



W.P.(MD)No.22401 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 17.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

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K.Livingston Prabhu

... Petitioner

Vs

1.The Director General of Police/Director General of Prison and
Correctional Services,
Whannels Road, Egmore, Chennai.

2.The Deputy Inspector General of Prison,
Chennai Range, Whannels Road,
Egmore, Chennai.

3.The Superintendent of Prison,
Central Prison II,
Puzhal, Chennai.

4.The Deputy Inspector General of Prison,
Madurai Range, A.A.Road, Arasaradi,
Madurai 625 016.

5.The Superintendent of Prison,
Central Prison, Palayamkottai, Tirunelveli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the fourth respondent in his proceedings in No.1946/MU.U/2019, dated 25.11.2019 and confirmed in the appeal by the first respondent in his proceedings in No.4997/EW.1/2020, dated 16.12.2020 and quash the same and direct the respondent to reinstate the



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petitioner as a Grade II Jail Warder with all consequential service and monetary benefits.

For Petitioner : Mr.V.Panneer Selvam
For Respondents : Mr.A.K.Manikkam
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2.The writ petitioner was appointed as Grade-II Jail Warden in the year 2017. He was posted at Chennai Puzhal Jail. Thereafter, he was transferred to Borstal School, Nanguneri. He was sent back on deputation to Puzhal Prison. He was issued with two charge memos. The charge memo dated 06.03.2019 reads that when the petitioner was called upon to appear for enquiry on 01.03.2019 at about 06.00 pm., he had conducted himself in a defiant manner. A reading of the impugned charge memo indicates that the enquiry related to the alleged absence of the writ petitioner from duty on 26.02.2019 at about 03.30 pm. It is stated that a Ganja packet was dropped at what is known as throwing point in puzhal prison premises; when the jailor directed one Head Constable by name Kannan to find out if the writ petitioner was manning the duty point, the said Kannan returned and informed the jailor that the



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writ petitioner was absent. In this connection, the enquiry was held.

This charge memo was followed by the issuance of another charge memo dated 19.03.2019. The second charge memo related to absence from the duty point.

3.One Thiru.Senthilkumar, Jail Superintendent, was appointed as the Enquiry Officer to enquire into the charges framed vide charge memo dated 06.03.2019. As many as five witnesses were examined in support of the charges. The writ petitioner also examined himself as a witness. After considering the materials on record, the Enquiry Officer came to the conclusion that the charges against the writ petitioner stood proved. Copy of the enquiry report dated 10.07.2019 was served on the writ petitioner. His further representation was also obtained. Thereafter, vide order dated 25.11.2019, the Deputy Inspector General of Prisons, Madurai Range, agreed with the findings of the Enquiry Officer and imposed the punishment of dismissal from service. Aggrieved by the same, the petitioner filed an appeal before the first respondent herein. Since it was not disposed of, he filed W.P(MD).No.12052 of 2020. Vide order dated 10.09.2020, the first respondent herein was directed to pass order on the petitioner's appeal. By the impugned order dated 16.12.2020, the first respondent also confirmed the punishment imposed



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by the Disciplinary Authority and dismissed the appeal. Challenging the same, the present writ petition has been filed.

4.The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and submitted that the impugned order deserves to be set aside.

5.The respondents have filed a detailed counter affidavit. The learned Special Government Pleader appearing for the respondents took me through its contents. He submitted that the writ petitioner was given a fair opportunity. He had cross-examined all the witnesses. After considering the materials on record, the Enquiry Officer had concluded that the charges framed against the writ petitioner stood proved. The standard of proof in a departmental proceedings is only “preponderance of probability” and not “beyond reasonable doubt”. He also added that the petitioner being a member of Uniformed Force ought to conduct himself appropriately. Even slight amount of defiance from subordinate officials will shake the morale and discipline of the force and therefore, the question of proportionality will have to be considered from that perspective. If the writ petitioner was employed in a Civil Department and had committed similar misconduct, an indulgent approach could be



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adopted, but no indulgence can be shown because the petitioner was part of the Uniformed Force. He submitted that the appellate authority had appreciated all the contentions raised by the writ petitioner in his appeal memorandum and come to a strong conclusion that no interference was warranted. He submitted that the writ petition deserved dismissal.

6.I carefully considered the rival contentions and went through the material on record.

7.Even before commencing his arguments, the learned counsel for the writ petitioner, after getting instructions, made a submission that if this Court allows the writ petition, the writ petitioner will not claim back wages and he would be satisfied with an order of reinstatement with continuity of service. He also added that the petitioner's ambition was always to serve the police department and that he has great respect not only for the department, but all the Superior Officials also. The petitioner would submit a letter of undertaking that he would conduct himself in such a manner that there will not be any room for complaint in future. The learned counsel for the petitioner added that the petitioner did not conduct himself in an inappropriate manner during the enquiry.



