



W.P.(MD)No.9733 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.9733 of 2019

M. Mariselvam

... Petitioner

–Vs. –

1. The Director General of Police,
Tamil Nadu Police Department,
Santhom High Road, Mylapore,
Chennai.

2. The Inspector General of Police,
Armed Police,
Trichy I/c of Deputy Inspector General of Police,
Armed Police, Trichy.

3. The Commandant,
Tamilnadu Special Police IX Battalion,
Manimuthar, Tirunelveli District.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, by calling for the records pertaining to the impugned proceedings in RC.No.11806/AP3(1)/2018, dated 24.11.2018 passed by the 1st respondent by confirming the order of the 2nd respondent in



W.P.(MD)No.9733 of 2019

WEB COPY

C.No.A2/Appeal-16/2017 dated 15.11.2017, by confirming the order of removing the petitioner from the service passed in No.A4/P.R.No.30/2016, B.O.64/2017 dated 17.02.2017 by the 3rd respondent herein and quash the same as illegal, invalid and against the Tamil Nadu Police Subordinate Service (D&A) Rules, 1955 and consequently direct the respondents herein to reinstate the petitioner into the service with retrospective effect.

For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mr.N.Muthu Vijayan,
Special Government Pleader

ORDER

This Writ Petition has been filed to quash the impugned proceedings in RC.No.11806/AP3(1)/2018, dated 24.11.2018 passed by the 1st respondent, by confirming the order of the 2nd respondent in C.No.A2/Appeal-16/2017, dated 15.11.2017, by confirming the order of removing the petitioner from service passed in No.A4/P.R.No.30/2016, B.O.64/2017, dated 17.02.2017 by the 3rd respondent, against the Tamil Nadu Police Subordinate Service (D&A) Rules, 1955, and also sought for a consequential direction to the respondents to reinstate the petitioner into the service with retrospective effect.



W.P.(MD)No.9733 of 2019

WEB COPY

2. Heard Mr.G.Thalaimutharasu, learned counsel appearing for the petitioner and Mr.N.Muthu Vijayan, learned Special Government Pleader appearing for the respondents. Perused the material documents available on record.

3. The brief facts of the case are that the petitioner was falsely implicated in criminal case in Crime No.639 of 2016, on the file of the Thalamuthu Nagar Police Station, Tuticorin District and the petitioner had faced trial in S.C.No.95 of 2018 wherein he was acquitted, vide Judgment, dated 04.04.2018.

4. The petitioner was placed under suspension by the 3rd respondent and Charge Memo under Section 3(b) of Tamil Nadu Police Subordinate Service (D&A) Rules, 1955, was issued. The petitioner has submitted his explanation. The contention of the petitioner is that, there was no proper enquiry, the 3rd respondent without following the principles of natural justice, mechanically and erroneously come to the conclusion that the charges were proved. Based on the same, the petitioner was removed from service on 17.02.2017 by the 3rd



W.P.(MD)No.9733 of 2019

WEB COPY

respondent. Thereafter the petitioner has preferred an appeal, but the appellate authority without considering the grounds raised therein, dismissed the appeal on 15.11.2017. Then petitioner has filed a review petition and the same was also dismissed on 24.11.2018. The petitioner has challenged the three orders passed by the respondents contending that the orders were passed without assigning any reasons and without independently analyzing the evidence placed before them and hence challenging the same the present writ petition.

5. The contention of the petitioner is that there was dispute between youths regarding temple festival and the petitioner had attempted to compromise among them. But in the process some people developed grudge against the petitioner and he was attacked. The accused in order to escape from arrest created false case against the petitioner and implicated him. The criminal case filed against the petitioner ended up in acquittal and some of the witness had become hostile witness.

6. The respondents submitted that the respondents have given adequate opportunity to the petitioner to prove his case and there is no violence of



W.P.(MD)No.9733 of 2019

WEB COPY

principles of natural justice at all. The petitioner has attacked one Marichelvam with deadly weapon, i.e., aruval, in which the said Marichelvam has sustained cut injuries. Since the petitioner involved in the said criminal case, disciplinary proceeding was initiated. Though the petitioner has rebutted the charge, he did not produce any supporting evidence to prove his innocence. The punishment authority has issued an order for appointing Enquiry officer. Before the Enquiry Officer, the petitioner has not produced any witness to prove his case. The petitioner has not even cross examined the witnesses. Therefore, based on the available records, more so, based on the certificate of the Doctor, the allegation has been proved against the petitioner and punishment of dismissal was imposed. Therefore, the respondents have claimed that there is no ground to sustain the petitioner's claim.

