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Order dated 26.08.2022
Writ Petition Nos.16066 & 16067 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.16066 & 16067 of 2018

and

W.M.P.No.19093 of 2018 in W.P.No.16067 of 2018

Vinothkumar
S/o.Selvaraj

... Petitioner in both petitions

Vs.

1.The Superintendent of Prisons,
Central Prison,
Salem - 7.

... R1 in both petitions

2.The Additional Superintendent
of Prisons,
Central Prison,
Salem.

... R2 in W.P.No.16066 of 2018

Prayer :

W.P.No.16066 of 2018

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the second respondent to permit the petitioner to cross-examine the witnesses, who took part in the enquiry proceedings in No.7640/Po.1/2016 of the second respondent and



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consequently, direct the second respondent to file fresh enquiry report within an appropriate time.

W.P.No.16067 of 2018

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings in No.G1/7640/2016 dated 28.05.2016 and quash the same and consequently, direct the respondent to reinstate the petitioner and regularize the period of suspension as duty.

For Petitioner : Mr.R.Nalliyappan
[in both petitions]

For Respondents : Mr.R.U.Dinesh Raj Kumar
[in both petitions] Additional Government Pleader

COMMON ORDER

Since both these writ petitions were filed by the same petitioner and the issue raised in these writ petitions is inter-connected, with the consent of both sides, these writ petitions are heard together and disposed of by this common order.



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2. The petitioner was working as II Grade Warden at Central Prison, Salem. While he was working as such, in the year 2016, the petitioner was arrested in relation to a criminal case punishable u/s.380 IPC in Crime No.193 of 2016 on the file of Hasthampatty Police Station, he was arrested and remanded to judicial custody with effect from 28.05.2016 at 05.10 hours.

3. Following the said arrest made against the petitioner, the first respondent, by order dated 28.05.2016, placed the petitioner under suspension pending contemplation of an enquiry into grave charges against the petitioner. As against the said order of suspension dated 28.05.2016, the petitioner filed W.P.No.16067 of 2018.

4. Pursuant to the said suspension order, a charge memo was issued against the petitioner by initiating disciplinary proceedings where enquiry was conducted, fair opportunity was given to the petitioner including the chance of cross-examining the witnesses and ultimately, by concluding the enquiry, the Enquiry Officer gave his report on 15.03.2017. However, no final decision was taken by the first



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respondent, who is the disciplinary authority, on such enquiry report in view of the pendency of the criminal case, which was pending trial before the concerned Court against the petitioner.

5. Only in that circumstances the petitioner had given a representation on 16.05.2017 to the respondents to permit him to cross-examine the witnesses, who were examined on behalf of the prosecution before the domestic enquiry and the said representation since was not considered, he had chosen to file other writ petition in W.P.No.16066 of 2018, that is how, both the writ petitions came to be filed.

6. Heard Mr.R.Nalliyappan, the learned counsel appearing for the petitioner, who made submissions on the plea raised by the petitioner in both the writ petitions.

7. Insofar as W.P.No.16066 of 2018 is concerned, the learned counsel would contend that even though the chance of cross-examination was given to the petitioner, at that time, since the petitioner was not well-versed in cross-examining the witnesses, he could not make it. However,



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subsequent to the conclusion of the enquiry and filing of enquiry report, now the petitioner has come forward to examine the witnesses. Therefore, one more chance can be given to the petitioner and in this regard, the petitioner had given a representation on 16.05.2017, which was since not considered, the petitioner has moved the present writ petition. Hence, the learned counsel seeks indulgence of this Court to issue a direction by way of mandamus.

8. Insofar as the second writ petition i.e. W.P.No.16067 of 2018 is concerned, the order of suspension dated 28.05.2016 is under challenge.

9. The learned counsel appearing for the petitioner canvassed the point that the petitioner had been under prolonged suspension from May 2016, i.e., for more than 6 years. Therefore, at this juncture, at least, the said suspension order can be set aside or a direction can be given to the respondent to revoke the suspension and the petitioner can be directed to be reinstated.



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10. In support of his contention, the learned counsel would also submit that in the mean while, the criminal case filed against the petitioner ended in acquittal, where the concerned Court passed judgment on 28.12.2020 and this was brought to the notice of the respondents, despite that the respondents have not come forward to pass any order to revoke the suspension order dated 28.05.2016. Therefore, learned counsel contented that the impugned order in W.P.No.16067 of 2018 may also be interfered with.