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8.Though the impugned order of punishment is pursuant to the charge memo issued on 06.03.2019, it cannot be divorced from the charge memo dated 19.03.2019. The specific case of the department is that on 26.02.2019 at about 03.30 pm., a Ganja packet was found near what is known as throwing point in puzhal prison premises. The jailor had deputed one Head Constable by name Thiru.Kannan to find out whether Livingston/the petitioner herein was there on duty. It was reported by Thiru.Kannan that the writ petitioner was not present. According to the department, if the petitioner had been present on duty, this occurrence could have been avoided. In connection with that incident, the enquiry was held on 01.03.2019.

9.I wanted to know the duty hours assigned to the writ petitioner on 26.02.2019. The case of the disciplinary authority is anchored on the report made by Thiru.Kannan, Head Constable. I was taken through the cross-examination of the said Kannan. Thiru.Kannan, Head Constable, was cross-examined with reference to the entries made in the day duty register. Kannan admitted that he had left the prison campus at 2.45 pm., and returned only at 05.15 pm. Thus, the entire case of the disciplinary authority that Kannan was asked to find out if the writ petitioner was present near the throwing point on duty at 03.30 pm., turns out to be



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false. In fact Kannan admitted that during the relevant time i.e., 03.30 pm., on 26.02.2019, he was not even present within the prison campus.

There is absolutely no material to show that the writ petitioner was assigned duty on the said date. From a reading of the entries, it is seen that the writ petitioner entered the prison campus only at 06.05 pm., and left at 06.10 pm.

10.The learned counsel for the writ petitioner submits that the writ petitioner reported for evening duty; since he was informed that no duty was assigned to him, he left the prison campus after five minutes. From these materials available on record, I am more than satisfied that the charge made against the writ petitioner that he was absent from duty at 03.30 pm., on 26.02.2019 is without any basis or factual foundation.

11.It is quite possible that the writ petitioner got agitated when an unjustified allegation was thrown at him on 01.03.2019. The petitioner's counsel would strongly state that on 01.03.2019, he was never summoned for any enquiry and that he had entered the prison campus only to verify with his superior officer as to whether he had been assigned duty inside the prison campus on the next date since such an information was received from his colleagues. When he had come



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informally, the aforesaid incident had taken place. The charge set out in the charge memo dated 06.03.2019 is that on 01.03.2019 at about 06.00 pm., the writ petitioner was produced before the Jail Superintendent. The article of charge further reads that the writ petitioner was summoned only to enquire regarding the occurrence that had taken place at 03.30 pm., on 26.02.2019. There is nothing to show that the writ petitioner was formally summoned for enquiry. If he had been formally summoned, then obviously he ought to have appeared in a proper manner. Since the petitioner had been suddenly directed to appear, he was not able to present himself as befitting a member of an Uniformed Force. Exception could not have been taken on that score. On 01.03.2019, the petitioner had been assigned duty outside the prison campus and since his job was to keep watch on the visitors, he had been advised to wear color shirt. Be that as it may, the events said to have been taken place on 01.03.2019 at 06.00 pm., do not definitely warrant punishment of dismissal from service. The article of charge reads that when the writ petitioner was asked to properly shave, he had replied that whenever he goes to his native place, he would sport his mustache only in that fashion and that therefore, he was not prepared to change his appearance. The other officials present on the place are said to have intervened and advised the writ petitioner that he should not speak in such an insolent manner. For



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such advice, the petitioner is said to have replied that it was he who caused publication in news magazines about the jail happenings.

12.The learned counsel appearing for the writ petitioner adds at this stage that one prisoner was found inside with a mobile phone and that the writ petitioner had made entry regarding such possession and based on the writ petitioner's complaint, the said prisoner was also transferred to some other prison. Based on the petitioner's complaint, enquiry was conducted and as many as three mobile phones were recovered from the said prisoner. The said prisoner had grievance against the writ petitioner and even attacked him on 09.09.2018. In that regard, Crime No.583 of 2018 was also registered on the file of Puzhal police station. The petitioner's counsel would suggest that since the petitioner was rather strict in discharge of his duty, he earned the enmity of some of his colleagues. I do not want to go into this controversy. Suffice to say that the punishment of dismissal from service imposed on the writ petitioner is definitely disproportionate and shock my judicial conscience. In any event, the writ petitioner had suffered enough. He was dismissed from service as early as on 25.11.2019. We are now in October 2022. For the last three years, the writ petitioner has been out of service and he is not going to get back wages also. This is more than



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punishment even for whatever mistake, if at all, committed by the writ petitioner.

13.In this view of the matter, the orders impugned in the writ petition are set aside. The writ petition is allowed. The first respondent is directed to issue order reinstating the petitioner. As already held the writ petitioner will not get back wages. He will get only continuity of service. The first respondent will issue such an order within a period of eight weeks from the date of receipt of a copy of this order. No costs.

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Index : Yes/No

Internet : Yes/No

Rmk

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G.R.SWAMINATHAN, J.,

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