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W.P.(MD).No.12969 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

[ORDERS RESERVED ON : 27.07.2020]

[ORDERS PRONOUNCED ON : 01.02.2021]

CORAM:

THE HONOURABLE MR. JUSTICE **RMT.TEEKAA RAMAN**

W.P. (MD).No.12969 of 2014

R.Senthilnathan

.. Petitioner

.. Vs ..

1. The Director General of Police,
Tamil Nadu, Chennai - 4.

2. The Additional Director General of Police (Law & Order),
Tamil Nadu, Chennai.

3. The Commissioner of Police,
Tirunelveli City.

... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the files of the first respondent pertaining to its order in R.C.No.186625/AP2(1)/2009, dated 12.10.2013 and the consequential order of the third respondent bearing R.C.No.K3/PR 80/2006 CPO 801/2013, dated 25.10.2013 and to quash the same and consequently direct the respondents to reinstate the petitioner into service.

For Petitioner : Mr.R.Anand

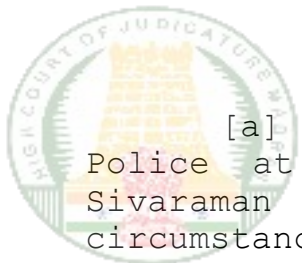
For Respondents : Mr.J.Gunaseelan Muthiah,
Additional Government Pleader.

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ORDER

The petitioner is challenging the order of compulsory retirement passed by the third respondent Commissioner of Police, Tirunelveli City.

2. The factual matrix that are required for determination of this case are as under:-



[a] When the petitioner was working as Sub-Inspector of Police at Palayamkottai Police Station, Tirunelveli City, one Sivaraman (Grade - I, Police Constable 904) died under mysterious circumstances on 28.03.2006, in which, as the petitioner and one Gnanasekaran Pandian, the then Head Constable No.538 were said to be in the company of the said Sivaraman, both of them were alleged as they are responsible for the death of the said Sivaraman and an F.I.R. in Crime No.349 of 2006 for the offence under Section 174 of Cr.P.C. was registered and subsequently, the same was altered into Sections 302 and 201 of IPC.

[b] In connection with the above incident, the third respondent, under Rule 3(b) of Tamil Nadu Police Sub-ordinate Service (Discipline and Appeal) Rules 1955, has issued a Charge Memo as against the petitioner vide P.R.No.80 of 2006. Likewise, the said Head Constable S.Gnanasekara Pandian also has been issued with a Charge Memo in P.R.No.81 of 2006, dated 06.10.2006. In both the said Charge Memos, identically, as many as five charges have been put. Among the five charges, Charges Nos.1 to 4 speak about the fact with regard to the death of Grade-I Constable Sivaraman and those were proceeded on the premise that the petitioner and the said Gnanasekara Pandian were responsible for the cause of his death. As far as the Charge No.5 is concerned, that would say that the petitioner has failed in reporting the incident to the superior officers.

[c] The Assistant Commissioner of Police, Palayamkottai Sub-Division, Tirunelveli City, has been appointed as Inquiry Officer and during the course of his departmental proceedings, he has examined as many as 20 witnesses on the side of the department and finally, vide his report dated 20.07.2008, he has found that both the petitioner as well as the Head Constable S.Gnanasekara Pandian are not guilty in respect of Charge Nos.1 to 4. However, he found that there was a deliberation on the part of both delinquent in informing the incident as soon as they acquired knowledge to their immediate superior and by concluding so, he held that the Charge No.5 is proved.

[d] After going through the enquiry report, the third respondent Commissioner of Police, Tirunelveli City, vide his order dated 03.11.2008, has passed the following order. [Relevant portion]

"I agree with the enquiry officer in having not proved first 4 counts, as the prosecution witnesses have turned hostile. Doctor's post-mortem certificate and his oral evidence are also in favour of delinquent officer. In respect of 5th count, from the statement of P.W.2, it is clear that the delinquent officer knew about the incident and failed to inform the officers. The enquiry officer has rightly proved this count on the basis of the oral evidence



of P.W.2. I agree with him and award punishment of reduction in time scale of pay by 2 stages for one year and it shall not operate to postpone his future increments."

