

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.08.2022	Delivered on : 14 .10.2022
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CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No. 629 of 2021
and WMP.Nos 17105 of 2021

A.Jayasubramanian

..Petitioner

Vs.

1. The Chief Secretary
Government of Tamil Nadu
Fort St.George, Chennai.

2.The Additional Chief Secretary,
Government of Tamil Nadu,
Fort St.George, Chennai.

3.The Director General of Police,
Police Head Quarters,
Chennai.

4.The Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli.

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records in connection with the charge memo no PR. NO 99/2013 U/S 17(B) Dated 30.7.2013 issued by the Deputy Inspector General of Police Tirunelveli Differed Memo Letter No 56603/POL.2/2015-9 dated 13.2.2018 passed by the Addl. chief secretary to Government of Tamil Nadu and Order of

Punishment Vide GO (2D) No 342 dated 26.11.2019 passed by the Additional chief Secretary to Government of Tamil Nadu and quash the same and consequently direct the Additional Chief Secretary to Government the 2nd respondent herein to reinstate the Petitioner into service with all consequential service benefits.

For Petitioner : Mr.S.T.S.Murthy, Senior Counsel
For Dr.R.Sampath Kumar.

For Respondents : Mr. T.Arunkumar, AGP

ORDER

Challenging the Charge Memo no PR. NO 99/2013 U/S 17(B) Dated 30.7.2013 issued by the 3rd respondent/ Deputy Inspector General of Police Tirunelveli and the consequential order passed by the 2nd respondent / Additional Chief Secretary to Government, Chennai in GO (2D) No 342 dated 26.11.19, the petitioner has filed the present writ petition.

2. The case of the petitioner is that the during the year 1999 while he was working as Inspector of Police, Thuckalay Police Station, he investigated a road accident which took place on 30.06.21999 involving an Ambassador Car bearing Registration No. TMZ 1812. After completion of enquiry, charge sheet was filed on 30.08.1999 before the Judicial Magistrate Court,

Padmanabhapuram, which was taken on file in STC No. 3158 of 1999. Subsequently, based on a false complaint dated 16.10.2004, the petitioner was imposed with major punishment of compulsory retirement by the 2nd respondent by impugned order dated 26.11.2019. Challenging the same, the present writ petition is filed.

3. The learned senior counsel appearing for the petitioner has submitted that after detailed investigation, the petitioner has filed the charge sheet before the Judicial Magistrate Court, Padmanabhapuram and the same has been taken on file as STC No. 3158/99 . The driver of the Ambassador Car bearing Reg.No.TMZ 1812 was produced before the Court and he admitted the offence and also paid the fine amount, therefore there is no illegality in any manner known to law. The legal heirs of the deceased Rathinasamy have filed a claim petition in MCOP No. 41/1999 before the Motor Accident Tribunal, Padmanabhapuram claiming compensation from the insurance companies namely M/s. Oriental Insurance Company Ltd., (for Car) and The New India Assurance Company Ltd. (Two Wheeler). The tribunal found guilt on M/s.Oriental Insurance Company Ltd., (for Car) and awarded as Rs.5,00,000/- as compensation along with interest at the rate of 9% per annum payable by

the M/s Oriental Insurance Company.

4. The learned senior counsel appearing for the petitioner has further submitted that challenging the said award, M/s.Oriental Insurance Company has preferred an appeal before the Madurai Bench of Madras High Court and on the consent of both the parties, the matter was posted before the Lok Adalat on 17.09.2011 and the said insurance company had agreed to settle a sum of Rs..4,50,000/- along with interest at 7.5% per annum and paid the amount to the claimant. Therefore, the petitioner cannot be blamed saying that he had falsely implicated the Ambassador Car in the said accident to favour the legal heirs of the deceased Rathinasamy to get compensation.

5. The learned senior counsel for the petitioner has further submitted that earlier based on the false complaint lodged by the Divisional Manager of M/s. Oriental Insurance Corporation, Tirunelveli alleging false implication of Ambassador Car by the petitioner in the said accident, the department has initiated investigation by filling FIR in Crime No. 17/2005 under Section 420 IPC and the same was referred as mistake of fact by proceedings in Rc.No.04/05, dated 14.12.2005.

6. The learned counsel for the petitioner has further submitted that after 11 years, the respondent had issued a charge memo in PR NO. 99/2013. The enquiry was conducted by the Deputy Inspector General of Police, Tirunelveli and the enquiry officer, after recording the evidences from 14 witnesses, found no merits on the charges and held not proved the charges framed against the petitioner and submitted the enquiry report dated 13.08.2015. The 2nd respondent had not accepted the said enquiry report and issued differed memo dated 13.03.2018 and imposed major punishment of Compulsory Retirement from service without considering the enquiry officer's report and the further explanation dated 04.04.2018 submitted by the petitioner. The review petition dated 18.12.2019 submitted by the petitioner was also rejected by the 2nd respondent by order dated 18.02.2021.

