



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD) .No.3432 of 2016

and

W.M.P(MD) No.3047 of 2016

Kasinathan

...Petitioner

Vs.

1.The Secretary to the Government,
Home Department,
St.George Fort,
Chennai.

2.The Director General of Police,
Law and Order,
Mylapore,
Chennai.

3.The Deputy Inspector General of Police,
Ramanathapuram Range,
Ramanathapuram District.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the impugned order in G.O.(2D)No.144 Home(Police VI) Department dated 20.04.2015 passed by the 1st Respondent confirming the punishment imposed by the 3rd Respondent in Na.Ka.No.B1/13870/99-2 dated 22.11.1999 and quash the same as illegal and consequently direct the Respondents to treat the suspension period from 27.04.1994 to 03.08.1998 as duty period for all purpose and to pay salary for suspension period after deducting the subsistence allowance on par with the favourable order issued in favour of co-delinquent in G.O.(D).No.645 dated 06.07.2011 passed by the 1st respondent.

For Petitioner : Mr.V.P.Rajan

For Respondents : Mr.N.Ramesh Arumugam,
Government Advocate (Civil Side).

**O R D E R**

This Writ Petition is filed to quash the impugned order in G.O.Ms.No.(2D)No.144 Home (Police VI) Department dated 20.04.2015 confirming the punishment in order dated 22.11.1999 and consequently, direct the respondents to treat the suspension period from 27.04.1994 to 03.08.1998 as duty period for all purpose and confer all monetary benefits on par with the favourable order issued in favour of co-delinquent in G.O.Ms.No.645 dated 06.07.2011

2.The brief facts of the case are that the petitioner was working as Head Constable in Thiruvidadaimaruthur District. When the petitioner was working as Head Constable in R.S. Mangalam Police Station one Mr. Vijayakumar, then Inspector of Police arrested one Muniyandi in connection with illicit arrack on 26.04.1994 and he died under the Police custody. The Revenue District Officer, Ramanathapuram has preferred a police complaint against the petitioner and the Inspector of Police. A criminal case was registered for the offence under Section 192, 196, 201, 218, 343, 302 read with 201 & 34 I.P.C. The petitioner and the said Vijayakumar were arrested and released on bail. Thereafter the Superintendent of Police, Ramanathapuram District suspended the petitioner and the said Vijayakumar. In the criminal case, the petitioner and the said Vijayakumar were acquitted by the Principal Sessions Court, Ramanathapuram on the ground that the deceased Muniyandi died due to Chronic Lung disease and not by the torture of Police. In the meanwhile, the respondents issued a Charge Memo in P.R.No.31 of 1996 and 32 of 1996, dated 17.06.1996 to the petitioner and the said Vijayakumar respectively. The allegation in the Charge Memo is that both have committed dereliction of duty and demanded bribe from the deceased Muniyandi for doing business of illicit arrack. The petitioner and the said Vijayakumar filed O.A.No.6872 of 1996 challenging the disciplinary proceedings. The Administrative Tribunal held that the action may be taken pursuant to the judgment of Criminal Court. However, the respondents conducted a common enquiry and the Enquiry Officer submitted a report holding that the charges are proved against the petitioner and the said Vijayakumar. Pursuant to the enquiry report, then Deputy Inspector General of Police, Ramanathapuram District, has imposed with the punishment of reduction in time scale of pay by one stage for one year without cumulative effect, vide order, dated 22.11.1999. The petitioner was suspended for more than four years. After the acquittal, the petitioner submitted a representation to the respondents requesting them to treat the suspension period as duty period and also prayed to set aside the punishment based on the acquittal in the criminal case.



3. The contention of the petitioner is that the co-delinquent Vijayakumar also preferred a representation to the respondents. Since the respondents did not take any action, the said Vijayakumar has filed a writ petition in W.P.(MD)No.8451 of 2008 with a prayer to direct the respondents to treat his suspension period as duty period with a consequential relief. This Court, vide order, dated 14.12.2009 directed the respondents to dispose of the representation on merits in accordance with law. The first respondent after considering the request of the said Vijayakumar had set aside the punishment imposed on him and also ordered to treat the suspension period as duty period, vide G.O.(D)No.646 dated 06.07.2011. Pursuant to the same, the petitioner has preferred various representation requesting the respondents to set aside the punishment and treat the suspension period as duty period, based on the order passed in favour of the co-delinquent Vijayakumar. Since no action was taken, the petitioner has preferred a writ petition in W.P.(MD)No.677 of 2014 and this Court, vide order, dated 10.01.2014 directed to consider the request on par with the co-delinquent. However, the first respondent without considering the matter in a proper perspective had rejected the petitioner's request, vide impugned order, dated 20.04.2015 stating that the charges leveled against the petitioner and the said Vijayakumar are different and both are standing in the different foot. The contention of the petitioner is that the charges against the petitioner and the co-delinquent are one and the same. The statement of the first respondent is absolutely incorrect. Therefore, the petitioner prayed to set aside the impugned order with a consequential relief.

4.The respondents have filed a counter affidavit stating that the charges against the petitioner in disciplinary action and the criminal action are different. Since there was a custodial death, the Government has ordered to take disciplinary and criminal action against the petitioner and the said Vijayakumar. Accordingly, the Inspector of Police, namely, Vijayakumar was dealt with on various charges in P.R.No.31 of 1996 for his misconduct and the same is reproduced hereunder:

"(i)reprehensible conduct in having misused official powers by threatening and beating Muniyandi on 26.04.1994 (ii) reprehensible conduct in having created a false diary and record on 26.04.1994 at R.S.Mangalam Police Station and (iii) reprehensible conduct in having made a false statement before the R.D.O., Ramanathapuram on 19.05.2014 during PSO 145 enquiry."

