



WP(MD)No.10231 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.08.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD)No.10231 of 2020
and
W.M.P(MD)No.9126 of 2020

M.Saravanan

... Petitioner

/vs./

- 1.The Secretary to Government,
Home (Police VI) Department,
Secretariat,
Fort St.George,
Chennai-600 009.
- 2.The Director General of Police,
Chennai-600 004.
- 3.The Deputy Inspector General of Police,
Dindigul Range,
Dindigul.
- 4.The Superintendent of Police,
Theni District,
Theni.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, calling for the records pertaining to the impugned proceedings issued by the fourth respondent in PR.No.62/F1/2014, dated



WP(MD)No.10231 of 2020

22.06.2017, which was confirmed by the third respondent in his proceedings in Rc.No.AP-47/A2/2017, dated 20.11.2017, which was again confirmed by the second respondent in his proceedings in Rc.No.067634/AP.2(3)/2018, dated 11.08.2018 and further confirmed by the first respondent in G.O.(D)No.341, dated 18.02.2020 and quash the same and consequently direct the respondents to reinstate the petitioner into service with all monetary and attendant benefits and pass such other orders as this Court.

For Petitioner : Mr.T.Antony Arulraj
for M/s.Veera Associates

For Respondents : Mr.R.Ragavendran
Government Advocate

ORDER

The punishment of "compulsory retirement" imposed by the fourth respondent against the petitioner herein is under challenge in the present writ petition.

2. The brief facts of the case are as follows:

(i) The petitioner herein had joined as a Grade II Police Constable in the respondent Department on 16.06.1993. Based on a complaint given by one Manimegalai, who claims to be the wife of the petitioner herein, for charges of bigamy, a preliminary enquiry was conducted on 28.10.2014, whereby, the



WP(MD)No.10231 of 2020

WEB COPY

statements of Manimegalai and others were recorded by the Investigation Officer.

(ii) Consequently, a charge memo, dated 13.11.2014, came to be issued against the petitioner, alleging that he had married one Jeyasudha during the subsistence of the first marriage with one Manimegalai. On the basis of such charges, an enquiry was conducted by the Deputy Superintendent of Police, Uthamapalayam and by a report, dated 11.04.2015, the charges levelled against the petitioner were held to be proved.

(iii) The fourth respondent herein, being the disciplinary authority, had imposed the punishment of "Removal from Service". In the appeal filed by the petitioner, the second respondent herein had set aside the order of punishment, by holding that, non-examination of the witnesses in the enquiry had vitiated the proceedings and accordingly, had remitted back the matter for conducting a denovo enquiry.

(iv) In consequence to such remission, the fourth respondent herein, had conducted a fresh enquiry and ultimately had imposed the punishment of "compulsory retirement" on 22.06.2017. The appeals against the punishment were



WP(MD)No.10231 of 2020

WEB COPY

also dismissed by the respondents 1 to 3 on 20.11.2017, 11.08.2018 and 18.02.2020, respectively.

3. The main ground raised by the petitioner herein in this writ petition is that, during the course of the original enquiry, the enquiry officer, in his report, dated 11.04.2015, had relied upon the statements made by the six witnesses, including the complainant, during the course of the preliminary enquiry conducted by the Police, which is prior to framing of the departmental charges. Apart from the six witnesses, the seventh witness, who was examined during the course of enquiry, had also placed reliance on the statements made by the other witnesses during the course of preliminary enquiry.

4. When the second respondent herein had found that the enquiry report was vitiated owing to non-examination of proper witnesses and remitted back the matter, the fourth respondent had once again placed reliance on the statement, dated 28.10.2014, of the complainant/witness, which was recorded during the course of preliminary enquiry by the police. Likewise, the fourth respondent had further placed reliance on the enquiry report itself, dated 06.11.2014, which was marked as Exhibit P19. These two documents are the prime documents supporting



WP(MD)No.10231 of 2020

WEB COPY the charges against the petitioner.

