.S.SIVAGNANAM, J.

The appellants are the Additional Director General of Police-cum-Inspector General of Prison, Chennai and two others, who are aggrieved by the order dated 18.03.2019, passed in W.P.(MD) No.4758 of 2017, filed by the respondent herein.

2. For the sake of convenience, the parties shall be referred to as in the writ petition.

3. The petitioner was appointed as a Prison Constable Grade-II on 24.03.1998 and posted at the Central Prison at Coimbatore. Though the petitioner became eligible to be promoted as Grade-I Prison Constable during October, 2012, his name was not considered as charges were pending against him and he was promoted to the said post only on 23.01.2015. Thereafter, the petitioner was transferred to the Central Prison, Palayamkottai, on 12.02.2009.

4. It is stated that on 12.09.2010, when the petitioner was on duty between 13.00 hours to 18.00 hours, one Subramanian, son of Durai Raj fell unconscious and he was taken to the Prison Hospital. After giving first aid, the said Subramanian was taken to the Government Medical College Hospital, Tirunelveli, at about 14.45 hours and at about 15.00 hours, the Hospital Authorities declared Subramanian dead. This incident led to issuance of a charge memo, dated 16.09.2010, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules ("the Rules" for brevity).

5. The gist of the allegations of the charges is that when the petitioner was assigned protection duty at the new block on 12.09.2010, at about 13.45 hours, he failed to supervise the clash resulting in beating one prisoner, by name, Prabhakaran by some other prisoners and continuation of the same resulting in a clash in Cell No.8 and one prisoner Subramanian fell unconscious. The petitioner denied the allegations made in the charge memo and by representation dated 05.06.2013 sought for 31 documents, of which, only three documents were furnished and explanation was called for and thereafter, on 19.12.2011, the petitioner submitted a detailed explanation and also mentioned about the irregularities committed by the officials working in the Central Prison, Palayamkottai, which lead to the death of the prisoner Subramanian and as to how there was pressure of work on the petitioner, where he was forced to manage 310 prisoners in the new block and though the allegation was that one Prabhakaran was beaten by some prisoners, no complaint was received from the said Prabhakaran and no action was initiated by the third respondent, but the petitioner was directed to submit explanation.



6. The petitioner would further state that on 13.03.2009, at about 06.30 a.m., one Arumuga Nainer and Chinnakutti were attacked by some prisoners and they sustained injuries, but no charge memo was issued nor any case was registered against the accused persons and like the said incident, there are several incidents, which were happened in the prison, which though was well within the knowledge of the third respondent - Superintendent of Prison, Central Prison, Palayamkottai, no action was initiated. It is further submitted that some of the accused persons were permitted to play kabadi inside the prison complex, which led to a quarrel among the prisoners and the prisoners attacked Subramanian and thereafter, Subramanian consumed alcohol and ganja and these are all established by the medical report. Further, in the affidavit filed in support of the writ petition, the petitioner would mention that several incidences were happened inside the prison and no action was initiated by the third respondent against either the aggressor or the prisoner and the petitioner alone has been singled out with an allegation, which is factually incorrect.

7. Further, the petitioner would state that there are several flaws in the domestic enquiry and a report was submitted by the Enquiry Officer stating that the charges are proved without taking note of the materials available on record. It is submitted that the third respondent, by proceedings dated 26.02.2013, imposed the punishment of reduction in time scale of pay by one stage for one year without cumulative effect. Challenging the said order, the petitioner preferred an appeal to the second respondent, who by proceedings dated 23.10.2013, dismissed the appeal. Aggrieved by the said order, the petitioner preferred review petition before the first respondent on 13.12.2013, which was rejected by order dated 22.09.2016. The petitioner challenged these orders by filing the writ petition.

8. The writ petition was allowed only on the ground that the workload assigned to the petitioner was very heavy and the petitioner could not have been charged for not properly supervising the prisoners and fixing responsibility on the petitioner for the death of one of the prison inmates, who was permitted to play kabadi, is not based on any concrete materials. Further, there is no specific allegation as against the petitioner of any dereliction of duty. Thus, the Court came to the conclusion that the charge was not specific and no liability can be fixed on the petitioner and accordingly, set aside the order of punishment. Aggrieved by the same, the Department has preferred the present appeal.

