



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.03.2022

DELIVERED ON : 14.06.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.2718 of 2015

and

M.P (MD)No.1 of 2015

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P.Sahaya Selvam

... Petitioner

VS

1.The Principal Secretary to Government
Home (Police-VI) Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.

2.The Director General of Police,
Chennai-600 004.

3.The Deputy Inspector General of Police,
Trichy.

4.The Superintendent of Police,
Perambalur District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the fourth respondent in Na.Ka.No.F1/9947/2008, dated 02.11.2009, which was confirmed in appeal by the third respondent in impugned proceedings C.No.B1/APP4/2010, dated 25.01.2010, confirmed in revision by second respondent in impugned proceedings Rc.No.93345/AP IV(1)/2010, dated 29.01.2011 and finally confirmed in Mercy Petition by first respondent in impugned order G.O(2D)No.387, dated 29.10.2014, quash the same and consequently direct the respondents herein to reinstate the petitioner into service with arrears of salary and all monetary and attendant benefits.

For Petitioner : Mr.G.Kannan
for Mr.C.Jegannathan

For Respondents : Mrs.D.Farjana Ghoushia
Special Government Pleader

**ORDER**

This Writ Petition is filed challenging the impugned order dated 02.11.2009 which was confirmed in appeal, vide proceedings, dated 25.01.2010 and confirmed in revision by order dated 29.01.2011 and confirmed in Mercy Petition in G.O. (2D) No.387 dated 29.10.2014 and consequently direct the respondents to reinstate the petitioner into service with all monetary benefits and attendant benefits.

2. The brief facts of the case are that the petitioner joined the service as Grade II Constable on 25.05.1988, then promoted as Grade-I Head Constable and has completed 21 years of service in the Police Department. The allegation against the petitioner is that while he was working as Head Constable in the Crime Wing of the Cantonment Police Station on 21.08.2007, a false criminal case was registered in Crime No.332 of 2007 as if the petitioner demanded Rs.10,00,000/- from one Ramesh who was a Srilankan National and the demand was reduced to the tune of Rs.1,50,000/- and two gold bangles from the said Ramesh and the Police Official who demanded the illegal gratification is claiming to the CBCID Police. In furtherance to the said Charge, the petitioner was suspended on 24.08.2007 and was revoked on 29.10.2007 followed by a Charge Memo in PR.No.18 of 2008 was served by the Commissioner of Police, Trichy framing the charge under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules. The charge against the petitioner is that the petitioner with the other Police officials have threatened the said Ramesh, seized his passport and demanded Rs.1,50,000/- as illegal gratification and two gold bangles weighing three sovereigns for not taking any action in registering any criminal case. The petitioner submitted an explanation and thereafter an enquiry was conducted.

3. The contention of the petitioner is that the list of documents relied on by the Deputy Commissioner of Police, Trichy District are the statements recorded from the Police Officials and the F.I.R as a source of material for framing of charges and the complainant in the criminal case the one T.Ramesh was arrayed as a witness in support of the charge. The contention of the petitioner is that none of the documents were served to the petitioner and the enquiry was proceeded without giving a reasonable opportunity. The original complainant Ramesh was not examined and none of the relatives of Ramesh who alleged to have accompanied and found during the demand was not examined. But only Police officials who is stated to have visited the scene of occurrence was alone examined. The enquiry officer has concluded that the charges were proved in the departmental enquiry and the petitioner was not given any reasonable opportunity to cross-examine the witness and the enquiry was an eye wash. The third respondent has issued a show cause notice along with the enquiry report and the petitioner submitted his explanation and



pleaded that there is no specific evidence for demand and acceptance of illegal gratification by the petitioner. The respondent through a non-speaking order imposed major penalty of dismissal from service. The petitioner has preferred an Appeal, Revision and Mercy Petition, all are dismissed and all four impugned orders are challenged before this Court.

