



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.14832 of 2016

and

W.M.P. (MD) .No.10971 of 2016

A.Praveen

... Petitioner

Vs.

1.The Deputy Inspector General of Police,
Trichy Range,
Trichy District.

2.The Superintendent of Police,
District Police Office,
Pudukkottai & District.

3.Mr.A.Andiappan
Office Superintendent,
District Police Office,
Pudukkottai.

4.Mrs.A.Jeyamala,
Office Assistant,
District Police Office,
Pudukkottai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the second respondent in his proceedings No.K1/PR.02/2015 u/r/ 3(b), dated 17.02.2016 which is confirmed by the first respondent in his Na.Ka.P2/Me.Mu.10/16, dated 13.04.2016 and quash the same as illegal and consequently, direct the respondents to reinstate the petitioner into service from the date on which the petitioner was dismissed from the service with all consequential monetary benefits.

For Petitioner	:	Mr.K.Baalasundharam
For R-1 & R-2	:	Mr.P.Thambidurai
		Government Advocate (Civil Side)
For R-3 & R-4	:	No appearance



ORDER

This writ petition is filed to challenge the impugned order passed by the second respondent in his proceedings No.K1/PR.02/2015 u/r/ 3(b), dated 17.02.2016 which is confirmed by the first respondent in his Na.Ka.P2/Me.Mu.10/16, dated 13.04.2016 and consequently, direct the respondents to reinstate the petitioner into service from the date on which the petitioner was dismissed with other consequential monetary benefits.

2. The petitioner was recruited as Police Constable in the year 2005. The petitioner was orally instructed on 16.11.2010 by the Inspector of Police, Armed Reserve Force to assist the staff in the pay bill 'B' section of District Police Office, Pudukkottai. Along with the petitioner, another Grade II A.R. Constable namely, Mr.Vigneswaran was also instructed to assist in the pay bill 'B' Section on 16.11.2010. Both the petitioner and the said Vigneswaran reported to duty. The petitioner had passed 10th standard and not conversant with the computer work. The petitioner is not possessing any qualification in the computer operation. The Assistant and Junior Assistant in office have undergone pay bill software training given by the Pudukkottai Treasury. The petitioner has not attended the said software training. As per the orders of the higher officials, the petitioner reported to duty in pay bill section.

3. The third respondent issued a suspension order on 28.11.2014 for the reason as stated in the order is that "Gross dereliction of duty in having misappropriated the Government money of Rs.1,13,206/- by claiming excess salary by manipulating the data entered in his pay and allowances in the computer while preparing pay bill for 20 months from April, 2012 to January 2014 (Except February, 2013 and December, 2013) by using the official capacity as he was nominated as pay section computer PC for entering pay claims in the computer by forging the records".

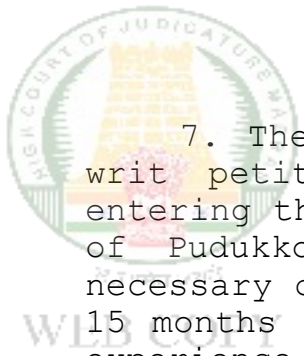
4. The second respondent herein appointed a team consist of three persons of ministerial staff to scrutinize the pay bill account for the period from 04/2012/ to 01/2014 as per the proceedings No.28366/2014, dated 08.10.2014. The above team submitted a report fixing the responsibility on the petitioner for the excess payment. According to the petitioner, the said team failed to note Assistant, Junior Assistant and Office Superintendent of pay bill section also operated the computer and prepared the computer pay bill. The said team has filed a report, accusing the petitioner alone for the mistake crept in the computer bill since the excess payment was made to the petitioner.

5. The petitioner further states that the computer pay bill cannot be done by the petitioner or any one of the staff of the pay