9. Mr.A.K.Manickam, learned Government Counsel appearing for the appellants, submitted that the charge against the appellant was one of dereliction of duty and after conducting a full-fledged enquiry and taking note of the material evidence, which was

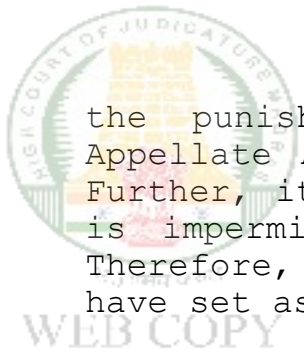


available on record, the punishment was imposed on the petitioner, which is a minor punishment. Further, it is submitted that the allegation made by the petitioner that documents were not furnished to him is incorrect, since the petitioner was intimated by Memo dated 04.02.2011 to receive all the documents, but the petitioner failed to utilise the same during the course of enquiry. Further, it is submitted that the Disciplinary Authority, after considering the report of the Enquiry Officer and the contentions raised by the petitioner, has imposed punishment for the proven charge. This order of the Disciplinary Authority has been confirmed by the First Appellate Authority as well as by the Revisional Authority and the Court will seldom interfere in such matters, where punishment has been imposed on a person, who belongs to a Uniformed Service for a proven charge.

10. Further, it is submitted that the learned Writ Court held that for managing 131 prisoners, the workload will be heavy is incorrect, because the duty assigned to the petitioner is to supervise the prisoners and the actual and physical monitoring of the prisoners will be carried by convict-warders. However, during emergency situation, it is the petitioner, who is duty bound to call for deployment of adequate strength and could not have been a silent spectator to the commotion, which led to the death of one of the prison inmates.

11. Further, it is submitted that lack of supervision on the part of the petitioner is also an act of misconduct and on account of which there was a loss of one human life and the Department was justified in initiating disciplinary action. In support of such contention reliance was placed on the decision of the Honourable Supreme Court in ***Tara Chand Vyas vs. Chairman and Disciplinary Authority and others [(1997) 2 LLJ 26]***.

12. Further, it is submitted that the findings of the Enquiry Officer are based on oral and documentary evidence. The Enquiry Officer has taken note of the submissions made by the respective parties and then recorded his findings by giving cogent reasons to hold that the charges are proved. Further, the Disciplinary Authority took note of the report of the Enquiry Officer and the submission of the petitioner and thereafter, passed a detailed order imposing punishment. The findings on fact have been approved by the Appellate Authority and confirmed by the Revisional Authority. Hence, the learned Writ Court ought not to have interfered with the orders of punishment and even assuming the Court is of the view that the punishment is disproportionate, then the matter would normally be remanded back to the Disciplinary Authority for fresh consideration and only in rarest of rare cases, where there is a long delay in conclusion of the disciplinary proceedings, the Court will substitute its own views as to the quantum of punishment. Further, the Court will not interfere with



the punishment imposed by the Disciplinary Authority or the Appellate Authority unless it shocks the conscience of the Court. Further, it is submitted that in such cases, sympathy or generacity is impermissible and loss of confidence is the primary factor. Therefore, it is submitted that the learned Writ Court ought not to have set aside the order of punishment.

13. Mr.S.C.Herold Singh, learned counsel appearing for the respondent / writ petitioner, sought to sustain the order passed in the writ petition by submitting that the learned Writ Court took note of the facts and circumstances of the case and that there was no conclusive proof or specific allegation against the petitioner warranting punishment to be imposed on the petitioner. Further, the workload, which has been assigned to the petitioner at the relevant time, was a very important factor, which the learned Writ Court had rightly taken into consideration while granting the relief to the petitioner. Further, the petitioner had contended in the writ petition that no witness was examined to establish the charges levelled against him. That apart, the petitioner has pointed out several incidents, which have happened in the Central Prison, Palayamkottai, for which no action was initiated by the third respondent. Further, it is submitted that in the writ petition, the petitioner has stated that the third respondent was in the habit of issuing charge memos and after which, if bargaining is done, the charge memo proceedings would be stopped and since the petitioner did not agree to such a procedure being followed, he has been victimised. On the above grounds, the learned counsel prayed for dismissal of the writ appeal.