5. It is a settled proposition of law that during the course of a disciplinary proceedings, the enquiry officer cannot place reliance on the statements made during the course of a preliminary investigation conducted by the police in connection with the levelled charges. In one such decision of this Court, the proceedings itself have been held to be vitiated owing to the reliance placed by the enquiry officer on the statements made during the preliminary enquiry, in the case of '**N.Rajavelu Vs. The Superintendent of Police, Villupuram District and Others**' passed in W.P.No.32816 of 2013, dated 29.03.2022, in which the earlier decision of the Hon'ble Supreme Court, as well as this Court, was relied upon and this proposition was upheld in the following manner:

*"2. This Court, in various decisions, have held that the orders of punishment based upon the evidences in the preliminary inquiry, cannot be sustained. In one such order of this Court, passed in the case of '**M.Ramakrishnan Vs. The Superintendent of Police & another**' in W.P.No.28893 of 2008, dated 18.09.2009, this proposition was upheld in the following manner:-*



WP(MD)No.10231 of 2020

WEB COPY

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“8. The Enquiry Officer cannot give a finding based upon mere surmises and conjectures. The petitioner was not allowed to cross-examine the witnesses to verify the statement made by them in the preliminary enquiry.

*9. Therefore, while rejecting the subsequent statements the Enquiry Officer cannot rely upon earlier statement given during the preliminary enquiry. In the judgment reported in **2006 2 MLJ 202** this Court was pleased to observe as follows:-*

*“7. In the decision reported in **Union of India v. Mohd. Ibrahim**, (2004) 10 SCC 87, the Honourable Supreme court in the facts and circumstances of the case before it held that the order of dismissal was vitiated as the findings have been based on consideration of statement of the persons examined during the preliminary enquiry and for the said fact the Tribunal set aside the order of dismissal which was upheld by the High Court and there is no error in the said order setting aside the dismissal order.*

*8. A Division Bench of this Court by Judgment in **Deputy Inspector General of Police, Villupuram and others v. V.Vanniaperumal and others**, W.P.Nos. 29862 and 32581 of 2002, dated 22.2.2005 upheld the order of the Tribunal which set aside the order of removal from service. Paras 6 and 8 of the judgment can be usefully referred to, which reads thus:*

“6. We have carefully considered the relevant materials and the rival contentions. We have already referred to the charges levelled against the applicants.



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It is also relevant to note that apart from the applicants two more officers have also been implicated along with them. They are one Sattanathan, Sub – Inspector of Police and Antony, Inspector of Police. It is brought to our notice that Sattanathan is no more and so far as the other officer Antony is concerned lesser punishment has been imposed. Now we are concerned with the charges levelled against both the applicants. In the light of the conclusion arrived at by the Tribunal, we perused the finding of the Enquiry Officer. It is not in dispute that all the prosecution witnesses except PW3, who is none other than the Deputy Superintendent of Police, the other witnesses viz., P.Ws. 1,2,4 and 5 turned hostile before the Enquiry Officer and not supported their earlier statement made at the preliminary enquiry. The Enquiry Officer having noted the above aspect curiously submitted a report holding that all the three charges levelled against them are proved based on the preliminary enquiry.

7.....

8. In our case, we have already referred to the fact that the prosecution witnesses viz., P.Ws. 1,2,4 and 5 turned hostile and not supported their preliminary version. However, the Enquiry Officer basing reliance on their earlier statement in the preliminary enquiry found that all the charges levelled against them are proved. In the light of the decision of the Supreme Court referred to above, after full-fledged enquiry was held the preliminary enquiry had lost its importance. Further, we find no substance or material to arrive at a conclusion that "since all the three counts were proved by the prosecution beyond reasonable doubts, convincingly, I agree with the findings of the Enquiry Officer,". We are satisfied that there is no material to arrive at such a conclusion by the Deputy Inspector General of Police, while



WP(MD)No.10231 of 2020

WEB COPY

passing an order removing the applicants from service. All these aspects have been considered by the Tribunal in a proper manner and there is no acceptable material or evidence to take different view as that of the Tribunal. We find no merits in both the writ petitions. Accordingly, they are dismissed. No costs. Consequently, the connected miscellaneous petitions are dismissed.

The said conclusion was arrived at by the Division Bench based on the decision of the Honourable Supreme Court reported in Narayana Dattatraya Ramteerthakhar v. State of Maharashtra, (1997) 1 S.C.C 299.

9. The above referred decision of the Division Bench was followed by me in the order in B.Balamurugan v. The Inspector General of Police, Madurai – 2 and two others W.P.No.27019 of 2005, dated 15.2.2006, wherein the order of punishment was set aside.

