



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.17089 of 2019

and

W.M.P(MD)No.13630 of 2019

WEB COPY

M.Arul Kumar

... Petitioner

vs.

1.The State of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Home (Police - VI) Department, Chennai - 9.

2.The Director General of Police,
Chennai - 4.

3.The Superintendent of Police,
Tirunelveli, Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to the impugned punishment order of dismissal passed by the third respondent in his proceedings in F order in P.R.No.82 of 2015, dated 26.07.2016 and the consequential confirmation order passed by the second respondent in his proceedings in RC.No.36715/AP2(1)/2017, dated 27.01.2018 and the consequential rejection order passed by the first respondent in his proceedings in G.O(D)No.307, Home (Police VI) Department, dated 20.03.2019 and quash the same as illegal.

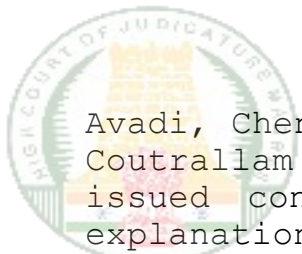
For Petitioner : Mr.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.Veera.Kathiravan
Senior Standing Counsel
Assisted by
Mr.P.Subbaraj
Government Advocate

ORDER

The petitioner has filed the present Writ Petition, to quash the impugned punishment order of dismissal passed by the third respondent, dated 26.07.2016; the consequential confirmation order passed by the second respondent, dated 27.01.2018 and the consequential rejection order passed by the first respondent in G.O (D)No.307, Home (Police VI) Department, dated 20.03.2019.

2.According to the petitioner, initially he was appointed as Police Constable Grade-II on 01.03.2008 at Veerapuram Battalion,



Avadi, Chennai. While he was working as Police Constable Grade-II at Coutrallam Police Station, a charge-memo, dated 27.05.2015 was issued consisting of two charges. The petitioner submitted his explanation on 21.06.2015. The third respondent by proceedings, dated 04.07.2015, appointed the Deputy Superintendent of Police, Puliyanudi Sub-Division as Enquiry Officer. After concluding the enquiry, the enquiry officer submitted his report on 27.06.2016, holding that both the charges are proved. The petitioner submitted his further representation on 19.07.2016. By proceedings, dated 26.07.2016, the third respondent, considering the materials, enquiry report and submissions of the petitioner, dismissed the petitioner from service. By an order, dated 26.10.2016, the appeal petition preferred by the petitioner before the Appellate Authority viz., the Deputy Inspector General of Police, Tirunelveli Range, was rejected. By an order, dated 27.01.2018, the second respondent rejected the review petition. By an order, dated 20.03.2019, the first respondent rejected the mercy petition of the petitioner. Challenging the said orders, the petitioner has come out with the present Writ Petition.

3.The learned Senior Counsel appearing for the petitioner submitted that no complaint was given against the petitioner that he demanded and received a sum of Rs.200/- as bribe from an Iyyappa devotee, for permitting him to take bath in Coutrallam main falls by using soap on 21.11.2014. Similarly, no complaint was given against the petitioner that he assaulted two persons who were returning from a TASMACHOP shop with liquor bottles and threatened them to return the liquor bottles to the TASMACHOP shop. The witnesses examined in the domestic enquiry did not depose that the petitioner had committed the said misconduct. Those two persons were not examined in the domestic enquiry. The employers of TASMACHOP shop were also not examined. The witnesses examined in the domestic enquiry did not identify the petitioner as the person, who received bribe. There is no evidence in the domestic enquiry to prove the charges levelled against the petitioner. The enquiry officer, relying on the statements of P.W.1 to P.W.4, which were recorded during preliminary enquiry behind the back of the petitioner, held that the charges levelled against the petitioner are proved. The said finding is perverse and the same is without any evidence. The Enquiry Officer having failed to prove the allegation made against the petitioner during oral enquiry, is not justified in relying on the statement obtained from the witnesses during the preliminary enquiry, which was not recorded in the presence of the petitioner. The serious charges of bribe cannot be proved on mere probabilities and hearsay evidence. The first respondent mechanically passed the order rejecting the mercy petition filed by the petitioner.