bill section. It is a combined work of the Junior Assistant, Assistant, Office Superintendent and Personal Assistant (Accounts). The pay bill is prepared by the Junior Assistant and Assistant, is verified by the Office Superintendent and the same is passed by the Personal Assistant (Accounts). All the pay bills should be verified and signed by the Junior Assistant, Assistant thereafter Office Superintendent and then passed by the Personal Assistant (Accounts). That being so, the team consisting of the Ministerial staff of the same District Police Office filed the report without noting down the fact that the pay bill cannot be prepared by the petitioner alone. Subsequent to the petitioner's suspension, the preliminary enquiry was ordered. The second respondent has directed to take action against the Office Superintendent and Assistant under Section 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. For the same delinquency, different treatments were given to the petitioner and the Office Superintendent and Assistant. An enquiry officer was appointed. The department witnesses 1 to 10 were examined. The Office Assistant and Superintendent who are charged under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 are the witnesses on the side of the department. The Office Superintendent namely, Mr.Andiappan, the third respondent and the Assistant namely, Mrs.Jeyamala (i.e.) fourth respondent who were also delinquents in the disciplinary proceedings were examined as witness Nos.2 and 3. The delinquents in order to escape from the punishment had given evidence implicating the petitioner in the departmental proceedings which is against the principles of natural justice. The enquiry officer based on the co-delinquents evidence has come to the conclusion, the alleged delinquents is proved which is against the principles of natural justice.

6. The copy of enquiry report was issued to the petitioner vide proceedings in Na.Ka.No.K1/Tha.Pa.02/2015, dated 16.12.2015, directed the petitioner to submit further explanation. The petitioner submitted his explanation, dated 27.01.2016. After considering the same, the respondents had not considered the explanation in proper perspective and passed impugned order for dismissal vide order, dated 17.02.2016. Even prior to the initiation of the departmental proceedings, the excess amount credited in the petitioner's salary were recovered from April 2014 and recovery process was started in the month of April 2014 and a sum of Rs.3,000/- was recovered from the petitioner's salary from April 2014 to February 2016. In addition to the recovery process, the departmental proceedings were initiated against the petitioner and thereafter, the dismissal order was passed by the second respondent. The petitioner filed an appeal and the same was dismissed without giving any proper opportunity to the petitioner vide order, dated 13.04.2016. Aggrieved over the same, the present writ petition has been filed.



7. The second respondent had filed a counter stating that the writ petitioner was nominated as pay section Computer PC for entering the pay claims for the entire strength of police department of Pudukkottai District in the computer, as he possesses the necessary computer knowledge. The petitioner has served properly for 15 months from 16.11.2010. After that, the petitioner has used his experience, misappropriated the Government money by adding excess money to his pay bill from 4th month of 2012 to 1st month of 2013 again from 3rd month of 2013 to 11th month of 2013 and January 2014. Totally for 20 months, the petitioner had added excess amount over the actual entries made by the section staff in the Long Roll. On February 2013 and December 2013, the petitioner has correctly entered his salary in the long roll. The petitioner's surrender leave salary is due on 16th December and the income tax computation is on February 2013. Since there is a possibility of detecting his illegal act on these two months, he has prepared the correct salary bills for those months and for other remaining months he has prepared bills in contrary to the long roll for his personal gain. On the second month of 2014, while computing and preparing income tax of employees, the pay bill section Superintendent had verified the salary bills and other allowances bills of every individuals. The Superintendent (i.e.) third respondent has identified some excess addition of basic pay, grade pay and HRA in the salary bills of the petitioner, for which the Superintendent instructed the 'B1' pay bill section Assistant (i.e.) the fourth respondent to review and check up the salary bills and other allowances bills of the petitioner to the prior months of February 2014. The third respondent 'B1' Assistant (fourth respondent) scrutinized the salary and other allowances bills, found that the petitioner from 4th month of 2012 onwards, has added some excess amount in the basic pay and other pay by misusing his official capacity as computer PC. The above illegal amount was recovered, thereafter, strict action was taken against the petitioner for misappropriation. The second respondent has verified the records and immediately issued proceedings No. B1 / 28366 / 2014, dated 08.10.2014 with instructions to inspect and review the pay bills by forming a special team consisting with the members Mr.T.Subramanian, Office Superintendent, Mr.M.Venkatesan and Mr.J.Sureshkumar, Assistants of the District Police Office, Pudukkottai to furnish the detail enquiry report in the above matter. The special team members were scrutinized the Long Roll leave of the petitioner and it was found that the petitioner has misappropriated the Government money. Based on the said report of the special team, the second respondent passed an order on 28.11.2014, instructing the DSP, Keeranur Sub-Division to conduct the preliminary enquiry on the allegations made against the petitioner, further instructed to deal with the pay bill section Superintendent and Assistants departmentally under rule 17(a) of Tamil Nadu Civil Service (Disciplinary & Appeal) Rules, 1955 for their lapses noticed.



