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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NOS.7279 & 7280 OF 2014

M.Dhandapani

...Petitioner in W.P.No.7279 of 2014

R.Karunakaran

...Petitioner in W.P.No.7280 of 2014

Vs.

1. The Superintendent of Police,
Thiruvannamalai District.

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

..Respondents in both W.Ps

Prayer in W.P.No.7279 of 2014 :

Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records of the 1st respondent in connection with the impugned order passed by the 1st respondent in PR No.34/2012 dated 25.12.2012 and confirmed by the 2nd respondent in C.No.B1/AP.3/1301/2013 dated 04.2.2013 and quash the same.

Prayer in W.P.No.7280 of 2014 :

Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records of the 1st respondent in connection with the impugned order passed by the 1st respondent in PR No.33/2012 dated 25.12.2012 and confirmed by the 2nd respondent in C.No.B1/AP.2/1300/2013 dated 04.2.2013 and quash the same.

For Petitioners : Mr.K.Venkataramani
[in both W.Ps] Senior Advocate
For Mr.M.Muthappan

For Respondents : No appearance [in both W.Ps]



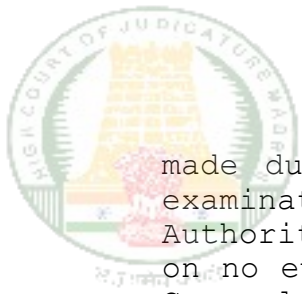
COMMON ORDER

The orders of punishment dated 25.12.2012, postponement of the petitioners next increment for three years, which shall operate to postpone their future increment, which was confirmed by the Appellate authority in order dated 04.02.2013 are under challenge in the present writ petitions.

2.The writ petitioner in W.P.No.7279 of 2014 was recruited as Grade-II Police Constable and was promoted to the Post of Head Constable. The writ petitioner in W.P.No.7280 of 2014 was recruited as Grade-II Police Constable and was promoted to the Post of Special Sub Inspector of Police.

3. Charge Memos under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules were framed against the writ petitioners in proceedings dated 28.03.2012. The charge against the petitioners is that during the surprise prohibition raid conducted by the Deputy Superintendent of Police along with the Sub-Inspector of Police and others on 29.01.2012, the inspection team found one Manickam, Chinnaraj, Sakthivel and Murugan were tapping toddy from the palmirah trees and they were caught red-handed and against them, a criminal case in Crime No.31-32 of 2005 under the Tamil Nadu Prohibition Act was also registered. Statements were recorded, which reveals that they were permitted to continue their illegal business by receiving the mamool by the writ petitioners. During the preliminary enquiry, it was found that the petitioners were assisted those accused persons by receiving mamool and allowing them to tap toddy from the palmirah trees, which is in violation of the Prohibition laws in force. Accordingly, the writ petitioners were placed under suspension. Charge memos were issued to the petitioners and an enquiry was conducted. The Enquiry Officer found that the charges are proved. Thereafter, the Disciplinary Authority passed the impugned orders of punishment, imposing the punishment of postponement of petitioners increment for three years with cumulative effect and the writ appeals filed by the petitioners were also rejected.

4. The learned Senior Counsel appearing on behalf of the writ petitioners mainly contended that there is absolutely no evidence to establish the charges. Witnesses were turned hostile. In the absence of any such evidence, the punishment imposed by the authorities cannot be sustained. Thus, the impugned orders of punishment are liable to be set aside. The learned Senior counsel relied on the judgment of the learned Single Judge of this Court dated 20.04.2009 passed in W.P.No.39098 of 2006, wherein it was held that the statement



made during the preliminary enquiry, not corroborated by cross examination can be validly relied on by the Disciplinary Authority. Thus, the dismissal in that case was vitiated based on no evidence. Relying on the said judgment, the learned Senior Counsel made a submission that in the present case, the witnesses turned hostile and therefore, the orders of punishment were issued without based on any acceptable evidence and thus, untenable.

5. The learned counsel for the respondents objected the said contentions by stating that statements from the accused persons were recorded. Charge memos were issued accordingly and during the enquiry, the allegations were established. The Enquiry Officer taking note of the materials available on record, formed an opinion that the charges against the writ petitioners are proved. Based on the proved charges, the punishment was imposed. Thus, there is no infirmity and therefore, the writ petitions are liable to be rejected.