14. We have heard learned counsel for the parties and carefully perused the materials placed on record.

15. The charge against the petitioner is that he failed to prevent the clash between the remand prisoner No.2838 - Subramanian, son of Durai Raj with the co-prisoner, which caused the death of the remand prisoner - Subramanian in the Central Prison, Palayamkottai. The Government vide G.O.(Ms) No.1361, Public (L&O-E) Department, dated 11.12.2013, ordered to take departmental action against the staff responsible for the death of the remand prisoner Subramanian. The third respondent initiated departmental action by issuing a charge memo, dated 16.09.2010, under Rule 17(b) of the Rules. The petitioner submitted his explanation on 19.12.2011. The Jailor, Central Prison, Palayamkottai, was appointed as Enquiry Officer, who conducted oral enquiry on 30.11.2012 and submitted his report holding that the charges are proved and after considering all materials, the Disciplinary Authority imposed the punishment of reduction of pay by one stage for a period of one year without cumulative effect by proceedings dated 26.02.2013. The petitioner preferred an appeal to the second respondent, which was dismissed by order dated 23.10.2013. The review petition filed by the petitioner

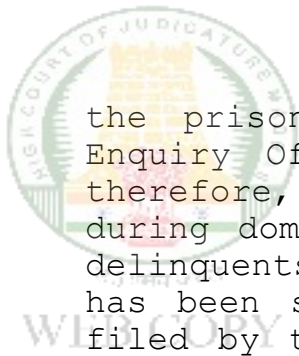


before the first respondent was also dismissed by order dated 22.09.2016.

16. Before the learned Writ Court, the petitioner has alleged that he alone has been victimised and no action was initiated by the third respondent against the others when similar such incidents had occurred in the Central Prison, Palayamkottai. A faint plea was raised by the petitioner stating that the documents sought for by him have not been furnished to him. However, the nature of documents sought for by the petitioner, which were not furnished, have not been set out in detail. From the facts placed before us, it is seen that by a Office Memo dated 04.02.2011, the petitioner was directed to receive all the documents sought for by him during the enquiry proceedings and it is the petitioner, who had failed to utilise such an opportunity. If such is the factual position, then the petitioner cannot claim that there has been violation of principles of natural justice.

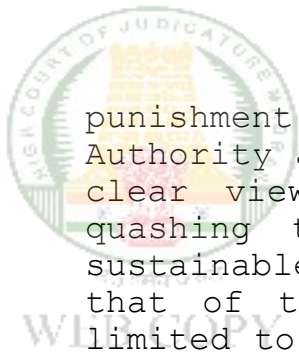
17. After taking note of the averments made in the affidavit filed in support of the writ petition, we find that the petitioner has not raised a specific plea as to how the departmental action is vitiated. There is no specific allegation of any procedural irregularity. If such is the factual position, the Court exercising powers under Article 226 of the Constitution of India would seldom interfere with the order of punishment more so, when the punishment imposed on the petitioner was a minor punishment. As rightly contended by the learned Government Counsel, unless and until the punishment is shockingly disproportionate to the proven charge, the learned Writ Court will not interfere with the order of punishment imposed by the Disciplinary Authority more so, when the delinquent employee belongs to a Uniformed Service. Unless and until there are cogent material available to show that the findings of the Enquiry Officer are perverse or that the Disciplinary Authority passed an order ignoring the rudimentary legal principles, the Court will not interfere with the order of punishment merely on the ground that it is of the view that a different punishment could have been imposed. In the absence of any procedural impropriety or any other illegality, the Court will not substitute its opinion to that of the opinion recorded by the Disciplinary Authority and will do so only when the punishment shocks the conscience of the Court. In the instant case, we find that there is no such material available to show that there was any illegality or procedural impropriety in the disciplinary proceedings nor there is any disproportionality between the punishment imposed and the proven charge.