7. The specific contention of the petitioner is that he slept because of his tiredness and hence, he was not aware of the incident at all. But in the disciplinary enquiry the authority had held that the petitioner was intoxicated, but was having conscious and has relied on the medical report wherein it states that the petitioner was in intoxicated state. After hearing the rival submissions, this



W.P.(MD)No.9733 of 2019

WEB COPY

Court is of the considered opinion that the version of the respondents cannot be accepted since the respondent states that the petitioner is in intoxicated state but was conscious. A person with intoxication state cannot be fully conscious and it dependent upon the quantity of the intoxication. The respondents have not administered the petitioner for any test to ascertain this fact. When almost all the witness in the criminal case turned as hostile witness, when there is no witness in the disciplinary proceedings except the medical report of intoxication, the respondents have come to the conclusion that the charge is proved. Even for the preponderance of probability some evidence is necessary. In the present case except for the medical report of intoxication there is no other acceptable evidence. Therefore, this Court is of the considered opinion that the charges against the petitioner is not proved.

8. The petitioner submitted that the impugned orders are non-speaking orders, since the respondents have not stated any reasons at all. Moreover, the appellate authority had not considered the various grounds raised by the petitioner. On perusal of the enquiry report, the claim of the petitioner is that, since he was tired, he slept near his house which is far away from the place of



W.P.(MD)No.9733 of 2019

WEB COPY

incident. However, the respondents claimed that the petitioner was in intoxicated mode. The allegation against the petitioner is that, he has involved in the crime in intoxicated mode. But there is no discussion neither in the enquiry report nor in the order of disciplinary authority, that the petitioner has involved in the crime. There is no reason stated to come to the conclusion that the petitioner has involved in the alleged crime. The disciplinary authority has simply stated that the version of the petitioner cannot be accepted and hence, he has proceeded to impose punishment. On perusal of the order of the Appellate authority, he simply confirmed the order of the original authority without assigning any reasons. Moreover, it is only two pages order, even the Appellate authority has not applied his mind independently. Therefore, this Court is of the considered opinion that the order passed by the three authorities are non-speaking order.

9. Since the allegation is not proved as stated supra, even if it is accepted that the petitioner is involved in the alleged crime, this Court is of the considered opinion that the punishment imposed on the petitioner is on higher side and hence this Court is inclined to interfere with the quantum of punishment.



W.P.(MD)No.9733 of 2019

WEB COPY

10. Accordingly, this Court is passing the following order:

(i). The impugned proceedings, dated 24.11.2018 in RC.No.11806/AP3(1)/2018, passed by the 1st respondent, by confirming the order of the 2nd respondent, dated 15.11.2017 in C.No.A2/ Appeal-16/2017, by confirming the order of removing the petitioner from service passed in No.A4/P.R.No.30/2016, B.O.64/2017, dated 17.02.2017 by the 3rd respondent, are hereby quashed.

(ii). The respondents are directed to impose minor punishment of stoppage of increment of two years without cumulative effect.

(iii). The respondents are further directed to reinstate the petitioner back into service with continuity of service, within a period of four weeks from the date of receipt of a copy of the order.

(iv). The period from 2017 to till the date of order, the petitioner is not entitled any back wages for the non-employment period.



W.P.(MD)No.9733 of 2019

WEB COPY

11. With the above directions, this Writ Petition is disposed of. No

Costs.

Index : Yes / No

16.12.2022

Internet : Yes

ksa

To

1. The Director General Of Police,
Tamil Nadu Police Department,
Santhoom High Road, Mylapore, Chennai.
2. The Inspector General Of Police,
Armed Police,
Trichy I/c of Deputy Inspector General of Police,
Armed Police, Trichy.
3. The Commandant,
Tamilnadu Special Police IX Battalion,
Manimuthar, Tirunelveli District.



WEB COPY



W.P.(MD)No.9733 of 2019

S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No.9733 of 2019**

16.12.2022