4.In support of his contention, the learned Senior Counsel appearing for the petitioner relied on the following Judgments:-

(i) In **Union of India and others Vs. Gyan Chand Chattar**

<https://hcservices.ecourts.gov.in/hcservices/>



reported in **2009 (12) SCC 78**, the Hon'ble Supreme Court held as follows:-

"21. Such a serious charge of corruption requires to be proved to the hilt as it brings civil and criminal consequences upon the employee concerned. He would be liable to be prosecuted and would also be liable to suffer severest penalty awardable in such cases. Therefore, such a grave charge of quasi-criminal nature was required to be proved beyond any shadow of doubt and to the hilt. It cannot be proved on mere probabilities."

(ii) In **K. Ramalingam Vs. The Superintendent of Police, Perambalur** reported in **2009 WLR 511**, this Court held as follows:-

"8. Now the issue to be decided in this case is as to whether the respondent was justified in relying on the statements made by the witnesses during the preliminary enquiry, which was not substantiated, admittedly during the oral/regular enquiry.

9. Whether the statements made during the preliminary enquiry, not corroborated by cross examination can be validly relied on by the Disciplinary authority, was considered by the Honourable Supreme Court in the decision reported in (2004) 10 SCC 87 (Union of India v. Mohammed Ibrahim). The Honourable Supreme Court held that the order of dismissal was vitiated as the findings have been based on consideration of statement of the persons, examined during the preliminary enquiry and for the said fact the Tribunal set aside the order of dismissal, which was upheld by the High court and there is no error in the order setting aside the dismissal order.

10. A Division Bench of this Court by Judgment dated 22.2.2005 in W.P.Nos.29862 & 32581 of 2002 (The Deputy Inspector General of Police, Villupuram and others v. V. Vanniaperumal and others) upheld the order of the Tribunal, which set aside the order of removal from service.

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11. The above referred decision of the Division Bench was followed by me in the order dated 15.2.2006 in W.P.No.27019 of 2005 (B. Bals Murugan v. The Inspector General of Police, Madurai-2 and Two others), wherein the order of punishment was set aside.

12. I have also followed the above decisions and allowed similar writ petition and the same is reported in (2006) 2 MLJ 202 (T. Pitchai v. Deputy Inspector General of Police, Tirunelveli) by setting aside the order of



dismissal with a direction to reinstate the petitioner therein with all service benefits.

13. In the decision reported in (2006) 3 MLJ 900 (H.C. Lenin v. Commissioner of Police), A.Kulasekaran, J., has taken a similar view following the decision of the Honourable Supreme Court reported in AIR 1999 SC 677 : (1999) 2 SCC 10 (Kuldeep Singh v. Commisisoner of Police and others).

.....

14. In view of the above cited settled position of law on this aspect and having regard to the fact that there is no controversy about the enquiry offier's finding of guilt on the part of the petitioner, relying upon the statements given by the witnesses during the preliminary enquiry and there was no occasion to cross examine the said witness during the preliminary enquiry, I am of the view that the charges framed against the petitioner cannot be said to be validly proved. Hence the petitioner is bound to succeed in this writ petition challenging the order of dismissal passed against him."

(iii) In the **Commissioner of Police, Delhi and others Vs. Jai Bhagwan** reported in **2011 (6) MLJ 305 (SC)**, the Hon'ble Apex Court held as follows:-

"15.It also seems quite impracticable to presume that in the presence of so many passengers, the respondent could have extorted money. The allegation of receiving Rs. 100/- as illegal gratification is framed on suspicions and possibilities while trying to link it up with the instance of returning back of Rs. 100/- by the respondent to the complainant. There are many other shortcomings in the entire investigation and the enquiry like the statement of Mrs. Ranjana Kapoor was not recorded by the Inspector and the Inspector also did not take down in writing and also attest the complaint made by her. The statement of S.P. Narang was also not recorded by the Inspector nor did the Inspector seize Rs. 100/- note nor noted down its number. Mr. Narang was also not examined during the course of departmental proceedings. Non-examination of the complainant and P.S. Narang during the departmental proceeding has denied the respondent of his right of cross-examination and thus caused violation of Rule 16 (iii) of the Delhi Police (F & A) Rules, 1980.