[e] The first respondent has issued a show cause notice in R.C.No.011377/AP2(1)/09, dated 18.02.2009, in which, in respect of the proportionality of punishment as he thought it was disproportionate, has indicated through the said notice that he takes up the said matter by exercising his suo-moto power. The petitioner, vide his written explanation dated 22.03.2009, has explained saying that even Charge No.5 could not have been found proved. Having been not satisfied from the said explanation, the 2nd respondent i.e., Additional Director General of Police, (L & O), Tamil Nadu, Chennai, through his order dated 07.07.2009, in R.C.No.11377/AP2(1)/09, has modified the said punishment into one of "compulsory retirement from service".

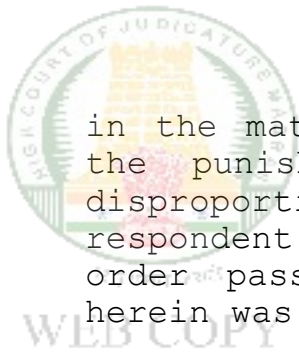
[f] Challenging the said order of compulsory retirement dated 07.07.2009, the petitioner has filed a writ petition in W.P.No.14758 of 2009 and by order dated 28.03.2013, the order passed by the first respondent was set aside and the matter was remitted back to the first respondent for fresh consideration with reference to the show cause notice dated 18.02.2009.

[g] The penultimate paragraph of the said order in W.P.No.14758 of 2009 is reproduced hereunder for ready reference.

"14. In view of the above, the writ petition is allowed, the impugned order is set aside and the matter is remitted back to the first respondent. The first respondent shall consider the matter with reference to the show cause notice dated 18.02.2009 with specific reference only to the charge held proved and on the reasons submitted by the petitioner and dispose of the same, within a period of four weeks from the date of receipt of a copy of this order."

[h] After that the petitioner's case was taken afresh, the first respondent, vide order dated 12.10.2013 in R.C.No.186625/AP 2 (1)/2009, has confirmed the very same earlier finding, by which, he has ordered that the charged officer viz., petitioner is ordered to be awarded a punishment of compulsory retirement.

[i] Aggrieved over the said punishment, the present writ petition has been filed and when the same was pending adjudication, the said S.Gnanasekara Pandian has separately challenged his order of compulsory retirement before the Principal Bench of this Court in W.P.No.5803 of 2017, in which, vide order dated 26.10.2018, this Court, by relying upon the principle of applying the proportionality



in the matter of awarding punishment, has categorically held that the punishment awarded upon the delinquent is so harsh and disproportionate and accordingly, the said order passed by the first respondent in his respect, was ordered to be quashed and the earlier order passed by the punishing authority i.e., third respondent herein was restored.

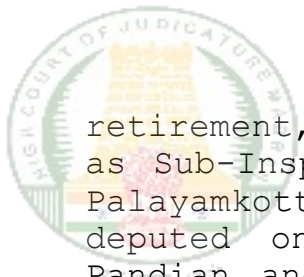
3 (a). Mr.R.Anand, learned counsel for the petitioner would contend that in the earlier round of litigation, this Court has held that the order of compulsory retirement is disproportionate to the gravity of the offence and remitted the matter for reconsideration, however, without doing so, the very same punishment of compulsory retirement has been awarded.

3 (b). The next point that was urged by the learned counsel for the petitioner is that a similarly placed person namely, S.Gnanasekara Pandian, has filed a writ petition in W.P.No.5803 of 2017 and the Principal Bench of this Court, by an order dated 26.10.2018, has allowed the said writ petition in part and set aside the enhanced punishment and restored the punishment imposed by the Disciplinary Authority.

3 (c). Thirdly, on the quantum of punishment, the learned counsel for the petitioner would contend that the order passed by the Disciplinary Authority is sufficient and the same is consumerate with the gravity of the charge and besides, there is no deliberate intention in not intimating the unnatural death of his colleague to his immediate superior and hence, prayed for allowing of this writ petition.

