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W.P.(MD)NO.13595 OF 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.13595 of 2019

S.Udaya Suriyan,
Special Sub Inspector of Police,
Thilagar Thidal police station,
Madurai District.

... Petitioner

Vs.

1. The Director General of Police,
Santhome, Chennai 600 004.

2. The Commissioner of Police,
Madurai City, Madurai.

3. The Deputy Commissioner of Police (L & O),
Madurai District, Madurai.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order in Rc.No. 182233/AP.2(3)/2018 dated 02.02.19 passed by the 1st respondent confirming the order C.No. D1(1)/ Appeal-03/2015 dated 06.05.15 passed by the 2nd respondent confirming the order of three years increment cut without cumulative effect passed by the 3rd respondent in his proceedings Tha.pa. 92/2014 dated 23.12.14 and quash the same as illegal.



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For Petitioner : Mr.M.Jerin Mathew

For Respondents: Mr.A.K.Manickam,
Special Government Pleader.

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ORDER

Heard the learned counsel on either side.

2. The writ petitioner was appointed as Grade-II Police Constable on 25.05.1988 and he was promoted as Grade-I Police Constable on 27.08.1999. He became Head Constable on 27.08.2003 and he was promoted as Special Sub Inspector of Police on 01.09.2013. He was suspended from service on 12.12.2014. Charge memo was issued on 15.03.2014 containing two articles of charges. It alleged that the petitioner demanded and accepted a sum of Rs.10,000/- as bribe from one Nagammal so as to avoid passing of detention order under Act No.14 of 1982 against her daughter Pandiammal. The second allegation was that the petitioner had locked the complainant's house and as a result, the complainant had to stay along with her grand-children



elsewhere. The petitioner submitted his explanation denying the charges and an Assistant Commissioner was appointed as the enquiry officer. The Assistant Commissioner gave a report dated 25.11.2014 calling upon the petitioner to offer his explanation on the enquiry report. The petitioner submitted his explanation dated 10.12.2014. After considering the same, the disciplinary authority passed an order dated 23.12.2014 holding the petitioner guilty and imposing punishment of three years increment cut without cumulative effect. Aggrieved by the same, the petitioner had filed an appeal before the appellate authority. The appellate authority vide Order dated 06.05.2015 confirmed the decision of the disciplinary authority and dismissed the appeal. The review petition filed by the petitioner was also in vain. Challenging the said orders, the present writ petition came to be filed.

3. The learned counsel appearing for the writ petitioner took me through the contents set out in the affidavit filed in support of the writ petition and called upon this Court to quash the orders impugned in the writ petition.



4. Per contra, the learned Special Government Pleader submitted that the impugned orders do not call for any interference.

5. I carefully considered the rival contentions and went through the materials on record.

6. The petitioner was charged with twofold delinquencies. He had allegedly demanded and accepted the bribe amount of Rs.10,000/- from one Nagammal so that her daughter Pandiyammal could avoid being detained under Act No.14 of 1982 as a drug seller. The second allegation is that the petitioner had locked the house of Nagammal. Obviously, these two charges could have been substantiated only through the testimony of Nagammal. During the enquiry, Nagammal as well as her grand-children Divya were examined as witnesses. A mere look at the testimony of chief examination of Nagammal would indicate that she turned hostile. Both the witnesses did not support the case projected by the disciplinary authority. Therefore the case of the disciplinary authority rests on no evidence.



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7. It is seen that the enquiry officer himself cross examined the witnesses. This is a clear violation of principles of natural justice. The Court or the enquiry officer can pose questions to the witnesses for clarifying doubts. We follow what is known as an adversarial system and not inquisitorial system. The Court cannot cross examine the witnesses. Cross examination of the witnesses by the enquiry officer is clearly evident from the enquiry report.

8. The learned counsel appearing for the writ petitioner drew my attention to the decision reported in **(2018) 7 SCC 670 (Union Of India Vs. Ram Lakhan Sharma)**. The Hon'ble Supreme Court of India in the said decision held that the enquiry Officer, who is in the position of a Judge shall not act as a presenting officer, who is in the position of a prosecutor.

9. That apart in the enquiry report, the enquiry officer had also stated that he conducted secret enquiry and came to know that the delinquent / petitioner herein had prevailed



upon the witness to turn hostile. The enquiry officer cannot undertake such missions. Looked at from any angle, I have to necessarily come to the conclusion that the enquiry is vitiated by the violation of principles of natural justice. In as much as the entire case of the disciplinary authority rests on no evidence, I hold that the order passed by the disciplinary authority as well as the orders passed by the appellate authority are perverse. The orders impugned in this writ petition are quashed. This writ petition stands allowed. No costs.

12.09.2022

Index : Yes / No

Internet : Yes/ No

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To:

1. The Director General of Police,
Santhome, Chennai 600 004.
2. The Commissioner of Police,
Madurai City, Madurai.
3. The Deputy Commissioner of Police (L & O),
Madurai District, Madurai.



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G.R.SWAMINATHAN,J.

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