10. Applying the above principles laid down by the Honourable Supreme Court, Division Bench of this Court and also the earlier decision of mine, as referred above, I am of the opinion that the differing view taken by the disciplinary authority/second respondent herein against the Enquiry officer's report is unsustainable in view of the fact that the said view was taken solely based on the statements recorded during the preliminary enquiry. Consequently, the punishment imposed on the basis of the dissenting view is unsustainable and the order of the appellate authority confirming the order of the dismissal is also unsustainable".

10. The said judgment of the learned single judge



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was again followed in the unreported order passed in WP 23378/07 wherein this Court was pleased to observe as follows:

" 9. Admittedly, the main witness namely, P.W.2 has not substantiated the allegations during the regular enquiry and the same is made clear not only in the enquiry report but also in the counter affidavit filed in the relevant paragraph, extracted above.

10. Whether a charge can be fond proved based on the statement given at the time of preliminary enquiry was considered by me in the decision reported in (2006) 2 M.L.J. 202 (T. Pitchai V. Deputy Inspector of General of police, Tirunelveli). In the said judgment, I have followed the Judgments of the Supreme Court reported in (2004) 10 S.C.C 87 (Union of India V. Mohd. Ibrahim) and also the Division Bench Judgment of this court in W.P.Nos.29862 and 32581 of 2002, dated 22.02.2005 etc., and held that the statements given by the witnesses during the preliminary enquiry cannot be the sole evidence to prove the charges against a police officer.

11. In this case, admittedly the Enquiry officer found that the charges are proved based on the statement given by P.W.2, during preliminary enquiry which is admitted in the counter affidavit filed by the respondents. Hence, the finding given by the enquiry officer is to be treated as perverse and the consequential punishment imposed against the petitioner is also not sustainable. The order of punishment imposed against the petitioner is quashed and in view of the order of punishment having been quashed, the respondents are directed to consider the case of the petitioner for promotion to the post of sub inspector of police on merits and in accordance with law, within a period of eight weeks from the date of



WP(MD)No.10231 of 2020

WEB COPY

receipt of a copy of this order. "

11. In WP.No.39098/06 dated 20.04.2009 this Court following the above mentioned judgment and observed as follows:

" 13. In the decision reported in (2006) 3 MLJ 900 (H.C. Lenin v. Commissioner of Police), A. Kulasekaran, J., has taken a similar view following the decision of the Honorable Supreme Court reported in AIR 1999 SC 677: (1999) 2 SCC 10 (Kuldeep Singh v. Commissioner of police and others), wherein the Honorable Supreme Court in paragraphs 32 and 33 held thus,

32. In State of Mysore v. Shivabasappa Shivappa Makapur, the witness was not examined in the presence of the delinquent so far as his examination-in-chief was concerned and it was his previous statement recorded at an earlier stage which was brought on record. That statement was put to the witness who acknowledged having made that statement. The witness was thereafter offered for cross-examination and it was held that although the statement (examination -in-chief) was not recorded in the presence of the delinquent, since the witness had been offered for cross-examination after he acknowledged having made the previous statement, the rules of natural justice were sufficiently complied with. 33. In Kesoram Cotton Mills Ltd. v. Gangadhar and state of U.P.v. Om prakash Gupta the above principles were reiterated and it was laid down that if a previous statement of the witness was intended to be brought on record, it could be done provided the witness was offered for cross-examination by the delinquent." Following the above decisions, similar



WP(MD)No.10231 of 2020

WEB COPY

writ petitions in W.P.No.14193 of 2006, W.P.No.23378 of 2007 and W.P.No.7257 of 2008 were allowed by me by orders dated 9.4.2007. 9.4.2008 and 23.7.2008 respectively. The Director General of Police, implemented the order dated 9.4.2007 made in W.P.No.14193 of 2006 by issuing circular in Na.Ka.No.79697/Con.3(1)/2007, dated 25.4.2007, and ordered that the charges cannot be held proved only on the basis of the statement given during preliminary enquiry, and whether charges are proved or not, is to be determined only on the basis of the statements made during the oral enquiry. The Disciplinary Authorities as well as Enquiry Officers were directed to keep the same in mind while conducting enquiry and disposing of the disciplinary proceedings.