4. Per contra, Mr.J.Gunaseelan Muthiah, learned Additional Government Pleader appearing for the respondents, based upon the counter affidavit, would contend that in the domestic enquiry, the Enquiry Officer has held that Charge Nos.1 to 4 were not proved. However, has held that Charge No.5 is proved. Accordingly, the Disciplinary Authority has passed an order of reduction in rank without cumulative effect. On representation, the Review Authority, after perusing the relevant materials, have formed an opinion that the quantum of punishment inflicted is disproportionate to the gravity of the charge and accordingly, after issuing the show cause notice, has enhanced the punishment and hence, there is no violation of procedure nor in law and made submissions in support of the order of compulsory retirement passed against the writ petitioner.

5. After perusing the additional typed set of papers consisting of Charge Memo issued by the second respondent; copy of the order passed in S.C.No.23 of 2007 by the learned Additional Sessions Judge, Tirunelveli; copy of the enquiry report of the enquiry officer; subsequent orders passed thereon; show cause notice issued by the first respondent and the impugned order of compulsory



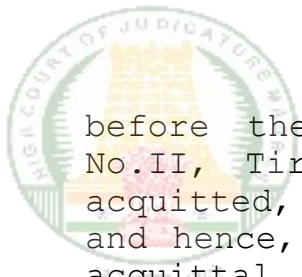
retirement, I find that the petitioner herein was directly recruited as Sub-Inspector of Police in the year 1999 and he was working at Palayamkottai Police Station, Tirunelveli City. The petitioner was deputed on special duty along with Head Constable Gnanasekara Pandian and Grade-I Police Constable Sivaraman and Grade-I Police Constable Krishnasamy in Palayamkottai police station in Crime No.327/2006 for the offence under Section 302 IPC and Crime No.331/06 for the offences under Sections 147, 148, 302 and 506(ii) IPC to arrest the accused concerned in the above said Crime Numbers.

6. On 24.03.2006, the special party started for Nagercoil, KTC Nagar and Chettikulam in search of the accused and returned to Parvathi Sankar Complex Lodge at about 12.45 p.m., on 27.03.2006 at Vannarapettai. Then the police party along with the owner of the complex Tr.Ramesh and his friend Tr.Durai @ Chelladurai had liquor-party which is against the moral code of conduct and in drunken mood, Grade I Police Constable Sivaraman passed bad comments over the modesty of Woman Police Constable Praba. Aggrieved over the comments on the Woman Police Constable Praba, there started scuffle between the police personnel (SI, HC 538 and Grade I PC 904) in the drunken mood.

7. As per the enquiry report, the case of Department is that while Grade-I Police Constable 904-Sivaraman tried to go for the bathroom, Head Constable 538-Gnanasekara Pandian kicked him on the hip and as a result of which, Sivaraman fell down in the staircase at about 03.15 a.m. on 28.03.2006. As he fell down with grievous injuries and so fainted, having known that Sivaraman has got grievous injuries, HC 538-Gnanasekara Pandian, the petitioner herein/Senthil Nathan and the lodge owner Ramesh and Durai @ Chelladurai have taken away injured Sivaraman and laid down him before the Sorna Snacks Tea Stall, Vannarpettai, with an ulterior motive to make the incident as an accident.

8. The tea shop owner Edwardsam, Essakimuthu and Durairaj, Sakthi Hospital watchman have admitted the said Sivaraman in the Sakthi Hospital on 28.03.2006 at about 04.10 a.m. Finally, Sivaraman Grade-I PC 904 died on 28.03.2006 at about 07.30 a.m.

9. In view of the death of the Grade-I Police Constable Sivaraman, both criminal cases as well as the departmental proceedings have been initiated and based upon the complaint given by the duty Doctor Sumathy in the Sakthi hospital, Vannanpettai, a case in Crime No.349 of 2008 was registered for the offence under Section 174 of Cr.P.C. on 28.03.2006 at 9.00 hours only. It appears that after the arrest of the person, who admitted the injured in the hospital viz., lodge owner Ramesh and on the basis of his confession statement, the petitioner and two police constables were arrested and placed under suspension. After investigation, charge sheet has been laid in a Sessions Case in S.C.No.23 of 2007. After trial



before the learned Additional Sessions Judge, Fast Track Court No.II, Tirunelveli, in the Sessions case, all the accused were acquitted, since private prosecution witnesses have turned hostile and hence, giving benefit of doubt, the Sessions Case has ended in acquittal.