6. Considering the arguments as advanced by the learned Senior counsel for the petitioners and the learned counsel for the respondents, the issue to be considered is, whether the case on hand is a case of "No Evidence" or the case, where the charges are established through probabilities. The strict application of case of "No Evidence" cannot be applied in departmental disciplinary proceedings. The standard of proof required to establish criminal charges before the Criminal Court of law is different and such strict proof is not required in respect of the departmental disciplinary proceedings. Preponderance of probabilities are sufficient to establish the charges and impose punishment on the Discipline and Appeal Rules. Therefore, the case of "No Evidence" is to be examined with reference to the tests to be applied in departmental disciplinary proceedings and the yardstick to be adopted in a criminal case would not form any basis to decide the punishment imposed in departmental disciplinary proceedings.

7. The charges are serious in nature. The allegation against the petitioners was that by receiving Mamool, permitted the accused persons to tap toddy in an illegal manner continuously in that locality. The Enquiry Officer conducted an enquiry by affording an opportunity to the Delinquent officials. The Enquiry Officer recorded the statements. No doubt, the witnesses turned hostile probably in order to support the writ petitioners, who are working as Head Constable and Special Sub Inspector of Police respectively in that locality. All the witnesses had turned hostile probably on certain extraneous considerations. Therefore, the Enquiry Officer has gone through the entire materials available on record with reference to the statements and the incident occurred and formed an opinion that



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the allegations are proved based on the preponderance of probabilities. The witnesses have uniformly turned hostile by stating that the signatures were obtained from them in white papers in the office of the Deputy Superintendent of Police (Prohibition).

8. No doubt, the other witnesses turned hostile, but the Government witness one Mr.Ganesan, Deputy Superintendent of Police, Sengam, Tiruvannamalai District, in his deposition, has narrated the facts and circumstances. The Deputy Superintendent of Police, who was leading the Police team and conducted surprise raid, categorically deposed before the Enquiry Officer that he has recorded the statement, registered the criminal case and further, the petitioners have acted against the interest of the department and colluded with the accused persons for tapping toddy. The said Government witness one Mr.Ganesan, Deputy Superintendent of Police, has stated that they have received Mamool and caused dis-reputation to the Police Department and further, committed an act of misconduct.

9. Pertinently, the writ petitioners / Delinquent officers had not cross-examined the Government side witness one, Mr.Ganesan, Deputy Superintendent of Police. When the Deputy Superintendent of Police deposed the entire incident and the manner, in which, the statements were recorded and further, regarding the facts and circumstances in a cogent manner, the Enquiry Officer mainly considered the deposition of the Government witness, one Mr.Ganesan and formed an opinion that the charges against the writ petitioners are proved. Even presuming that the statements from the accused persons were recorded unilaterally and those witnesses have turned hostile, it would be sufficient if the Government witness, one Mr.Ganesan, Deputy Superintendent of Police, who headed the team, while conducting raid, placed all the materials before the Enquiry Officer to establish the facts and circumstances. In view of the fact that the allegations are relating to receiving of Mamool and allowing the accused persons to commit offence under the Prohibition Laws and taking note of all other facts and circumstances, the competent Disciplinary Authority imposed the punishment of postponement of next increment for three years with cumulative effect. Such a punishment was imposed taking note of all the factors and also the preponderance of probabilities. If at all, the receipt of Mamool is established, then, that would be the case for imposing major penalty of removal from service. However, considering the entire facts and taking note of the deposition of the Government witness, one Mr.Ganesan, Deputy Superintendent of Police, who conducted raid and recorded evidence and placed all the files before the Enquiry officer, the Disciplinary Authority imposed the punishment of postponement of next increment for three years



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with cumulative effect. Therefore, the Enquiry Officer arrived a conclusion based on the deposition of a Government side witness, one Mr.Ganesan, Deputy Superintendent of Police. The accused persons, against whom, a criminal case was registered, turned as hostile and the statement of those witnesses were corroborated along with the deposition of the Government side witness one Mr.Ganesan, Deputy Superintendent of Police. Therefore, the Enquiry officer relied on the deposition of the Deputy Superintendent of Police, who is a responsible official of the Police Department and arrived a conclusion that the charges against the writ petitioners are proved.