16.In the absence of such a definite/clear proof supporting the case of the appellants it is difficult to draw a finding of taking illegal gratification by the respondent from the complainant. Therefore, as rightly



held by the High Court the present case is a case of no evidence."

(iv) In **Principal Secretary to the Government of Tamil Nadu Vs. J. Joseph Vaz** reported in (2017) 2 MLJ 641, the Division Bench of this Court held as follows:-

"8. On perusal of the materials available on record, we find that the learned Single judge, by relying upon the entire evidence, has arrived at a finding that the Enquiry Officer has not considered the testimonies of witnesses in proper perspective. The findings of the Enquiry Officer were based on surmises and conjectures and the disciplinary authority also simply agreed with the findings of the Enquiry Officer and went through the report of the Tamil Nadu Public Service Commission and ordered for removal from service. The learned Single Judge has also come to the conclusion that the disciplinary authority has failed to consider the material points and simply accepted the findings of the Enquiry Officer. Therefore, in our considered view, if the finding of the Enquiry Officer is not supported by any evidence, the Court can make an interference. In the instant case, by dealing with each and every aspect, the learned Single Judge has come to the correct conclusion that the Enquiry Officer rendered a finding based on surmises and conjectures. Therefore, absolutely, we do not find any infirmity in the said order warranting interference at the hands of this Court. Thus, the Writ Appeal is liable to be dismissed and accordingly, it is dismissed. The appellants are directed to disburse the retirement benefits, within a period of six weeks from the date of receipt of a copy of this judgment. No costs."

5.The respondents filed counter-affidavit.

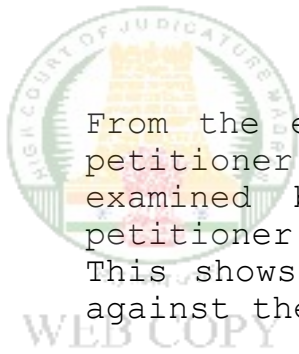
6.The learned Senior Standing Counsel appearing for the respondents submitted that the charges levelled against the petitioner are very serious in nature. The petitioner, who was working as Constable, involved in serious misconducts demanding money and he attacked two persons. For the charges levelled against the petitioner, domestic enquiry was conducted. The enquiry officer, after elaborate consideration of the evidence, held that the charges levelled against the petitioner are proved. P.W.1 has categorically stated that the petitioner threatened and assaulted two persons, who bought liquor bottles and forced them to return the bottles and get back their money. P.W.2 and P.W.3 turned hostile, but they admitted their signature in the statement given before P.W.5-Assistant Superintendent of Police during preliminary enquiry. In the



statement, they have clearly mentioned the receipt of bribe by the petitioner. The Assistant Superintendent of Police, who conducted preliminary enquiry, has proved the statement given by the witnesses, which proved the charges levelled against the petitioner. The allegation that at the instigation of Mariappan, Special Sub-Inspector of Police, Special Branch, who, according to the petitioner, lords over all the police personnel, including the Sub-Inspector of Police, false charges are levelled against the petitioner is not correct. The charges levelled against the petitioner were proved by examining witnesses and marking documents. For the proven charges, the disciplinary authority passed the impugned order, dismissing the petitioner from service. The order of punishment is commensurate with the charges levelled against the petitioner. There is no procedural violation by the disciplinary authority. The petitioner was earlier imposed with 12 punishments. The Appellate Authority, considered the merits of the appeal and also his previous misconduct for the past 7 years and 12 punishments imposed earlier, held that the petitioner is not entitled to continue in Uniformed service. The punishment imposed is proportionate to the proven charges and prayed for dismissal of the Writ Petition.