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10. So far as the departmental proceedings are concerned, after placing the petitioner under suspension with effect from 01.04.2006, the petitioner was dealt with on a charge under Rule 3 (b) of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, in P.R.No.80/2006 for the following counts of charges.

11. The charges against the petitioner are :

[i]. Most reprehensible and criminal misconduct in having committed the murder of Gr.I.PC 904-Sivaraman, who was one among the police party deputed on special party for arresting accused in Palayamkottai Police Station in Crime No.327/2006 for the offence under Section 302 IPC and Crime No.331/2006 for the offences under Sections 147, 148, 302 and 506(ii) IPC, on 27.03.2006 night by neglecting the special duty for which he was deputed.

[ii]. Highly in-disciplinary and reprehensible conduct in having consumed liquor by staying in a lodge at Parvathi Sankar Complex, Vannarapettai and behaved in ridiculous manner drunken mood and brought discredit to the prestigious Police Department.

[iii]. Highly misconduct in having talked ill on the character of one WPC 194-Praba affecting her modesty among the co-police personnel and thereby, created shouting and quarrelled among them.

[iv]. Criminal misconduct in having murdered Gr.I.PC 904 Sivaraman by attacking him brutally along with HC 538 Gnanasekara Pandian.

[v]. Gross neglect of duty in having concealed the occurrence of the murder and failed to inform the matter to superior officers.

12. The Enquiry Officer/Assistant Commissioner of Police, Palayamkottai, has held that the fifth count of the charge alone as proved, while the other four counts of charges as not proved.

13. Learned counsel for the petitioner has raised three issues for determination which are as follows:-

[1] There was an order of acquittal in the Sessions Case in S.C.No.23 of 2007 and hence, when the petitioner was acquitted in the murder case, he cannot be removed from service on compulsory retirement.



[2] One of the co-team member namely, Gnanasekara Pandian has filed a writ petition in W.P.No.5803 of 2017 and the same was allowed on 26.10.2018 and hence, seeks for extension of similar relief to the petitioner.

[3] On the point of quantum of punishment, the order of compulsory retirement is not consumerate with the gravity of the charge [Disproportionate punishment].

14. **Point No.1 :**

On similar set of facts, in a decision of the Hon'ble Supreme Court in reported in **2020 SCC OnLine SC 886 [State of Rajasthan and Others Vs. Heem Singh]**, wherein, a Police Constable acquitted in a murder case but dismissed from service after related disciplinary enquiry was upheld by the Hon'ble Supreme Court.

15. In the above said decision, the Hon'ble Supreme Court has held as follows:-

(i) In a disciplinary enquiry involving a charge of misconduct, the test is whether the charge is established on a 'preponderance of probabilities' unlike in a criminal trial where the prosecution has to establish their case 'beyond reasonable doubt';

(ii) While exercising judicial review under Article 226 of the Constitution against the findings in a disciplinary enquiry, the Court cannot re-appreciate the evidence in the manner of an appellate Court, and so long as the finding of misconduct is based on some evidence, no interference is warranted;

(iii) The judgment in the criminal trial, acquitting the respondent of the offence of murder, did not constitute a clean acquittal but was founded on the benefit of doubt.

(iv) The standard of proof in disciplinary proceedings is different from that in a criminal trial. In **Suresh Pathrella Vs. Oriental Bank of Commerce** reported in [(2006) 10 SCC 572], a two judge Bench of this Court differentiated between the standard of proof in disciplinary proceedings and criminal trials in the following terms:

"...the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities."



(v) This standard is reiterated by another two-Judge Bench of this Court in **Samar Bahadur Singh V. State of U.P.** reported in [(2011) 9 SCC 94].

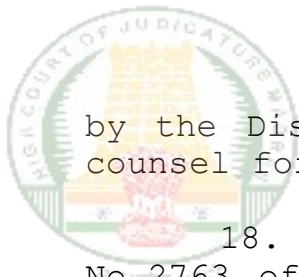
"Acquittal in the criminal case shall have no bearing or relevance to the facts of the departmental proceedings as the standard of proof in both the cases are totally different. In a criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt whereas in a departmental proceedings, the department has to prove only preponderance of probabilities."

