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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.32816 OF 2013

AND M.P.NO.1 OF 2013

N.Rajavelu

... Petitioner

Vs.

1. The Superintendent of Police,
Villupuram District.

2. The Deputy Inspector General of Police,
Villupuram Range,
Villupuram.

... Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the respondents 1 & 2 in connection with the impugned orders passed by them in PR.No.17/2007 dated 18.10.2010 and R.O.No.251/2013 C.No.B3/19815/2010 dated 29.07.2013 and quash the same.

For Petitioner : Mr.R.Venkataramani, (Senior Counsel)
for Mr.M.Muthappan

For Respondents: Mr.P.Ganesan
R1 & R2 Government Advocate

O R D E R

Quoting delinquency of dereliction of duties, the petitioner was subjected to a Departmental Inquiry for two charges under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955. During the course of inquiry, the Inquiry Officer had relied upon the evidence given during the preliminary inquiry report dated 20.12.2007 and held both the charges to have been proved. The Disciplinary



Authority, while imposing the punishment in his order dated 18.10.2010, had also taken into account of the findings of the Inquiry Officer that the charges were proved on the strength of the evidence given during the preliminary inquiry and accordingly, had imposed the punishment of reduction in pay by one stage for one year which shall operate to postpone his future increments for a period of one year. On appeal, the second respondent herein, had modified the punishment into that of a 'Black Mark' through the impugned order dated 29.07.2013.

2. This Court, in various decisions, have held that the orders of punishment based upon the evidences in the preliminary inquiry, cannot be sustained. In one such order of this Court, passed in the case of 'M.Ramakrishnan Vs. The Superintendent of Police & another' in W.P.No.28893 of 2008, dated 18.09.2009, this proposition was upheld in the following manner:-

.....
"8. The Enquiry Officer cannot give a finding based upon mere surmises and conjectures. The petitioner was not allowed to the cross-examine the witnesses to verify the statement made by them in the preliminary enquiry.

9. Therefore, while rejecting the subsequent statements the Enquiry Officer cannot rely upon earlier statement given during the preliminary enquiry. In the judgment reported in 2006 2 MLJ 202 this Court was pleased to observe as follows:-

"7. In the decision reported in Union of India v. Mohd. Ibrahim, (2004) 10 SCC 87, the Honourable Supreme court in the facts and circumstances of the case before it 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 said order setting aside the dismissal order.

8. A Division Bench of this Court by Judgment in Deputy Inspector General of Police, Villupuram and others v. V.Vanniaperumal and others, W.P.Nos.29862 and 32581 of 2002, dated 22.2.2005 upheld the order of the Tribunal which set aside the order of removal from service. Paras 6 and 8 of the judgment can be usefully referred to, which reads thus:

"6. We have carefully considered the



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relevant materials and the rival contentions. We have already referred to the charges levelled against the applicants. It is also relevant to note that apart from the applicants two more officers have also been implicated along with them. They are one Sattanathan, Sub - Inspector of Police and Antony, Inspector of Police. It is brought to our notice that Sattanathan is no more and so far as the other officer Antony is concerned lesser punishment has been imposed. Now we are concerned with the charges levelled against both the applicants. In the light of the conclusion arrived at by the Tribunal, we perused the finding of the Enquiry Officer. It is not in dispute that all the prosecution witnesses except PW3, who is none other than the Deputy Superintendent of Police, the other witnesses viz., P.Ws. 1,2,4 and 5 turned hostile before the Enquiry Officer and not supported their earlier statement made at the preliminary enquiry. The Enquiry Officer having noted the above aspect curiously submitted a report holding that all the three charges levelled against them are proved based on the preliminary enquiry.

7.. . . .

8. In our case, we have already referred to the fact that the prosecution witnesses viz., P.Ws. 1,2,4 and 5 turned hostile and not supported their preliminary version. However, the Enquiry Officer basing reliance on their earlier statement in the preliminary enquiry found that all the charges levelled against them are proved. In the light of the decision of the Supreme Court referred to above, after full-fledged enquiry was held the preliminary enquiry had lost its importance. Further, we find no substance or material to arrive at a conclusion that "since all the three counts were proved by the prosecution beyond reasonable doubts, convincingly, I agree with the findings of the Enquiry Officer,". We are satisfied that there is no material to arrive at such a conclusion by the Deputy Inspector General of Police, while passing an order removing the applicants from service. All these aspects have been considered by the Tribunal in a proper manner and there is no acceptable material or evidence to take different view as that of the Tribunal. We find no merits in both the writ



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petitions. Accordingly, they are dismissed. No costs. Consequently, the connected miscellaneous petitions are dismissed.