5. The petitioner was dealt in P.R.No.32 of 1996 and the allegation are reproduced hereunder:



"The petitioner Kasinathan was dealt with in P.R.No.32 of 1996 for his (i)reprehensible conduct in having demanded and accepted illegal gratification of Rs.300/- from one Muniyandi of Naranamangalam Village on 26.01.1994 by causing enquiry with the prohibition offenders and colluding with Tr.R.Vijayakumar, Inspector of Police, R.S.Mangalam."

The contention of the respondents is that since the petitioner was alleged for demanding and accepting illegal gratification of Rs.300/- (Rupees Three Hundred only) from the said Muniyandi, the action was initiated. However, for the said Vijayakumar, the action was initiated for misusing his Official powers by threatening and beating Muniyandi and for creating false diary and record and for creating the false statement. Since the charges are different, the petitioner cannot compare with the said Vijayakumar. Hence the respondents prayed to dismiss the writ petition.

6. Heard Mr.V.P.Rajan, learned Counsel appearing for the petitioner and Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents.

7. On perusing the orders, especially the impugned order, dated 20.04.2015, it is stated in Paragraph 3 as under:

*"The charge framed against Thiru.R.Kasinathan in departmental action is for demanding and accepting bribe of Rs.300/- from Thiru.Muniyandi of NaramangalamVillage **on behalf of Thiru.R.Vijayakumar, Inspector of Police** whereas the criminal case is for the offence related to the custodial death of Thiru Muniyandi of Naramangala, Village on 26.04.1994."*

It is stated in the said order that the charge against the petitioner is for **demanding and accepting bribe on behalf of Vijayakumar, the Inspector of Police**. When the charge itself is confirmed that the petitioner has demanded and received the money **on behalf of the said Vijayakumar**, this Court fails to understand how the charges are framed against the said Vijayakumar by not noting the fact that the bribe is demanded on behalf of Vijayakumar. The very framing of charges itself is erroneous. When there is a specific statement by the respondents that the petitioner demanded bribe on behalf of the said Vijayakumar, then the said Vijayakumar is also liable for the disciplinary proceedings for accepting bribe. Therefore this Court is of the considered opinion that the impugned order is liable to be quashed.



8.As far as the suspension period is concerned, if there is any acquittal the delinquent would be entitled to regularize the period of suspension. Under Rule 54-B - Ruling 9, the delinquent is entitled to regularization of his period of suspension and the relevant portion is extracted hereunder:

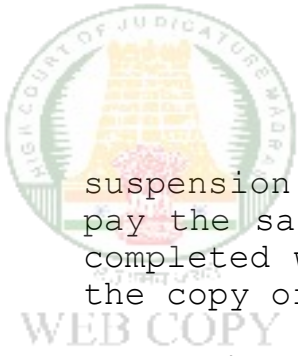
"Where a Government Servant is placed under suspension in view of the fact that complaint against him of a criminal officer is under investigation or trial and the Government Servant is subsequently reinstated in service on his acquittal by the Court either on merits or on the ground that the charge against him has not been proved or by giving benefit of doubt or on any other technical ground, he must be regraded as having been prevented from discharging his duties and the period of his absence including the period of suspension shall be treated as duty for all purposes and he shall be paid full pay and allowances which he would have been entitled to, had he not been under suspension or dismissed or removed or compulsorily retired from service"

When the delinquent is acquitted of the criminal case, then the delinquent is automatically entitled to regularize the period of suspension as duty period. Therefore, this Court is of the considered opinion that the petitioner is entitled to regularize the suspension period as duty period on being acquitted from the criminal case.

9. The contention of the petitioner that if the co-delinquent is inflicted with lesser punishment, then the petitioner also is eligible for the same treatment. The petitioner relied on the judgment rendered in Tata Engineering & Locomotive Co. Ltd. Vs. Jitendra PD Singh and another reported in (2001) 10 SCC 530 and the relevant portion is extracted hereunder:

"Since as many as three workmen on almost identical charges were found guilty of misconduct in connection with the same incident, though in separate proceedings, and one was punished with only one month's suspension, and the other was ultimately reinstated in view of the findings recorded by the Labour Court and affirmed by the High Court and the Supreme Court, it would be denial of justice to the appellant if he and the Supreme Court, it would be denial of justice to the appellant if he alone is single out for punishment by way of dismissal from service."

10. Therefore, this Court set aside the impugned order G.O.(2D) No.144 Home(Police VI) Department dated 20.04.2015 and also set aside the punishment imposed in Na.Ka.No.B1/13870/99-2 dated 22.11.1999. The respondents are directed to regularize the



suspension period from 27.04.1994 to 03.08.1998 as duty period and pay the salary payable to the petitioner and such exercise shall be completed within a period of four weeks from the date of receipt of the copy of the order.

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

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

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To

1. The Secretary to the Government,
Home Department,
St. George Fort,
Chennai.

2. The Director General of Police,
Law and Order,
Mylapore,
Chennai.

3. The Deputy Inspector General of Police,
Ramanathapuram Range,
Ramanathapuram District.

+1 CC to M/s. SPL GP (SR-13499[F] dated 22/03/2022)

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MGJ(19.04.2022) 6P 5C