(vi) In the present case, we have an acquittal in a criminal trial on a charge of murder. The judgment of the Sessions Court is a reflection of the vagaries of the administration of criminal justice. The judgment contains a litany of hostile witnesses, and of the star witness resiling from his statements. Our precedents indicate that acquittal in a criminal trial in such circumstances does not conclude a disciplinary enquiry. In **Southern Railway Officers Association V. Union of India** reported in [(2009) 9 SCC 24], this Court held:

"37. Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. **It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge.**"

16. It is settled law that the strict burden of proof required to establish the guilt in a criminal Court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc., and hence, the contention of the learned counsel for the petitioner that after the acquittal order in the Sessions Case, the order of dismissal or compulsory retirement could not be passed cannot be countenanced, in view of the Apex Court decision as stated supra.

17. On the point of extension of similar relief to the petitioner as granted to the other co-delinquent, learned counsel for the petitioner drawn my attention to the order passed by the Principal Bench of this Court in W.P.No.5803 of 2017, dated 26.10.2018 wherein, one of the Head Constable in the said team has filed the writ petition against the order of compulsory retirement and the same was set aside and the order of reduction in rank passed



by the Disciplinary Authority was restored and hence, the learned counsel for the petitioner seeks the similar relief.

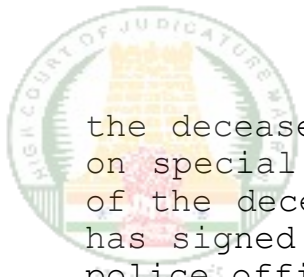
18. On verification of Court records, I find that Writ Appeal No.2763 of 2019 is pending before the Principal Bench and interim stay also been granted. Since the writ appeal is pending before the Division Bench at the Principal seat and also on the factual ground that the petitioner therein is a constable, who is not the head of the team as like the petitioner and hence, I am of the considered view that in view of the pendency of W.A.No.2763 of 2019, I am proposed to dispose of the writ petition based upon the records pertaining to the petitioner herein.

19. The Enquiry Officer submitted the finding in the departmental charges in P.R.No.80/2006 by holding charges in count Nos.1 to 4 as not proved and charge in count No.5 alone as proved.

20. After perusing the proceedings of the second respondent dated 07.07.2009, I find that it is clear and categorically taken note of the fact that the standard of proof that is required in the Sessions Case to prove the charges is that all the charges have to be proved beyond reasonable doubt while the standard of proof that is required by the Disciplinary Authority is the theory of preponderance of probabilities and the charges against the writ petitioner is proved through the oral and recorded evidence and also taking note of the fact that the charges were serious and the punishment awarded by the third respondent is too lenient when compared with the natural of delinquency and accordingly, recorded the enhancement of punishment and hence, I find that the reasons assigned by the second respondent for enhancement of punishment is in accordance with law.

21. The third point raised by the learned counsel for the petitioner is that the proposed enhancement of punishment is excessive and not in consumerate with the gravity of proved charges. Along with this point, learned counsel for the petitioner also urged that the order of this Court in W.P.No.14758 of 2009, wherein, the respondent was directed to reconsider the petitioner's case and the same was not properly considered by the respondent herein. After perusing the earlier order passed by the this Court in the earlier round of litigation and also the reasoning recorded by the second respondent, I find that the order passed by the second respondent is on line with the order of reconsideration passed by this Court.

22. At this juncture, it is necessary to refer the finding rendered by the Enquiry Officer. On a careful examination of the records, it revealed that as per the evidences of P.W.20 Tr.Sambosivan, then Assistant Commissioner of Police, Palayamkottai and his report in Ex.P.32; as per deposition of P.W.14 Gr.I.P.C. 911 Krishnasamy and his statement Ex.P.19, the police party including



the deceased Gr.I.PC 904 Sivaraman and the writ petitioner were all on special duty. As per the evidence of P.W.2, Thiru Velu, father of the deceased Gr.I.PC. 904 Sivaraman and his statement Ex.P.2, he has signed in the records related to investigation requested by the police officers on 28.03.2006 at 07.30 hours, he has got advise from the petitioner and then only signed. These facts had clearly proved that the petitioner had knowledge about the occurrence of demise of Gr.I.PC 904 Sivaraman, who is one among the special police party deputed with the petitioner and also failed to inform the matter to his superiors through any report or giving any information.