18. Furthermore, in the writ petition, the Additional Director General of Police had filed a counter affidavit, wherein there is a specific averment that the Enquiry Officer has recorded that the petitioner has cross-examined P.W.1 regarding assault of



the prisoner Prabhakaran by some co-prisoners. A copy of the Enquiry Officer's report has been served on the petitioner and therefore, we find that there is no procedural error committed during domestic enquiry. The petitioner had alleged that the co-delinquents have not been proceeded against and the petitioner alone has been singled out and victimised. From the counter affidavit filed by the first respondent in the writ petition, we find that there are three co-delinquents, namely, Assistant Jailor on whom the punishment of reduction of pay by one stage for a period of six months without cumulative effect was imposed by order dated 05.06.2013; Grade-I Warder (UG) on whom charges were held to be not proved and Deputy Jailor was warned by proceedings dated 21.03.2011. Therefore, the submission that no disciplinary action was initiated against the co-delinquent is factually incorrect.

19. As noticed above, the primary ground on which the punishment was set aside by the learned Writ Court is on account of the workload entrusted to the petitioner, which in the opinion of the learned Writ Court, was very heavy and liability cannot be fastened on the petitioner for the death of the prison inmate. The petitioner is a member of a Uniformed Service and the duties and responsibilities are assigned as per the allocation of work by the Head of the Department. It is not for the Court to come to a conclusion as to whether the duty assigned to an employee is heavy or not. If according to the petitioner, he was unable to handle the duties assigned to him, it was for the petitioner to approach the higher officials with a request for deployment of additional strength or for initiating steps to mitigate the hardship. That apart, the respondents have stated that physical management of the inmates is only with the convict-warder and the duty assigned to the petitioner is only to supervise the prisoners. In any event, it is not for the Court to state as to whether the duty assigned was heavy or light. These are all matters which have to be left open to the discretion of the Administration and the Departmental Authorities under whom the employee functions. However, that cannot be a ground to set aside the punishment imposed, after conducting a domestic enquiry. The learned Writ Court has not recorded any finding as to what was the error committed by the Enquiry Officer or for that matter, the Disciplinary Authority, the First Appellate Authority or the Revisional Authority. The petitioner did not challenge the charge memo at the first instance as being vague, but, submitted to the jurisdiction, furnished his reply and participated in the domestic enquiry and also cross-examined the prosecution witnesses and ultimately, the punishment has been imposed. Therefore, it is too late for the petitioner to state that the charge proceedings are vague and it would not be appropriate for the learned Writ Court to hold that the charge proceedings are vague after conclusion of the domestic enquiry and imposition of punishment, more particularly, when the petitioner did not raise any such stand before any of the higher officials or came to this Court challenging the charge proceedings. But, the writ petition was filed only after the



punishment was imposed and confirmed by the First Appellate Authority as well as the Revisional Authority. Thus, we are of the clear view that the exercise of jurisdiction by the Court for quashing the punishment imposed for the proven charge is not sustainable. It is not for this Court to substitute its decision to that of the administration and the scope of judicial review is limited to the decision making process and not to the decision. We find that there is no ground made out by the petitioner to state that the decision making process was flawed. In such circumstances, the order of punishment imposed on the petitioner could not have been interfered.

20. For the above reasons, the writ appeal is allowed and the order, dated 18.03.2019, passed in W.P.(MD) No.4758 of 2017, is set aside. Consequently, the order of punishment imposed on the respondent / writ petitioner is sustained. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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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 Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Additional Director General of Police-cum-
Inspector General of Prison
Chennai
- 2.The Deputy Inspector General of Police (Prisons)
Madurai Division, Madurai
- 3.The Superintendent of Prison
The Central Prison
Palayamkottai
Tirunelveli District



W.A.(MD) No.1082 of 2020

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-22018[F] dated 12/07/2021)

+1 CC to M/s.SPL GP (SR-22137[F] dated 12/07/2021)

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and

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