The said conclusion was arrived at by the Division Bench based on the decision of the Honourable Supreme Court reported in Narayana Dattatraya Ramteerthakhar v. State of Maharashtra, (1997) 1 S.C.C 299.

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

10. Applying the above principles laid down by the Honourable Supreme Court, Division Bench of this Court and also the earlier decision of mine, as referred above, I am of the opinion that the differing view taken by the disciplinary authority/second respondent herein against the Enquiry officer's report is unsustainable in view of the fact that the said view was taken solely based on the statements recorded during the preliminary enquiry. Consequently, the punishment imposed on the basis of the dissenting view is unsustainable and the order of the appellate authority confirming the order of the dismissal is also unsustainable".

10. The said judgment of the learned single judge was again followed in the unreported order passed in WP 23378/07 wherein this Court was pleased to observe as follows:

" 9. Admittedly, the main witness namely, P.W.2 has not substantiated the allegations during the regular enquiry and the same is made clear not only in the enquiry report but also in the counter affidavit filed in the relevant paragraph, extracted above.

10. Whether a charge can be fond proved based on the statement given at the time of preliminary enquiry was considered by me in the decision reported in (2006) 2 M.L.J. 202 (T. Pitchai V. Deputy Inspector of General of police, Tirunelveli). In the said judgment, I have followed the Judgments of the Supreme Court reported in (2004) 10 S.C.C 87 (Union of India V. Mohd. Ibrahim) and also the Division Bench Judgment of this court in W.P.Nos.29862 and



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32581 of 2002, dated 22.02.2005 etc., and held that the statements given by the witnesses during the preliminary enquiry cannot be the sole evidence to prove the charges against a police officer.

11. In this case, admittedly the Enquiry officer found that the charges are proved based on the statement given by P.W.2, during preliminary enquiry which is admitted in the counter affidavit filed by the respondents. Hence, the finding given by the enquiry officer is to be treated as perverse and the consequential punishment imposed against the petitioner is also not sustainable. The order of punishment imposed against the petitioner is quashed and in view of the order of punishment having been quashed, the respondents are directed to consider the case of the petitioner for promotion to the post of sub inspector of police on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. "

11. In WP.No.39098/06 dated 20.04.2009 this Court following the above mentioned judgment and observed as follows:

" 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 Honorable Supreme Court reported in AIR 1999 SC 677: (1999) 2 SCC 10 (Kuldeep Singh v. Commissioner of police and others), wherein the Honorable Supreme Court in paragraphs 32 and 33 held thus,

32. In State of Mysore v. Shivabasappa Shivappa Makapur, the witness was not examined in the presence of the delinquent so far as his examination-in-chief was concerned and it was his previous statement recorded at an earlier stage which was brought on record. That statement was put to the witness who acknowledged having made that statement. The witness was thereafter offered for cross-examination and it was held that although the statement (examination -in-chief) was not recorded in the presence of the delinquent, since the witness had been offered for cross-examination after he acknowledged having made the previous statement, the rules of natural justice were sufficiently complied with.



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33. In Kesoram Cotton Mills Ltd. v. Gangadhar and state of U.P.v. Om prakash Gupta the above principles were reiterated and it was laid down that if a previous statement of the witness was intended to be brought on record, it could be done provided the witness was offered for cross-examination by the delinquent."

Following the above decisions, similar writ petitions in W.P.No.14193 of 2006, W.P.No.23378 of 2007 and W.P.No.7257 of 2008 were allowed by me by orders dated 9.4.2007. 9.4.2008 and 23.7.2008 respectively. The Director General of Police, implemented the order dated 9.4.2007 made in W.P.No.14193 of 2006 by issuing circular in Na.Ka.No.79697/Con.3(1)/2007, dated 25.4.2007, and ordered 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 Disciplinary Authorities as well as Enquiry Officers were directed to keep the same in mind while conducting enquiry and disposing of the disciplinary proceedings.

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 officer'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. "

Hence, considering the above said legal position, this Court is of the opinion that the Impugned orders passed by the respondents based upon the Enquiry report, which was based upon the statements obtained during the preliminary enquiry, cannot be sustained.

12. In the judgment reported in (2006) 5 Supreme Court Cases 88 M.V.Bijlani Vs. Union Of India and others the Hon'ble Apex Court was pleased to observe as follows_



4. In the result, the impugned orders dated 18.10.2010 and 29.07.2013, are quashed and the Writ Petition stands allowed. No costs. Connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The Superintendent of Police,
Villupuram District.
2. The Deputy Inspector General of Police,
Villupuram Range,
Villupuram.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.21148
+1cc to the Special Government Pleader, S.R.No.21719

W.P.No.32816 of 2013

SKM(CO)
PM/19/04/2022