14. In view of the above cited settled position of law on this aspect and having regard to the fact that there is no controversy about the enquiry officer's finding of guilt on the part of the petitioner, relying upon the statements given by the witnesses during the preliminary enquiry and there was no occasion to cross examine the said witness during the preliminary enquiry, I am of the view that the charges framed against the petitioner cannot be said to be validly proved. Hence the petitioner is bound to succeed in this writ petition challenging the order of dismissal passed against him. "

Hence, considering the above said legal position, this Court is of the opinion that the Impugned orders passed by the respondents based upon the Enquiry report, which was based upon the statements obtained during the preliminary enquiry, cannot be sustained.



WP(MD)No.10231 of 2020

WEB COPY

12. In the judgment reported in (2006) 5 Supreme Court Cases 88 M.V.Bijlani Vs. Union Of India and others the Hon'ble Apex Court was pleased to observe as follows_

" 25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

26. The report of the enquiry officer suffers from the aforementioned vices. The orders of the disciplinary authority as also the Appellate Authority which are based on the said enquiry report, thus, cannot be sustained. We have also noticed the way in which the Tribunal has dealt with the matter. Upon its findings, the High Court also commented that it had not delved deep into the contentions raised by the appellant. The Tribunal also, thus, failed to discharge its functions properly."

13. A reading of the above said judgment would show that the proceedings before the Department are quasi-judicial proceedings, therefore, an Enquiry



WP(MD)No.10231 of 2020

WEB COPY

Officer cannot take into consideration irrelevant materials and give a finding based upon mere surmises and conjectures."

3. Since both the charges levelled against the petitioner were held to be proved only on the basis of the statements given during the preliminary inquiry, which is impermissible in law, the consequential punishment which came to be modified by the second respondent on 29.07.2013, cannot be sustained".

6. The aforesaid extract is self explanatory. Thus, when the fourth respondent herein, had also placed reliance on the statements made during the course of the preliminary police enquiry, particularly on the statement of Manimegalai, who is the complainant, as well as the report of the investigation officer, the proceedings are deemed to be vitiated, in view of the law laid down in the aforesaid decision.

7. In normal circumstances, this Court may have remitted back the matter to the disciplinary authority to conduct a fresh denovo proceedings by examining independent witnesses. However, in the instant case, when the fourth respondent herein had originally placed reliance on the evidence in the preliminary enquiry and the second respondent had set aside the punishment and directed the fourth



WP(MD)No.10231 of 2020

WEB COPY

respondent to conduct a fresh denovo enquiry, the present punishment has been imposed based on a similar procedural mistake, by placing reliance on the preliminary statements of Manimegalai, as well as the preliminary report of the investigation officer, even during the course of second denovo enquiry. In this background, remitting back the matter for another fresh enquiry would cause serious prejudice to the petitioner, who has been in non employment for more than five years. In this background, remitting back the matter for fresh enquiry would not be appropriate.

8. Since this Court has found that the entire proceedings culminating to the punishment of "compulsory retirement" stands vitiated, the petitioner would be entitled for all the consequential service and monetary benefits arising out of his reinstatement back into service.

9. In the light of the above findings and observations, the impugned orders, dated, 22.06.2017, 20.11.2017, 11.08.2018 and 18.02.2020 on the file of the respondents are quashed. Consequently, there shall be a direction to the second respondent herein to pass appropriate orders, reinstating the petitioner back into service, with effect from the date of his original termination, together with all



WP(MD)No.10231 of 2020

WEB COPY

service and monetary benefits including arrears of the pay and any other promotional benefits, which he may have been deprived of, in view of the pendency of the departmental proceedings. Such orders shall be passed by the second respondent, at least within a period of eight (8) weeks from the date of receipt of a copy of this order.

10. The writ petition stands allowed, accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

03.08.2022

Index : Yes / No
Internet : Yes / No
btr/lm

To

- 1.The Secretary to Government,
Home (Police VI) Department,
Secretariat,
Fort St.George,
Chennai-600 009.
- 2.The Director General of Police,
Chennai-600 004.
- 3.The Deputy Inspector General of Police,
Dindigul Range, Dindigul.



WEB COPY



WP(MD)No.10231 of 2020

M.S.RAMESH, J.

btr/lm

4.The Superintendent of Police,
Theni District,
Theni.

Order made in
W.P.(MD)No.10231 of 2020

Dated:
03.08.2022