



W.P(MD)No.14520 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.14520 of 2018

and

W.M.P.(MD)No.13110 of 2018

Jeyaram

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Additional Chief Secretary,
Home (Police VI) Department,
Chennai-9.

2.The Commissioner of Police,
Tirunelveli City,
(In-charge) Inspector General of Police,
Tirunelveli Range,
Tirunelveli District.

3.The Superintendent of Police,
Office of Superintendent of Police,
Kanyakumari District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in C.No.C4/AP.49/2014, dated 06.10.2014 on the file of the second respondent and consequential order in G.O.(D)No.1174 passed by the first respondent dated 15.09.2017 on the file of



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the first respondent and quash the same as illegal and consequently, directing the respondents 2 & 3 to provide all monetary benefits and service benefits including promotion on par with his juniors on the date he is entitled without any punishment within a time prescribed by this Court.

For Petitioner : Mr.T.Aswin Rajasimman
for Mr.T.Lajapathi Roy

For Respondents : Mr.A.K.Manikkam
Special Government Pleader

ORDER

The writ petitioner is working as Head Constable in the Police Department. When he was working at Eraniel Police Station in the year 2012, the charge memo dated 07.12.2012 was issued. The charge memo contained the following article of charge.:-

“Gross neglect of duty in having allowed the accused driver namely Abbas S/o.Haneefa, Mohideenpuram, Erwadi, Tirunelveli District of sand laden lorry bearing Regn.No.KA 01 AC 3546 to escape from police custody though he was entrusted to him at Colachel PS by the Inspector of Police, Nithiravilai on 08.10.2012 with clean instructions to hand him over at Kollemcode PS for the purpose of registering cases of illicit sand transportation and remanding him before the court of law.”



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The petitioner denied the charge. Enquiry was conducted. The enquiry report held that the charge framed against the petitioner was proved. After getting the petitioner's further representation, the disciplinary authority imposed with the punishment of postponement of increment for a period of one year which shall operate to postpone his future increments. This order dated 27.06.2014 was challenged by the petitioner before the appellate authority. The appellate authority also vide order dated 06.10.2014 dismissed the appeal. Thereafter, the petitioner filed a mercy petition before the Director General of Police, Chennai who also vide order dated 16.12.2016 declined to interfere with the punishment. Thereafter, the petitioner went before the Government. The Government also declined to interfere and issued G.O.(D).No.1174, Home (Police VI) Department, dated 15.09.2017 to that effect. Challenging all these orders, the present writ petition has been filed.

2. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the impugned orders and grant relief sought for.

3. The respondents have filed a detailed counter affidavit and the learned Special Government Pleader took me through its contents. He pointed out that



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when all the authorities have in unison rendered findings against the petitioner, it is not for the Writ Court to interfere. He called for dismissal of the writ petition.

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

5. The charge framed against the petitioner has already been extracted. The only question that calls for consideration is whether the driver concerned namely Abbas escaped from the petitioner's custody. It is not in dispute that during the relevant time, the petitioner was part of a highway patrol team. The highway patrol team comprised one Thiru.K.Dhanapaul, Inspector of Police, Thiru.Balasundaram, Sub Inspector of Police and the petitioner himself. When they were on their patrol duty on 07.10.2012 at around midnight, a lorry bearing Registration No.KA 01 AC 3546 was intercepted and it contained a load of sand. The driver of the lorry was asked to get down and he was enquired. He stated that the lorry owner was also in the lorry. When he was enquired, he was not able to give proper response. The team felt that the lorry was carrying stolen sand. Even when the Inspector of Police was making ready the relevant documents, the lorry driver suddenly escaped from the spot. This version is given by none other than Thiru.K.Dhanapaul, Inspector of



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Police, Kollencode Police Station. It was registered as Crime No.268 of 2012 for the offences under IPC as well as Section 21 of Mines and Minerals (Development and Regulation Act), 1957. Thiru.K.Dhanapaul was examined as witness in the departmental enquiry and he repeated the very same version. The best person to speak about the occurrence was obviously the Inspector of Police. He himself fairly stated that when they were making ready the documents and conducting enquiry, the driver of the lorry namely Thiru.Abbas suddenly escaped. The vehicle checkup was being carried out at around midnight. It was the highway area. It is not as if the lorry driver and the lorry owner Kannan had been arrested. Only if a person had been arrested, the question of taking his custody will arise. During the relevant time, Thiru.Abbas was not under arrest. In any event, according to the Inspector of Police, he was not entrusted to the custody of the writ petitioner. In the light of the version set out in Crime No.268 of 2012 on the file of the Kollencode Police Station and in the light of the testimony of Thiru.K.Dhanapaul, Inspector of Police during departmental enquiry, the entire charge framed against the petitioner gets totally undermined. I fail to understand as to how this elementary aspect was omitted to be noted by the various authorities. The finding of the enquiry officer that the charge framed against the petitioner is proved is perverse.



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6. I set aside the impugned order. The writ petitioner will be entitled to all the consequential benefits. The Writ Petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
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To

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G.R.SWAMINATHAN, J.

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