



W.P.(MD)No.7310 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.7310 of 2020

and

W.M.P.(MD)No.6763 of 2020

R.N.Sunil

... Petitioner

Vs.

1. The Additional Director of General of Police
and Inspector General of Prisons,
Egmore,
Chennai - 600 008.
2. The Deputy Inspector General of Prisons,
Madurai Range,
Madurai - 625 016.
3. The Superintendent of Prisons,
Central Prison,
Palayamkottai,
Tirunelveli District.
4. Thiru.T.Tamilselvan,
Enquiry Officer (Additional Superintendent of Prisons
Central Prison, Madurai),
Presently, Superintendent of Prisons,
Central Prison,
Salem.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the punishment order No.7862/Po.1/2016 dated 09.02.2017 passed by the third respondent and the order No. 832/Mu.U/2017, dated 14.12.2017, passed by the second respondent dismissing the appeal and quash the same and consequently, direct the respondents 1 to 3 to reinstate the petitioner into service and grant all the service and monetary benefits from the date of suspension.

For Petitioner : Mr.B.Karunanithi

For Respondents : Mr.G.V.Vairam Santhosh
Addl. Govt. Pleader for R1 to R3
No appearance for R4

O R D E R

This Writ Petition has been filed to call for records of the punishment order No.7862/Po.1/2016, dated 09.02.2017, passed by the third respondent and the order No.832/Mu.U/2017, dated 14.12.2017, passed by the second respondent dismissing the appeal, quash the same and consequently, direct the respondents 1 to 3 to reinstate the petitioner into service and grant all the service and monetary benefits from the date of suspension.



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2. The case of the petitioner is that the petitioner was enrolled as Grade-II Warder on 14.06.2006 at the Central Prison, Puzhal-II and he was transferred to the Central Prison, Vellore and then, he was transferred to the Central Prison, Palayamkottai on 09.11.2012. While, he was on Medical Leave from 08.09.2016, the third respondent placed him under suspension vide order, dated 16.09.2016, contemplating an enquiry into a false allegation. Thereafter, the third respondent has issued a charge memo, dated 20.09.2016. The sum and substance of the charge memo is that the petitioner had contact with relative / friend of prisoner, in violation of the Prison Rules and received contraband articles, money and sim card from the relative of the prisoner and planned to smuggle the same into Prison and thus, failed to follow the Prison Rules and defamed the Prison Department and the Government. The third respondent did not supply any documents referred in Annexure-III of the charge memo. Thereafter, the petitioner has submitted an explanation dated 08.10.2016, denying the charges framed against him. But, the third respondent has appointed the fourth respondent as Enquiry Officer and the Enquiry Officer has also did not supply the documents to the petitioner, but conducted enquiry at Palayamkottai, on



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27.12.2016 and 28.12.2016 and at the Central Prison, Madurai on 31.12.2016 and 05.01.2017. The Enquiry Officer has failed to consider the explanation submitted by the petitioner and mechanically drawn a proven minute against the petitioner and based on the proven minute, the third respondent has imposed the punishment of removal from service on 09.02.2017. Challenging the said order of removal, the petitioner preferred an appeal before the second respondent on 27.03.2017. The second respondent also in a cryptic order has confirmed the order of dismissal from service, vide order, dated 14.12.2017. As against the concurrent findings, the petitioner has filed the present Writ Petition.

3. The learned counsel appearing for the petitioner would submit that admittedly, no complaint was made either by Vignesh or Dinatharan before the Prison Department and without any complaints, the third respondent has issued a charge memo against the petitioner, which is not sustainable one and the demand and acceptance of bribe of Rs.5,000/- (Rupees Five Thousand only) for smuggling the cellphone in the Prison Department was not established. Though the Enquiry Officer examined six



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prosecution witnesses, none of the prosecution witnesses implicated the petitioner with the above brave misconduct. In fact, the person who allegedly paid a sum of Rs.5,000/- also denied that he did not know the petitioner. Further, all those evidence were hear-say evidence and during the cross-examination, they denied the allegation made against the petitioner. In the absence of any evidence, the proven minute drawn by the Enquiry Officer, which was accepted by the third respondent, is not sustainable one and it is not a regular trap case. Further, the allegation made against the petitioner, without any documents and without any records, based on which, a major punishment of removal of service was imposed, is not sustainable one and the alleged Rs.5,000/- was not recovered from the petitioner. Hence, the punishment imposed by the Original Authority, which was confirmed by the Appellate Authority, is not sustainable one and accordingly, he prayed for appropriate orders.

4. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the said incident had occurred between 10.08.2016 and 20.08.2016 and therefore, the Attendance



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Register of the petitioner between 10.08.2016 and 19.08.2016 was obtained along with the details regarding the visitor's pass details of the prisoner's relative on 10.08.2016, 17.08.2016 and 19.08.2016. Thereafter, the call records regarding the petitioner's Mobile No.8940404470 were perused, wherein, there was a call from the petitioner's mobile number to that of the prisoner's relative's Mobile No.8903064319. From the above records, it was seen that there was an outgoing call to the prisoner's relative at about 08.05 am on 19.08.2016 and thereafter, there was an incoming call from the same number to the petitioner's mobile at about 10.13 am on 19.08.2016, which is against the Tamil Nadu Prison Manual Volume-II, Rule No.147, *"No Prison Officer shall lend money to borrow money from or incur any obligation in favour of any other Prison Officer or prisoner or correspond with, or hold any intercourse with, the friends or relatives of any prisoner or have any unauthorised communication with any prisoner or with any prisoner or with any prison whatever as to matters concerning the prison"*. Hence, the punishment imposed by the third respondent which was confirmed by the second respondent, need not be interfered with. He further submitted that normally, this Court, would not interfere with the order of punishment



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imposed by the Original Authority as well as Appellate Authority and they are the Competent Authorities to impose the punishment as against the Subordinates for violation of the Prison Manual and this Court cannot interfere with the finding rendered by the fact finding authority unless contrary is proved before this Court. Accordingly, he prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

6. The undisputed fact is that the petitioner served as a Grade-II Warder in the Prison Department. While he was working as Grade-II Warder, Central Prison Palayamkottai, it is alleged that the petitioner received a sum of Rs.5,000/- (Rupees Five Thousand only) from the relative of Rajesh, who is a prisoner on the request made by his relative Vignesh. The said Vignesh received information from one Dinatharan who informed that the petitioner is capable of smuggling the cellphones. After receipt of the consideration, after getting information from Dinatharan, who is the



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inmate passed an information to the Rajesh, who is a murder accused for purpose of receiving the cellphone, for which, Rajesh requested Dinatharan to supply the cellphone to the petitioner through his relative Vignesh and thereafter, during the jail visit, he passed on the information to the Vignesh to pay Rs.5,000/- for the purpose of smuggling simcard. It is further alleged that the petitioner received a sum of Rs.5,000/- from Vignesh for the purpose of smuggling the cellphone to the Prison Department. However, the smuggling is not successful in view of the tight security and thereby, the said Rajesh, who is a prisoner, demanded money from Dinatharan and Dinatharan also passed an information to the petitioner and thereafter, the present charge memo was issued. The crucial point that arises for consideration is that admittedly, the petitioner's cellphone number was known to the prisoners, namely, Rajesh and Dinatharan. Thereafter, Rajesh-PW1 contacted the petitioner and informed his relative Vignesh cell number to the petitioner and both cell phone conversation was clearly established before the Enquiry Officer including the mobile number of the petitioner as well as relative of PW1. The depositions of PW1, PW2, PW3 would clearly establish the guilt committed by the petitioner. However, except the



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allegations, no other serious allegations were made against the petitioner.

Admittedly, the petitioner received the money from the prisoner's relative for the purpose of smuggling the cellphone which was clearly established by the Original Authority and the same was confirmed by Appellate Authority and no contra evidence were produced before this Court for disbelieving the enquiry report.

7. The petitioner has rendered ten years of service in the Prison Department and except the present charge, no other charge was made against the petitioner. In a catena of decisions, the Apex Court held that Constitutional Court cannot interfere with the punishment imposed by the Original Authority as well as Appellate Authority, if it is not dis-proportionate. However, this Court has power to interfere with the punishment imposed by the Original Authority as well as Appellate Authority, if it is disproportionate.

8. It is useful to refer to the judgment of the Hon'ble Apex Court in the case of *Prem Nath Bali vs. Registrar, High Court of Delhi and another* reported in (2015) 16 SCC 415, wherein it is held as under:



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"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating tot he delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) the the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the prove charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute



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the punishment by itself instead of remitting to the appointing authority."

9. Considering the facts and circumstances of the case, admittedly the petitioner's conduct cannot be approved being the disciplinary force and he is expected to perform the duty beyond reasonable doubt. However, in the present case, the petitioner involved a grave misconduct by receiving the bribe from the prisoner's relative for the purpose of smuggling and he is deserving for major punishment. However, the punishment imposed to the petitioner removed from service is disproportionate and the said punishment can be modified to that of compulsory retirement.

10. Accordingly, this Writ Petition is allowed in the above terms.

No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No

Speaking Order : Yes / No

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and Inspector General of Prisons,
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