7. Heard the learned Senior Counsel appearing for the petitioner and the learned Senior Standing Counsel appearing for the respondents and perused the entire materials available on record.

8. From the materials available on record, it is seen that the charge-memo, containing two charges was issued to the petitioner on 27.05.2015. The first charge was that he demanded and accepted bribe of Rs.200/- from an Iyyappa devotee, who took bath in Coutrallam main falls by using soap. Admittedly, the said Iyyappa devotee was not identified and not obtained any statement from him. According to the petitioner, P.W.2-one of the Homeguards, who was on duty along with the petitioner, gave a petition to the Inspector. It is the case of the respondents that preliminary enquiry was conducted and statement of witnesses were recorded. P.W.2 and P.W.3, the then Homeguards deposed that they did not know the alleged occurrence. Those witnesses were treated as hostile and were cross-examined. The signature in the statement given before the Additional Superintendent of Police in the preliminary enquiry was shown to them and they admitted the same as their signature, but they deposed that they did not note the contents of the statement before signing. The statements were recorded not in the presence of the petitioner and P.W.2 and P.W.3 have deposed that they do not know the occurrence. Further, P.W.1 who was examined to prove the second charge, has deposed that he saw one Uniformed person shouting at two unidentified persons and asked them to return the liquor bottles to the TASMACH shop and get the return of money. Subsequently, he saw the said person talking with two unidentified persons, but he does not know what the uniformed person conversed with those persons.



From the evidence of those persons, they have not implicated the petitioner to the charges levelled against him. The witnesses examined before the Enquiry Officer did not depose that the petitioner received bribe and assaulted two unidentified persons. This shows that there is no evidence to prove the charges levelled against the petitioner.

9.As rightly contended by the learned Senior Counsel appearing for the petitioner that demanding and receiving bribe is a grave charge and it must be proved by acceptable evidence. The Honourable Apex Court in the Judgment reported in **2009 (12) SCC 78 [Union of India and others Vs. Gyan Chand Chattar]** held that serious charges of bribe cannot be proved on mere probabilities and hearsay evidence. Further, in the Judgment reported in **2009 WLR 511 [K.Ramalingam Vs. The Superintendent of Police]**, this Court held that Enquiry Officer is not justified in relying on the statement obtained from the witnesses during the preliminary enquiry, which was not recorded in the presence of the delinquent employee and that the charges cannot be held proved only on the basis of the statement given during preliminary enquiry and whether charges are proved or not, is to be determined only on the basis of the statements made during the oral enquiry. The Judgments relied on by the learned Senior Counsel appearing for the petitioner are squarely applicable to the facts of the present case. The report of the Enquiry Officer holding that the charges levelled against the petitioner are proved, based on the statement recorded during the preliminary enquiry behind the back of the petitioner, is perverse. In view of the same, the punishment of dismissal imposed by the disciplinary authority relying on perverse report of Enquiry Officer is non-est in law and illegal. In view of the same, the order of the third respondent/disciplinary authority, dated 26.07.2016, imposing punishment order of dismissal is set aside and the order of the second respondent, dated 27.01.2018, confirming the punishment order of dismissal and the consequential rejection order passed by the first respondent, dated 20.03.2019, are erroneous.

10.For the above reasons, the impugned orders are set aside and the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

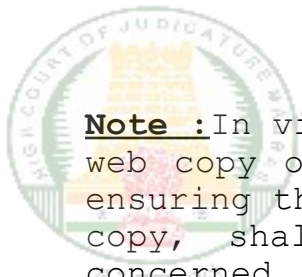
Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

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To

1.The Additional Chief Secretary to Government,
Home (Police - VI) Department,
Chennai - 9.

2.The Director General of Police,
Chennai - 4.

3.The Superintendent of Police,
Tirunelveli,
Tirunelveli District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-22244[F] dated
13/07/2021)

+1 CC to M/s.SPL GP (SR-22309[F] dated 13/07/2021)

W.P (MD) No.17089 of 2019

12.07.2021

RD(27.07.2021) 8P 6C