



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Writ Petition No.1043 of 2014

S.Loganathan
S/o.Sengottaiyan

... Petitioner

Vs.

1. The Superintendent,
Central Prison, Coimbatore.
2. The Deputy Inspector General of Prisons,
Coimbatore Range, Coimbatore.
3. The Additional Director General of Police
and Inspector General of Prison,
Prison Department,
CMDA Tower II, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the respondents 1 and 2 in connection with the impugned order passed by them in Proc.No.12789/KC3/2011/1 dated 29.12.2011 and Ref.No.1236/Mu/Oo/2012 dated 17.07.2012 and quash the same.

For Petitioner : Mr.K.Venkataramani, Senior Counsel
for Mr.M.Muthappan

For Respondents : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

O R D E R

The orders of punishment of stoppage of increment for one year without cumulative effect imposed on the writ petitioner in proceedings dated 29.12.2011 and 17.07.2012 are under challenge in the present writ petition.



2. The petitioner is working as Grade-II Warder in jail department. A charge memo under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was issued against the writ petitioner in proceeding dated 07.09.2011. The allegations set out in the charge memo are that, while the petitioner was working in Sub Jail, Udumalai, he and two other Grade-II Warders, viz., Mr.T.Selvakumar and Mr.A.Charles brought banned articles viz., beedies and hans and concealed them in the Sub Jail kitchen and one among them conducted search and seized the prohibited articles from the prisoners as if the contraband articles bought by the prisoners. Further, they threatened the prisoners to inform the higher officials during their visit that the prohibited articles were given to them by the Superintendent of Sub Jail to the prisoners working in Sub Jail kitchen as incentive to them. More over, they instigated the prisoners to go on hunger strike. When the prisoners refused to do so, the petitioner and his accomplices threatened them that they will file other cases against them to prevent their release from the prison. In view of the said conduct, the disciplinary authority framed a charge under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The petitioner was afforded with an opportunity to submit his explanation and thereafter, the impugned order of punishment was issued in proceeding dated 29.12.2011. The appeal filed by the writ petitioner was also rejected by the appellate authority/second respondent on 17.07.2012. Thus, the writ petitioner is constrained to prefer the present petition.

3. The learned Senior Counsel appearing on behalf of the writ petitioner mainly contended that the charges framed against the writ petitioner are vague and incapable of enquired into. Based on the vague charges, punishment cannot be imposed. Further, no enquiry was conducted and documents were not scrutinized and a specific request made by the writ petitioner in this regard was also not considered. Thus, the punishment is to be set aside.

4. The learned Senior Counsel reiterated that even for imposing minor penalties, the competent authority must establish the offence against the delinquent officer. In the absence of any evidence, no punishment can be imposed including minor punishment. This being the basic principles to be followed in the matter of departmental proceedings, in the present case, no such evidence has been produced nor the petitioner was afforded with an opportunity and therefore, the order impugned is bad in law. The appellate authority also failed to consider this aspect and passed a cryptic order, which is untenable.

5. The learned Senior Counsel further contended that the writ petitioner submitted a representation seeking all relevant



WEB COPY

documents enabling him to submit a detailed explanation with reference to the allegations. However, the authorities have not provided such an opportunity to defend his case and based on the vague charges, the petitioner was not in a position to submit his explanation in detail.

6. The learned Additional Government Pleader appearing on behalf of the respondents strenuously objected the said contention raised on behalf of the writ petitioner by stating that opportunity was afforded to the writ petitioner not once, but twice. The writ petitioner instead of availing the opportunity, had adopted a delay tactics to escape from the clutches of the disciplinary proceedings. Therefore, the very ground raised that no opportunity was given to the writ petitioner was incorrect and the opportunity granted to the writ petitioner by the authorities competent was not properly availed by him for which, the authorities cannot be blamed at all.

7. The learned Additional Government Pleader reiterated that the allegations are serious and documents were available. In fact, the writ petitioner was allowed to peruse the documents. However, the writ petitioner has not availed the opportunity. The petitioner was permitted by the first respondent in Memo No.12789/KiC-3/2011 dated 08.11.2011 to peruse the records available in Sub Jail, Udumalaipet and take extracts thereof. When such an opportunity was given to the writ petitioner through a written memo, the writ petitioner would have availed the opportunity for the purpose of submitting his explanation. Contrarily, the writ petitioner has adopted the delay tactics to prolong and protract the disciplinary proceedings and therefore, the authorities are forced to take a decision and pass final orders in the disciplinary proceedings. In such circumstances, this writ petition is liable to be dismissed.

8. The learned Additional Government Pleader further contended that beyond the first opportunity provided by the authorities to peruse the documents and take extracts thereof, the writ petitioner submitted an application under Right to Information Act as if no opportunity was given to him. The said application was also responded and the documents sought for under the Right to Information Act, were furnished to the writ petitioner in Memo No.106/11 dated 15.12.2012. Thus, opportunity was given twice to the writ petitioner and therefore, the writ petition is devoid of merits.