23. The first respondent has clearly stated in his orders that even if the Gr.I.PC 904 Sivaraman had died on account of an accident, the charged officer ought to have informed his superiors. The explanation given by him to the show cause notice is not convincing. A Sub-Inspector cannot disown his responsibility for the fate of a constable working under him and with him. This is not, therefore and ordinary incident of failure of passing of information that the first respondent regarded this as a grave matter as it involves the death of a policeman.

24. There is a specific finding in the Enquiry Officer that although the occurrence of murder took place on 27.03.2006 night, the FIR was registered on 28.03.2006 at 09.00 hours in Crime No.349/2006 for the offence under Section 174 Cr.P.C. only on the complaint of Doctor Tmt.Sumathi of Sri Sakthi Hospital, Vannarapettai and there is no proof to show that the petitioner had informed the occurrence to the superior officers.

25. It remains to be stated that the petitioner is a responsible police officer in the rank of Sub-Inspector of Police and having been deputed with a police party consisting of police personnel cannot disown his responsibility for the fact of a constable, who died is his only subordinate working under him and with officer in the team and disown responsibility.

26 (a). To sum up, the petitioner is the Sub-Inspector of Police. He was an special assignment to nab a prime accused in a murder case. He along with the Head Constable Gnanasekara Pandian, Grade-I Police Constable Sivaraman (deceased) and Grade-I Police Constable Krishnamoorthy were in search of the same and the deceased and other two delinquent officers were seems to have been taking alcohol on the roof of a hotel and therein from the enquiry report, it is seen that one lady Constable appears to have came to the scene when the delinquent officers are in the drunken mood. The time of her entry and exist are not relevant to this proceedings. However, after the exist of the lady Police Constable, it appears that a quarrel between the police personnel viz., Sub-Inspector of Police, the petitioner herein and Head Constable Gnanasekara Pandian and the Grade-I Police Constable the deceased Sivaraman in the drunken mood.



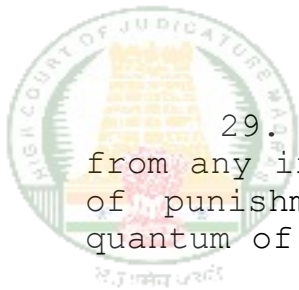
Subsequently, the said Sivaraman was found to be in unconscious stage having a skull injury and subsequently, he died.

26 (b). Admittedly, the petitioner being the Head of the Team as a duty and responsibility to inform the superiors about the happening of death of one of his team-mates in unnatural circumstances. As per the enquiry report, the matter was informed to the police only by the Doctor, who admitted the said Sivaraman with very critical stage. There is no iota of evidence to show that the petitioner has given an intimation to the higher officials. The petitioner being the Sub-Inspector of Police and also Head of the Special Team can neither scuttle the responsibility nor shirk the responsibility in not passing the information of the death happened to one of the Team-mates while they were formed to nab the murder case accused.

27. After perusing the Charge No.5 in P.R.No.80 of 2006 against the petitioner herein and connected evidence of P.W.20, Assistant Commissioner of Police and his report under Ex.P.32 and the evidence of Krishnamoorthy P.W.14 Grade-I Police Constable, who was a team member and his statement which was marked as Ex.P.19 and also taking the evidence of P.W.2-Velu, father of the deceased and the gravity of the fact that non passing of intimation about the serious injury caused to the police team member viz., Sivaraman, I find that there is a gross negligence and dereliction of duty on the part of the petitioner in concealing the occurrence and the death of Sivaraman and there is a deliberate action, in other words, calculated inaction thereby, he failed to inform the matter to the senior officials.

28 (a). The entire episode appears to have been surfaced only after the complaint has been received from the Dr.Sumathy, of Sakthi Hospital only at 9.00 hours and hence, I find that the conduct of the petitioner in scuttling the responsibility or shirking the responsibility to the superior officer cannot be accepted even though he was on special assignment and he is continuous to be officer in the uniformed service and ought to have given report regarding the death of Sivaraman.

28 (b). The inaction on his part is deliberate and non disclosure and concealment of the death co-police team member, amounts to misconduct, falling within the ambit of Rule 3(b) of the Tamil Nadu Police State and Subordinate Services (Discipline and Appeal) Rules and the said charges have been proved in the manner known to law and hence, taking into consideration the nature of the delinquency, I am of the considered view that the order of compulsory retirement inflicted by the third respondent is on par with the gravity of the charges proved and hence, I find no mistake or error in the impugned order.



