



W.P.(MD)No.22179 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.22179 of 2016

and

W.M.P.(MD)Nos.15893 and 15894 of 2016

R.Pazhanivel

... Petitioner

vs.

1.The State of Tamil Nadu,
represented by its Secretary,
Home Department,
Fort St. George,
Chennai-600 009.

2.The Director General of Police (L & O),
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

3.The Additional Director General of
Police (L & O),
Kamarajar Salai, Mylapore,
Chennai-600 004.

4.The Deputy Inspector of Police,
Thanjavur Range, Thanjavur,
Thanjavur, Thanjavur District.

... Respondent



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2. The petitioner joined in the Railway Police on 13.02.1978 a Grade II Police Constable. On 02.06.1997, the petitioner was recruited through direct recruitment to the post of Sub-Inspector of Police. The petitioner was given the promotion to the post of Inspector of Police on 27.10.2007 and retired from service on 31.01.2014. A charge memo, dated 26.07.2011, was issued leveling two charges as follows:

“i) Alleging that the petitioner had changed the number of vehicle as TN 46 A 9551 (TVS Suzuki) instead of the Vehicle TN 46-A 7447 (TVS Suzuki) in the investigation process in crime no.131/2003.

ii) The petitioner had changed the vehicle as TN 07 J 0111 (Tata Sumo) instead of TN 49 L 0111 (Tata Sumo) in the investigation process in Crime No.171 of 2001.”

The petitioner submitted an explanation, dated 06.03.2013. The enquiry officer concluded that that the charges were proved and imposed the punishment of compulsory retirement from service, vide order, dated 24.05.2013.



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3.The contention of the petitioner is that the punishment order was issued by the incompetent authority, i.e., 4th respondent, since the 2nd respondent alone is the competent authority. Hence the petitioner preferred an appeal and the same was pending for a long time, in spite of several reminders. The petitioner filed in W.P.No.381 of 2014 and this Court vide order, dated 07.01.2014 directed the 3rd respondent to consider and pass orders. The 3rd respondent, vide order, dated 13.01.2014, confirmed the order of punishment of compulsory retirement. Hence, a review petition was filed and the order of punishment of compulsory retirement was confirmed.

4. In the meanwhile, for the same allegation criminal case was registered in Crime No.131 of 2003, which was investigated and the Summary Trial Case ended in conviction. Further, in the meantime the CBCID registered a criminal case in Crime No.20 of 2005 under sections 420 IPC and 120(b) and 511 IPC against the accused in Crime No.131 of 2003, before the District Crime Branch that he had involved in changing the vehicle actually involved in the Crime No.



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131 of 2003 and the same was charge sheeted in C.C.No.31 of 2011. The said criminal case ended in acquittal with clear finding that the vehicle involved in Crime No. 131 of 2003 was only TN 46 A 9551 (TVS Suzuki). CBCID registered another criminal case in Crime No.13 of 2006 under sections 471 and 468 of IPC against the accused in Crime No.171 of 2001 before the District Crime Branch alleging that he had involved in changing the vehicle actually involved in the Crime No.171 of 2001 and the same was charge sheeted in C.C.No.48 of 2011. This was also ended in acquittal with a clear finding that the vehicle involved in Crime No. 171 of 2001 was only TN 07 J 0111 (Tata Sumo). Hence, the petitioner filed a mercy petition, dated 16.09.2015, before the 1st respondent and the same was pending for a long time. So, the petitioner filed W.P.(MD)No.1151 of 2016 seeking for early disposal of the mercy petition. This Court, vide order, dated 20.01.2016, directed the respondents to consider and pass orders within a prescribed time. The 1st respondent passed the impugned order rejecting the request of the petitioner to reconsider the punishment. Aggrieved over the same, the present writ petition is filed.



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5. The 4th respondent has filed a counter affidavit stating that the petitioner was charge sheeted under Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, under two grounds. A total number of 8 witnesses were examined, 14 documents were filed and 2 witnesses were examined in defence side. On completion of oral enquiry, the petitioner submitted written submission. After considering the witnesses, the documents and the written submissions of the petitioner, the petitioner was held guilty. Hence, the respondents have passed the punishment of compulsory retirement and it was confirmed in appeal, review petition and mercy petition. It is incorrect to state that the order of punishment was issued by incompetent authority. Since the petitioner is from Police Department, the 4th respondent is the appointing authority and hence, the 4th respondent is the competent authority. The criminal case would be conducted based on strict evidence. However, departmental action is based on preponderance of probability of evidence. Therefore, after considering the evidence, the charges were held to be proved. Hence, the request of the petitioner was not considered. The punishment was granted based on the



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records and the evidence available before the enquiry officer. Accepting the report, the said punishment was imposed. Hence, the 4th respondent prayed to dismiss the writ petition.

6. Heard Mr.T.Lajapathi Roy, learned Counsel appearing for the petitioner and M/s.D.Farjana Ghousia, learned Special Government Pleader appearing for the respondents.

7. The learned Counsel appearing for the petitioner submitted that the enquiry officer has come to the conclusion that the charges are proved for the sole reason that the complainant in the criminal case has approached the petitioner and has requested to change the vehicle number. But it is not based on the evidence. In the M.C.O.P., it is stated that the vehicle number TN 46 A 9551, was not in dispute and the Tribunal has granted relief only to the vehicle TN 46 A 9551. If any vehicle is not insured, then the Insurance Company would have adjudicated



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before the M.C.O.P. Court by stating that the claimant has mentioned wrong vehicle number. Since the M.C.O.P Court has granted relief for correct vehicle, the claim of the petitioner ought to be considered.

8.The learned Special Government Pleader appearing for the respondents submitted that there are several such cases during that period. Similarly placed persons like the petitioner were indulged in such activities and the petitioner is also one among them. Hence, the learned Special Government Pleader vehemently opposed to interfere in the order of punishment. But the Learned Special Government Pleader's claim cannot be accepted since in the criminal case also the petitioner was acquitted.



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9. In the criminal case the Trial Court has rightly held if the number is wrong, the claimant, the Insurance Company and would have adjudicated. All the persons involved in the case have accepted the vehicle as TN 46 A 9551. In such circumstances, the claim of the petitioner ought to be considered.

10. The learned Counsel for the petitioner submitted that the petitioner is an officer with integrity and has rendered unblemished service, hence the present punishment is a stigma in his entire career. A Government employee retiring with stigma, that too an officer with integrity would have a social bearing and hence the Learned Counsel submitted that the case of the petitioner ought to be considered.

11. Therefore, this Court is of the considered opinion that the order passed by the respondents ought to be interfered. The punishment of compulsory retirement is set aside and the respondents are directed to confer all the



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consequential benefits to the petitioner within a period of six weeks from the date of receipt of a copy of this order.

12.With the above said observation, the writ petition is allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

Index : Yes / No

17.11.2022

Internet : Yes

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To

- 1.The Secretary,
State of Tamil Nadu,
Home Department,
Fort St.George,
Chennai-600 009.
- 2.The Director General of Public(L & O),
Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.
- 3.The Additional Director General of
Police (L & O),



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Kamarajar Salai, Mylapore,
Chennai-600 004.

4.The Deputy Inspector of Police,
Thanjavur Range, Thanjavur,
Thanjavur, Thanjavur District.

S.SRIMATHY, J

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