11. On the other hand, Mr.R.V.Dinesh Raj Kumar, learned Additional Government Pleader, appearing for the respondents would submit that the criminal case against the petitioner ended in acquittal only on 28.12.2020 and thereafter, due to Covid-19 situation, immediate attention could not be given to complete the disciplinary proceedings by passing final orders on the enquiry report submitted by the Enquiry Officer dated 15.03.2017.

12. Learned Additional Government Pleader would also submit that since in the mean while these two writ petitions have been filed,



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which are pending before this Court, wherein in one writ petition, the petitioner sought for a writ of mandamus to permit the petitioner to go for further cross-examination of the witnesses, who have already been examined by the Enquiry Officer, the first respondent, being the disciplinary authority could not proceed further to pass final orders. These are the reasons for not passing final order despite the fact that the enquiry report was submitted in the year 2017. Therefore, the learned Additional Government Pleader would contend that if a time frame is fixed within which the final order would be passed after giving a second opportunity based on the report of the Enquiry Officer to the petitioner within such time framed by this Court and depending upon the outcome of such decision made by the disciplinary authority, the further effect of the issue including the suspension order already been made against the petitioner, which is also impugned herein, can also be decided.

13. I have considered the rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.



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14. Insofar the plea raised by the petitioner in W.P.No.16066 of 2018 is concerned in his very representation dated 16.05.2017, which was given after the report of the Enquiry Officer was filed, the petitioner has made it very clear that he was given a chance of cross-examining the prosecution witnesses and because of the ignorance on the part of the petitioner, he did not utilize the opportunity, therefore, now, he once again wants a chance to cross-examine the witnesses.

15. It is settled proposition that ignorance of procedure or law cannot be a defence for anyone including the petitioner.

16. Moreover, if at all, a chance for cross-examination was sought for by the delinquent and the chance was not given or denied by the Enquiry Officer, then only the Court can interfere by giving a direction to the Enquiry Officer to give such chance and in this regard, even if the enquiry has already been concluded and report has also been filed that can be interfered with.



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17. In the present case, it is an admitted fact that the chance of cross-examination was given to the petitioner. However, the same was not utilized by the petitioner for the reasons best known to him. Hence, the plea raised by the petitioner in the said writ petition seeking mandamus to give a direction to the respondents including Enquiry Officer to give further permission to the petitioner to cross-examine the prosecution witnesses at this juncture does not arise. Hence, the plea raised by the petitioner, in this regard, is liable to be rejected. Accordingly, W.P.No.16066 of 2018 fails.

18. Insofar as W.P.No.16067 of 2018 is concerned, the enquiry report has already been filed in the year 2017 itself. Despite that the first respondent being the disciplinary authority has not passed the final order on the disciplinary proceedings based on the enquiry report for two reasons *viz.*, Covid-19 situation and criminal Court had concluded the proceedings and acquitted the petitioner only on 28.12.2020 and also the petitioner had filed these two writ petitions in the year 2018 itself, which are pending even till date.



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19. Now the decks are cleared. Therefore, there is no further impediment for the first respondent to proceed further to pass final orders on the disciplinary proceedings based on the enquiry report submitted by the Enquiry Officer.

20. In that view of the matter and based on the aforesaid discussion, this Court is inclined to dispose of these writ petitions with the following order:

- That W.P.No.16066 of 2018 is concerned, the prayer cannot be granted for the reasons discussed above. Hence, this writ petition is dismissed.
- Insofar as W.P.No.16067 of 2018 is concerned, there shall be a direction to the respondents, especially, first respondent to pass final orders by giving second opportunity to the petitioner along with the enquiry report, if not already given on the disciplinary proceedings within a period of two months from the date of receipt of a copy of this order.
- It is made clear that depending upon the outcome of the decision taken by the first respondent as indicated above, the further course of



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action whether the impugned suspension order in this regard is to be
revoked or not can also be taken.

➤ With these directions, W.P.No.16067 of 2018 is disposed of.

No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Internet: Yes

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To

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R.SURESH KUMAR., J

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