29. The order passed by the third respondent does not suffer from any irregularity in observance of the procedure for enhancement of punishment nor suffers from any illegality in awarding the quantum of punishment in respect of the proved charges.

30. In short the impugned order does not suffer from any irregularity or illegality warranting interference and hence, in this view of the matter, the writ petition is devoid of merits and it is liable to be dismissed.

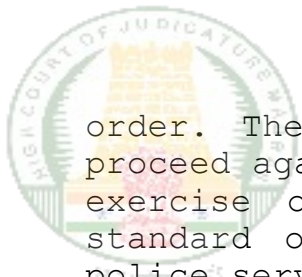
31 (a). Time and again, the learned counsel for the petitioner urged upon the acquittal order passed in the Sessions Case. On perusal of the order passed in S.C.No.23 of 2007, I find that all the private prosecution witnesses have turned hostile as the prime accused are police personnels.

31 (b). Had the head of the department viz., the Superintendent of Police or the Commissioner of Police have taken out necessary application before the concerned Principal Bench or Madurai Bench of this Court for transfer of the Sessions Case to the neighbouring District, since the accused are police officials in a sensational murder case, so as to ensure the fair trial and enable the private prosecution witnesses and independent witnesses to speak about the factum of the knowledge regarding the incidents in support of the charges in the Sessions Case. Had the same being done, the result of the case could have been different.

31 (c). Since I am not sitting on first appeal over the acquittal order passed in S.C.No.23 of 2007, I am not proceeding further except to say that when accused are police personnels/staff in uniformed service), the Head of the unit has to review the case and take steps to ensure a fair trial is conducted in Sessions Case, that too, in murder of the another Police Constable by requesting to transfer of Sessions Case to the nearest District-cum-Sessions Court.

32. In the decision reported in **2020 SCC OnLine SC 886 [cited supra]**, the Hon'ble Apex Court has held that (a) the verdict of the criminal trial did not conclude the disciplinary enquiry, (b) But there are circumstances emerging from the record of the disciplinary proceedings which bring legitimacy to the contention of the State that to reinstate such an employee back in service will erode the credibility of and public confidence in the image of the police force.

33. The involvement of a member of the police service in a heinous crime, if established, has a direct bearing on the confidence of society in the police and in this case, on his ability to serve as a member of the force. Such an individual is engaged by the State as a part of the machinery designed to preserve law and



order. The State can legitimately assert that it is entitled to proceed against an employee in the position of the respondent in the exercise of its disciplinary jurisdiction, for a breach of the standard of conduct which is expected of a member of the state police service.

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"Confidence of the State in the conduct and behaviour of persons it has appointed to the police is integral to its duty to maintain law and order."

34. Hence, I find that the order of compulsory retirement passed by the third respondent is found to be on par with the proved charges.

35. In the result, this Writ Petition is dismissed. However, in view of the discussion in the preceding paragraphs and in exercise of powers conferred upon this Court under Article 226 of the Constitution of India, I hereby direct the Secretary, Home Department to issue necessary instructions.

[i] To ensure the fair trial in Criminal Cases and Sessions Cases where the police officials and officer of uniformed service were arrayed as accused to review the case and to file necessary application before the Principal Bench or before the Madurai Bench of this Court for transfer of the trial of those cases to the nearby District Sessions Court so as to enable the private prosecution witnesses and independent witnesses to depose without any fear or influence of the local persons to depose the fact known to them in connection with the charges in the Court of law in the larger interest of justice.

No costs.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

Jr1

To

1. The Director General of Police,
Tamil Nadu, Chennai - 4.



2. The Additional Director General of Police (Law & Order),
Tamil Nadu, Chennai.

3. The Commissioner of Police,
Tirunelveli City.

Copy to

The Secretary,
Home Department
Fort St. George,
Secretariat Chennai.

+2 CC to Mr.R.ANAND, Advocate (SR-2977[F] dated 02/02/2021)

Order made in
W.P. (MD) .No.12969 of 2014
01.02.2021

VB (11.02.2021) 14P 7C