10. Let us now consider the principles to be followed in such circumstances.

(a) In a recent case of State Bank of India and another Vs. K.S.Vishwanath, reported in (2022) SCC OnLine SC 667, the Hon'ble Supreme Court of India made an observation as follows:

"26. From the impugned judgment and order passed by the High Court it appears that the High Court has dealt with and considered the writ petition under Articles 226/227 of the Constitution of India challenging the decision of the Bank / Management dismissing the delinquent officer as if the High Court was exercising the powers of the Appellate Authority. The High Court in exercise of powers under Articles 226/227 of the Constitution of India has reappreciated the evidence on record which otherwise is not permissible as held by this Court in a catena of decisions.

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13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal."

30.Even otherwise the standard of proof which is required in a criminal case



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and that of the disciplinary proceedings is different. The fact that the criminal court acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceeding invalid nor affect the validity of the finding of guilt or consequential punishment. As held by this Court in a catena of decisions the standard of proof required in criminal proceedings being different from standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings."

(b) In the case of Union of India and others Vs. Dalbir Singh, reported in (2021) 11 SCC 321, the Hon'ble Supreme Court of India held that "the burden of proof in the departmental proceedings is not of beyond reasonable doubt as is the principle in the criminal trial but probabilities of the misconduct."

11. The principles in the above cases cited supra would be squarely applicable with reference to the facts and circumstances of the case on hand. During the surprise raid by the Prohibition Wing of the Police Department, headed by the Deputy Superintendent of Police, found illegal tapping of toddy from palmirah trees and they registered a criminal case by arresting the accused persons. The accused persons have given a statement that they were continuously permitted to commit such illegal act in violation of Prohibition laws with the permission of the writ petitioners, who had received Mamool from the accused persons. The amount of Mamool paid was also has been mentioned in the statement given by the Accused persons before the Deputy Superintendent of Police. However, before the departmental Enquiry Officer, those accused persons cited as witnesses turned hostile and has stated that their signatures were obtained in the white paper. However, the Government side witness No.1 Mr.Ganesan, Deputy Superintendent of Police, has deposed before the Enquiry Officer regarding the surprise raid conducted by the Prohibition Wing and the manner, in which, the statements were recorded and further explained the nature of allegations against the writ petitioners, who caused disreputation to the department and committed an act of misconduct. When the Deputy Superintendent of Police, who is a responsible Police officer in the Police Department, has deposed before the Enquiry Officer regarding the indiscipline activities and the misconduct committed by the Head Constable and Special Sub-



Inspector of Police, the Enquiry Officer has formed an opinion that it is a case of probability and accordingly, held that the charges are proved.

12. The Courts have repeatedly held that preponderance of probabilities are sufficient to punish an employee under the Discipline and Appeal Rules. The Hon'ble Supreme Court of India also reiterated the principles in several judgments. Thus, the order of the learned Single Judge relied on by the petitioner is of no avail as it is to be restricted only to the case decided and the principles laid down by the Hon'ble Supreme Court of India in the matter of disciplinary proceedings are to be followed as precedent.

13. Thus, this Court has no hesitation in forming an opinion that the case on hand cannot be construed as a case of "No Evidence", but a case, wherein the punishment of postponement of next increment for three years with cumulative effect was imposed based on the preponderance of probabilities and relying on the materials available on record including the deposition of the Government side witness No.1 Mr.Ganesan, Deputy Superintendent of Police. The Appellate Authority thus rejected the appeal rightly and there is no infirmity or perversity as such.

14. Accordingly, the impugned order passed by the 1st respondent in PR No.34/2012 and PR No.33/2012 dated 25.12.2012, which are confirmed by the 2nd respondent in C.No.B1/AP.3/1301/2013 and C.No.B1/AP.2/1300/2013 dated 04.2.2013 are confirmed and consequently, both the writ petition stand dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Superintendent of Police,
Thiruvannamalai District.



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

+2ccs to Mr.M.Muthappan, Advocate, S.R.No.35722, 36405

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W.P.Nos.7279 & 7280 of 2014

SKM(CO)
PM/23/06/2022