9. Considering the arguments as advanced by the learned Senior Counsel appearing on behalf of the writ petitioner and the learned Additional Government Pleader appearing on behalf of the respondents, let us consider the scope of imposition of



minor penalties under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The procedure to be followed to impose minor penalties are that "in every case where it is proposed to impose on a member of a service or a person holding a civil post under the State any of the penalties specified in items (i), (ii), (iii), (v) and (ix) in Rule 8 or in Rule 9, he shall be given a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration before the order imposing the penalty is passed." Thus, the Rule contemplates "reasonable opportunity of making representation". What is reasonable opportunity to be granted to the delinquent officer by the disciplinary authority. Undoubtedly, the procedure contemplated is summary in nature. There is no trial or enquiry unlike contemplated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The delinquent officer is to be provided with a reasonable opportunity of making his representation and the authorities are bound to consider the representations/explanations, if any, submitted by the delinquent officer for the purpose of framing an opinion and for passing orders in the disciplinary proceedings.

10. The charge memo dated 07.09.2011 was served on the writ petitioner. The writ petitioner submitted his representation on 21.09.2011 seeking details regarding the allegations and the other particulars. The authorities competent given a reply on 11.10.2011 stating that based on the complaint by the prisoners, the charge memo was issued. The writ petitioner submitted further representation on 22.10.2011 seeking certain documents. In response to the said representation, the Superintendent, Central Prison, Coimbatore, in his letter dated 08.11.2011, permitted the writ petitioner to peruse all the records and take extracts of the same and thereafter, submit his explanation within a period of five days. Therefore, it is clear that an opportunity was given to the writ petitioner to peruse the documents, take extracts and submit his explanation within five days. Instead of availing the opportunity granted by the Superintendent of Central Prison, Coimbatore, the writ petitioner submitted a further representation dated 21.11.2011 seeking certain documents. The conduct of the writ petitioner reveals that he had no intention to defend the allegations, but, made an attempt to prolong and protract the disciplinary proceedings, more specifically, the charge issued under section 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

11. When Rule 17(a) Tamil Nadu Civil Services (Discipline and Appeal) Rules, contemplates that a delinquent officer is entitled for a reasonable opportunity of making his



representation and the writ petitioner made a representation seeking certain details and the Superintendent of Prison had given an opportunity to peruse the entire records and take extracts of the same and thereafter, submit explanation within a period of five days, the petitioner is expected to submit his explanation on merits defending the allegations. Contrarily, the writ petitioner was going on submitting representations seeking documents, which clearly establishes his motive to delay the process and escape from the clutches of the disciplinary proceedings. Such conduct of a public servant, at no circumstances, encouraged or appreciated by Courts. Any Government employee/delinquent officer is entitled for an opportunity and such opportunity is to be utilized or followed diligently for the purpose of defending his case. Contrarily, it should not be used for protracting the proceedings, which is impermissible and the Courts cannot encourage such conduct.

12. There is a growing trend of conduct amongst the Government employees that once the disciplinary proceedings are initiated, they go on submitting representations seeking documents and on some occasion, documents, which are not available with the department. The very purpose of prolonging the disciplinary proceedings are to escape from the clutches thereof. Otherwise, the delinquent officer files writ petition after writ petition before the High Court at each and every stage. All such instances are to be considered as if the delinquent officer instead of defending the case, made an attempt to prolong the issue. The Courts have to consider whether the authorities competent have given reasonable opportunity as contemplated under the Rules or not.

13. In the present case, admittedly charges are framed under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The petitioner submitted a representation for providing details and documents. The authorities have given such an opportunity to peruse the records and to take extracts of the records and thereafter, submit his explanation within a period of five days. However, the writ petitioner has not availed the opportunity to protract the proceedings. The counter filed by the respondents reveals that an opportunity was given through Memo dated 08.11.2011, which is on record. This apart, the application submitted by the writ petitioner under the Right to Information Act was also responded and the information sought for by the writ petitioner were provided and copies of the documents were furnished to the writ petitioner. When all such opportunities were granted as contemplated under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the contention of the writ petitioner that no opportunity was granted deserves no merit consideration.



14. As far as the charges are concerned, the charges are clearly stated in the charge memo and the authorities have considered the nature of the charges and decided to pass the order impugned based on the records available. In view of the fact that the petitioner has not submitted explanation defending the allegations on merits, there was no opportunity for the authorities to consider his defence in respect of the allegations. Under these circumstances, the appellate authority also followed the reasons given by the disciplinary authority and rejected the appeal. The procedure for imposing minor penalties under Rule 17(a) is summary in nature and in the present case, an opportunity as contemplated under the Rule, has already been granted to the petitioner. In stead of availing the opportunity, the petitioner was submitting representations one after another with a motive to prolong the issue. Under these circumstances, the writ petitioner is not entitled for any relief and this Court does not find any infirmity in the order impugned.

Accordingly, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Superintendent,
Central Prison,
Coimbatore.
2. The Deputy Inspector General of Prisons,
Coimbatore Range, Coimbatore.
3. The Additional Director General of Police
and Inspector General of Prison,
Prison Department,
CMDA Tower II, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

+1cc to Government Pleader SR. No. 33097

Writ Petition No.1043 of 2014

SR (CO)

PR (16/06/2022)