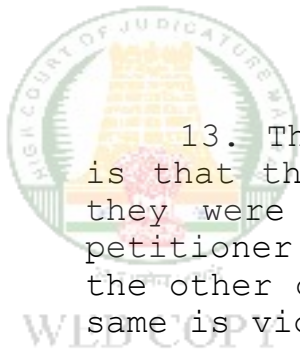
8. Accordingly, the pay bill section Superintendent Mr.A.Andiappan and Mr.P.Balaji and Mrs.Jeyamala were dealt with on the said charge. The enquiry officer was nominated by the second respondent, who conducted oral enquiry on the disciplinary proceedings. The enquiry officer had followed the rules strictly, procedural guidelines to conduct enquiry and there is no violation of principles of natural justice. The allegation against the petitioner was proved in the minute drawn by the enquiry officer on 13.11.2015. Therefore, there is no illegality in the punishment which was confirmed by the appellate authority.

9. Heard Mr.K.Baalasundharam, learned Counsel appearing for the petitioner and Mr.P.Thambidurai, learned Government Advocate (Civil Side) appearing for R1 and R2 and perused the records.

10. The contention of the petitioner is that the petitioner was transferred to handle the computer section, but even prior to this transfer there was an excess payment to the petitioner. The petitioner on his own accord has brought it to the knowledge of the concerned authorities and the same was rectified. The excess payment has been remitted back and the same has been deposited in Government account. Therefore, the allegation that there was an excess payment after the petitioner has taken charge in Computer Section is denied as false. According to the petitioner, there are some discrepancies even prior to the transfer of the petitioner to the computer section and based on this, the petitioner claims that there is some mistake already incorporated in the computer which is acting against the petitioner.

11. However, the contention of the respondents are that the petitioner has claimed correct salary for the period December and February because during December, the earned leave salary would be credited and during February the Income Tax payment would be determined. Since there is a possibility of detecting his illegal act on these two months, he has prepared the correct salary bills for those months and for other remaining months he has prepared bills in contrary to the long roll for his personal gain. That is why, the petitioner deliberately has not included the excess amount for the salary for the month of February and December. This portion was not explained by the petitioner. Admittedly, the petitioner has received excess salary even prior to the transfer of the petitioner to the Computer Department. Since there are lapses in the enquiry, the petitioner prayed to conduct the denovo enquiry.

12. The next contention put forward by the petitioner is that the respondents have conducted the oral enquiry instead of regular enquiry. Since the petitioner was charged under Section 17(b) that too for a major penalty, then the respondents are bound to conduct the proper enquiry and not oral enquiry.



13. The next contention that was put forward by the petitioner is that the co-delinquents who are charged under Section 17(a) and they were made as witnesses in the present enquiry against the petitioner. Since there is a chance of escaping from the allegation, the other co-delinquents have deposed against the petitioner and the same is violative of principles of natural justice.

14. The next contention put forward by the petitioner is that the pay bill passed by the Junior Assistants, Office Assistant then the Accounts Officer and the petitioner is only a data entry operator. According to the petitioner, the other co-delinquents ought to be dealt with under Section 17(b) only and not under Section 17(a), because the responsibility of other persons are more than the petitioner's. Hence the misappropriation allegation cannot be sustained because the co-delinquents were charged with lesser punishment.

15. For all these reasons, especially for the oral enquiry conducted for the charges under Section 17(b), this Court is of the considered opinion that a full-fledged enquiry ought to be conducted. Therefore, this Court is remanding this case back to the authority for denovo enquiry. The impugned orders are set aside and the respondents are directed to conduct the denovo enquiry. The denovo enquiry shall be completed within a period of six months from the date of receipt of the copy of the order. While imposing punishment, the respondents may consider to reinstate the petitioner in any other non-sensitive post.

16. With this above direction, the writ petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

btr

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 Deputy Inspector General of Police,
Trichy Range,
Trichy District.

2.The Superintendent of Police,
District Police Office,
Pudukkottai & District.

3.Office Superintendent,
District Police Office,
Pudukkottai.

4.Office Assistant,
District Police Office,
Pudukkottai.

+1 CC to M/s.K.BAALASUNDHARAM, Advocate (SR-22217[F] dated
28/04/2022)

+1 CC to M/s.SPL.GP. (SR-22075[F] dated 28/04/2022)

W.P. (MD) .No.14832 of 2016
27.04.2022

MGJ(15.06.2022) 7P 7C