7. Counter affidavit has been filed by the respondents, the learned Additional Government Pleader in support of the contentions made in the counter affidavit, has submitted that based on the complaint given by the Senior Divisional Manager of Oriental Insurance Company, a case in Crime No. 7/2005 under Section 420 IPC was registered against the petitioner and

later referred as mistake of fact on 14.12.2005. Later this case was re-investigated by the Crime Branch Criminal Investigation Department, wherein the false implication of the Ambassador Car came to light, hence the 3rd respondent had issued directions to take disciplinary action against the petitioner and accordingly, the charges were framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955.

8. The learned Additional Government Pleader has further submitted that the Inspector of Police namely S.Shankar Dev has enquired all the witnesses independently and after verifying all the records came to the conclusion. Though the oral enquiry officer drawn not proved the minute, the 2nd respondent after careful consideration of the deposition of eye witness namely Saratha and the concluding report of Crime Branch Criminal Investigation Department dated 30.09.2010 held that the charges against the petitioner as proved and informed the deviated views to the petitioner by letter dated 13.02.2018. Subsequently, the review petition submitted by the petitioner was also rejected after obtaining the views from the Tamil Nadu Public Service Commission, therefore, there is no violation of any principles on the part of the respondents as contended by the learned senior counsel appearing for the

petitioner.

9. Having heard Mr.S.T.S.Murthy, learned Senior Counsel appearing for the petitioner and Mr.T. Arunkumar, learned Additional Government Pleader appearing for the respondents and after perusal of materials available on record, this Court needs to answer the following points;

- i. Whether the respondent has substantiated with the documents for the inordinate delay in initiation as well as completion of Disciplinary proceedings against the petitioner.
- ii. Whether the disagreement notice issued by the respondent-Government is sustainable in law.

10. Inordinate delay in initiating and completing the disciplinary proceedings:

10.1 Admittedly, the petitioner while working as Inspector of Police, Thuckalay Police Station has investigated an accident case that took place on 30.06.1999 and filed a charge sheet before the Judicial Magistrate, Padmanabhapuram, which was taken on file as STC No. 3158 of 1999 holding that two vehicles viz., Motor Cycle and Ambassador Car bearing Reg.No.

TMZ 1812 were involved in the said accident. The driver of the said Ambassador Car was produced before the Court and he admitted the offence and paid the fine amount. PW2 Sarada suffered injuries, Sarada's husband Rathinasamy (PW2) took her along with the motor cycle rider with the help of one Murugan Asari. The above said Rathinasamy (PW1) gave evidence before the Judicial Magistrate, Nagercoil that an Ambassador Car came in high Speed had hit the motor cycle and consequently the motor cycle hit his wife Sarada and caused injuries to her and the motorcycle rider Rathinasamy, who died subsequently due to injuries. The said fact was also confirmed by the said Sarada (PW2) and Murugan before the Criminal Court in their evidence on 22.11.2005. The legal heirs of the deceased Rathinasamy namely 1. Gomathi (W/o. Late Rathinasamy), 2.Ambika (Daughter), 3. Ilango (Son) have filed the claim petition before the Motor Accidents Claims Tribunal, Padmanabhapuram and the tribunal has awarded compensation of Rs.5 lakhs along with 9 % interest. Challenging the said Award, the appeal preferred by M/s.Oriental Insurance Company before this Court was later settled before the Lok Adalat by consent of both the parties to the tune of Rs.4.50 lakhs as compensation.

10.2. Based on the complaint sent by one C.J. Joseph, Senior Divisional Manager of Oriental Insurance Company to the Additional Director General of Police, CBCID, Chennai, a Criminal Case was registered in Cr.No. 17/2005 under Section 420 IPC and investigated by the Deputy Superintendent of Police and based on the statement of the said witnesses, the said criminal case was closed as Mistake of Fact on 14.12.2005. Subsequently, the case was transferred to CBCID for reinvestigation after 11 years. The Inspector has filed a report and found guilt on the petitioner.

10.3. Based on the report, the charge memo under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules was issued to the petitioner on 30.07.2013, i.e. nearly after a period of 14 years of accident, which took place on 30.06.1999. The disciplinary authority viz., The Deputy Inspector General of Police, Tirunelveli had conducted the disciplinary proceedings during August 2014 and concluded the proceedings as 'Not proved' by his report dated 13.08.2015. The respondent-Government, after disagreeing with the findings of the enquiry officer, has issued the impugned punishment order against the petitioner on 26.11.2019, i.e after an inordinate delay of 20 years and 5 months.