4. The respondents have filed a counter affidavit stating that while the petitioner was serving in Cantonment Police Station, he along with the Head Constable Mr.Ramasamy, Head Constable Mr.S.V.Kumar, were dealt with the charge. After conducting an enquiry, the punishment of dismissal from service was imposed on 02.11.2009. Thereafter an Appeal, Revision and Mercy Petition were dismissed. While the petitioner was working in Cantonment Crime Police Station, a criminal case was registered in K.K.Nagar Police Station in Cr.No.332 of 2007 under Sections 419, 420, 384 of I.P.C against him along with two other Police Personnel, namely, Mr.Ramasamy and Mr.S.V.Kumar for the offence of posing as CBCID Police and seized the passport and demanded Rs.10,00,000/- as bribe from one Mr. Ramesh for not registering any criminal case against the said Ramesh. Later the petitioner and the other three Constables reduced the bribe amount from Rs.10,00,000/- to Rs.1,50,000/- and received an amount of Rs.20,000/- as advance and two gold bangles from the said Mr.Ramesh as bribe for not registering F.I.R against the said Ramesh (NRI). Therefore, the petitioner and others were placed under suspension and thereafter, the suspension was revoked and the petitioner was taken back into service without prejudice to the pending departmental action. A charge memo consisting of a list of Prosecution Documents which was sent by the Assistant Commissioner of Police and the important statement obtained from the said Ramesh, S/O. Thandavaraj and two important statements obtained from the CB CID Officials. During the oral enquiry, the enquiry officer gave reasonable time and opportunity to the petitioner to defend the petitioner. Therefore, the petitioner's original complaint was not examined during the oral enquiry. Since the petitioner is an NRI and residing at London, the petitioner neither produced any defence witness nor could elicit favourable points to prove his innocence. The minute copy was served to the petitioner on 07.07.2009. Based on the minute drawn by the enquiry officer, the statement of prosecution witness, prosecution documents and the other objections raised by the petitioner in his explanation were considered and the charges were held proved. Thereafter, the award of punishment was imposed on the petitioner and there is no violation in passing the order and the charges are very grave, adequate and reasonable opportunities were given to the petitioner. Hence the respondents submitted that there is no merit in this case and prayed to dismiss the writ petition.



5. Heard Mr.G.Kannan, learned Counsel appearing for the petitioner and Mrs.D.Farfjana Ghoushia, learned Counsel appearing for the respondents.

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6. The petitioner has circulated an additional typed set of papers during the course of arguments. The contention of the petitioner is while he was serving in the Cantonment Police Station, he was deputed by his Higher Authorities to assist the enquiry based on the complaint lodged against the said Ramesh. The said Ramesh is a Srilankan Citizen but residing at London. The contention of the petitioner is that the said complainant Ramesh who lodged a complaint against the petitioner and the other two officials was not examined and the respondents reply to this allegation is that the said Ramesh is an NRI and he cannot be examined. For this, the petitioner submitted that his father or other relatives like his father-in-law or mother-in-law could have been examined, none of his relatives were examined. The contention of the petitioner is that the said Ramesh was committing crime and in order to save himself the entire issue was turned against the petitioner and the other two officials. Since the complainant Ramesh and his family members were not examined, this Court is of the considered opinion that the claim of the petitioner ought to be considered.

7. The petitioner contended that there was a recovery of two bangles, but it was recovered from the other delinquent, namely, Ramasamy and not from the petitioner. It is seen from the records that there is no evidence against the petitioner that he has demanded bribe. The claim of the petitioner is that he had accompanied the other officials to enquire the said accused Ramesh. Even in the deposition of the prosecution witness it is stated that the petitioner has not entered the house of the said Ramesh, he was standing outside the house. The interaction with the Ramesh was not known to the petitioner. Taking into the fact of deposition of the respondents witness, this Court is of the considered opinion that the petitioner stayed out of the house and he has not demanded any bribe from the said Ramesh.

8. This Court is of the considered opinion that the petitioner made a demand of illegal gratification is not proved. A criminal case was also lodged against the petitioner and the other co-delinquents and the criminal case ended in acquittal. The reasoning given in the Criminal Court is stated as under:

“ஆகையால் எதிரிகளின் குற்றச் செயல் குறித்து சாட்சி ரமேஷிடம் கேட்டு அறிந்த அ.சப.1-ன் சாட்சியத்தை மட்டும் வைத்து எதிரிகள் மீதான குற்றம் நிரூபிக்கப்பட் டுவிட்டதாக கருத இயலாது.”



9. The Criminal Court has categorically stated that the prosecution was having only one document that too the said Ramesh's compliant and the statement of the said Ramesh's alone. Based on the statement of the Ramesh alone, the respondent cannot conclude the domestic enquiry and coupled with the fact that the said Ramesh was not brought in as a witness in the domestic enquiry and his relatives were also not brought in as witness to prove the prosecution case. Hence this Court is of the considered opinion that the entire enquiry is based on wrong footing, hence the impugned order is set aside. The petitioner is only 48 years at the time of filing the writ petition and he is 54 years now and has six years of service. The petitioner is entitled to reinstatement with continuity of service. However, backwages is not granted for the period of non-employment. This order shall be implemented within a period of four weeks from the date of receipt of the copy of the order.

10. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Principal Secretary to Government
Home (Police-VI) Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.



2.The Director General of Police,
Chennai-600 004.

3.The Deputy Inspector General of Police,
Trichy.

4.The Superintendent of Police,
Perambalur District.

+1 CC to M/s.SPL.GP (SR-25845[F] dated 15/06/2022)

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-25675[F] dated
14/06/2022)

Order made in
W.P. (MD) No. 2718 of 2015
14.06.2022

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TR(24.06.2022) 6P 7C