10.4. In this Context, it is pertinent to rely upon the decision of the Hon'ble Supreme Court in ***P.v.Mahadevan Vs M.D Tamil Nadu Housing Board reported in 2006 (6) SCC 636***, wherein the Hon'ble supreme Court clearly held that “*an inordinate delay in conducting disciplinary proceedings must be supported by a convincing explanation provided by the employer and departmental proceedings after a long distance of time would be prejudicial to the delinquent.*”

10.5. Yet another decision of Hon'ble Supreme Court in ***State of Madhya Pradesh Vs Bani Singh reported in AIR 1990 SC 1308***, wherein the Hon'ble Supreme Court has held that “*satisfactory explanation is necessary for a delay in 12 years of initiating disciplinary proceedings and issuing charge memo and also held that it would be unfair to permit the departmental enquiry to proceed at a later stage.*”

10.6. The aforesaid decisions of the Hon'ble Supreme Court squarely applies to the facts of the present case and in view of the aforesaid decisions, the impugned punishment order passed as against the petitioner after an inordinate delay of nearly 20 years is liable to be set aside.

11. Disagreement Notice:

As discussed above, the respondents took 15 years to conclude the proceedings. It could be seen that there is delay on the part of the respondent-department in every stage of the proceedings. Adding further to the above, the Government took 2 ½ years to take a decision and disagreed the findings of the enquiry officer without giving any reasons and called for explanation through letter dated 13.02.2018 and issued the impugned punishment order on 26.11.2019 against the petitioner.

11.1 A perusal of judgment passed by the tribunal clearly reveals that driver of the said Ambassador Car admitted his offence and paid the fine amount as per Ex.A6. The tribunal has discarded the statement of the eyewitness Saratha before the tribunal who had deposed contrary to the statement made by her before the criminal court and concluded that the accident had occurred only due to the negligence on the part of the driver of the ambassador car and awarded the compensation of amount of Rs.5,00,000/- along with interest at 9 % per annum to the claimants (legal heirs of the deceased Rathinasamy). As against the said compensation, the appeal

preferred by the Insurance Company was also settled before the Lok Adalat by consent of both parties and the settlement amount of Rs.4,50,000/- with interest @ 7.5.% was also paid to the claimants.

11.2 The respondents by merely relying upon the evidence of the Saradha before the tribunal who had deposed that the police officials of Thakkalai Police station had taken herself, Rathinasamy (Sarada's husband) and Murugan to the Magistrate Court and instructed to depose that on 22.11.2006 an Ambassador car hit the Rathinasamy's motorcycle who was returning from Thakkalai and due to the said accident the Rathinasamy died, had issued a charge memo to the petitioner and initiated disciplinary proceedings and passed the impugned punishment order, disagreeing with the findings of the enquiry officer, without stating any tentative reason for such disagreement.

11.3 The learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of ***Punjab National Bank & Others Vs.Kunj Behari Misra & Others, reported in 1998 II LLJ 809 SC***, wherein it is held that whenever the disciplinary authority disagreed with the enquiry authority, then it must record its tentative reasons for such disagreement and give

the delinquent officer an opportunity to represent, before it record its findings.”

11.4 The learned counsel for the petitioner has also brought to the notice of this Court wherein this Court was pleased to consider the above judgment of the Hon'ble Supreme Court and allowed the writ petitions ***W.P. Nos. 28541 of 2015 and 9062 of 2021 dated 13.04.2022 in the case of A.Babu Vs.Vinod Kumar.***

12. From the narration of facts and the proposition of law, this Court finds some force on the contentions made by the learned senior counsel appearing for the petitioner and accordingly comes to the conclusion that the respondent-Insurance Company failed to produce materials before the tribunal as well as this Court to substantiate their claim and the 2nd respondent-Government without following the procedures and without giving any reason for disagreeing the enquiry report, has passed the impugned punishment order against the petitioner after a period of 20 years from the date of alleged accident which is unsustainable in law in view of the decisions of the Hon'ble Supreme Court and this Court cited supra and the same is liable to quashed.

13. In fine, the impugned punishment order dated 26.11.2019 issued by the 2nd respondent is quashed and the *writ petition is allowed with the following directions;*

- i. The respondents are directed to reinstate the petitioner forthwith in service with all consequential service and monetary benefits. The period from the date of compulsory retirement i.e 26.11.2019 to the date of reinstatement in service shall be treated period as spent on duty for all purposes.
- ii. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.
- iii. It is open to the respondents to recover the terminal benefits granted to the petitioner, if any, in accordance with rules.
- iv. No costs. Consequently, connected Miscellaneous Petition is closed.

14.10.2022

Index: Yes/No

Internet : Yes

Speaking Order/Non Speaking Order

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