



WEB COPY

W.P.(MD)No.20423 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.04.2022

DELIEVERD ON: 14.06.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.20423 of 2017

and

W.M.P. (MD) .No.16689 of 2017

Kamaraj,
Special Sub Inspector of Police,
Kumbakonam East Police Station,
Thanjavur District.

... Petitioner

Vs

- 1.The Director General of Police,
Chennai-600 004.
- 2.The Deputy Inspector General of Police,
Thanjavur Range,
Thanjavur.
- 3.The Superintendent of Police,
Thanjavur District,
Thanjavur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the first respondent in his proceedings Rc.No.206738/AP.I(1)/2015, dated 18.03.2017 confirming the order passed by the second respondent in his proceedings C.No.B2/AP 102/2003, dated 24.12.2003 and punishment imposed by the third respondent in his proceedings vide C.No.K1/PR.75/89, dated 02.02.1992 and quash the same as illegal consequently to direct the respondent to pay increment.

For Petitioner : Mr.V.P.Rajan

For Respondents : Mr.P.Thambidurai
Government Advocate (Civil Side)

O R D E R

This writ petition is filed to quash the impugned order passed by the first respondent in his proceedings Rc.No.206738/AP.I(1)/2015, dated 18.03.2017, confirming the order passed by the second respondent in his proceedings C.No.B2/AP 102/2003, dated 24.12.2003 and the punishment imposed by the third respondent in his proceedings vide C.No.K1/PR.75/89, dated 02.02.1992 and consequently

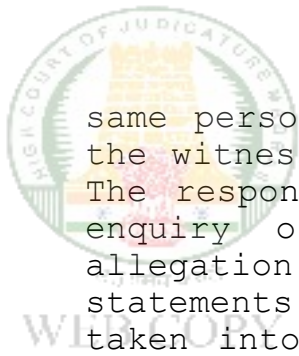


to direct the respondent to pay increment.

2. The brief facts of the case is that the petitioner was appointed as Grade-II police constable and presently working as a Special Sub Inspector of Police at Thanjavur. While he was working as constable Grade-II in the year 1989 at Thanjavur City (west) police station, one Kuppusamy preferred a complaint against three individuals namely, Samikannu, Saravanan and Asokan. As directed by the superior, the petitioner and two other constables namely Mahalingam and Kannan went to the place of the proposed accused for taking them to the police station on 08.01.1989. The said three proposed accused resisted and abused the petitioner and the two constables. The said three persons preferred a complaint against the petitioner and other two constables through All India Students Federation to the District Collector, alleging that the petitioner and two constables humiliated in the public view and attacked them. Based on the complaint, the Sub Collector was appointed as enquiry officer by the District Collector. The Sub Collector submitted a report stating that the incident was distorted by the complainant, however it is open to the department to institute disciplinary proceedings if warranted. Pursuant to the same, the third respondent framed charges against the petitioner under Section 3(b) of the Tamil Nadu Sub Ordinate (Discipline and Appeal) Rules in his proceedings PR.No.75/89, dated 05.12.1989. Alleging that the petitioner misbehaved with Samikannu, Saravanan and Asokan and attacked them, while the petitioner was discharging official duty which he committed misconduct and dereliction of duty.

3. The petitioner submitted his explanation on 11.12.1989. Thereafter, the enquiry officer was appointed and the enquiry report holding that the charge leveled against the petitioner was not proved. Pursuant to the same, the third respondent issued a show cause notice, dated 19.06.1991 as to why the proposed punishment of postponement of increment for two years with cumulative effect shall not be inflicted on the petitioner. The petitioner submitted his explanation on 07.10.1991 without considering the explanation. The third respondent imposed the punishment of stoppage of increment for two years with cumulative effect by an order, dated 02.02.1992. The petitioner preferred an appeal and the same was rejected on 24.12.2003. Aggrieved over the order passed by the second respondent, the petitioner preferred mercy petition. The said mercy petition was also rejected on 18.03.2017.

4. The contention of the petitioner is that the first respondent has imposed the punishment of postponement of increment while he was serving a Superintendent of Police, Thanjavur District. Therefore, the impugned order passed by the third respondent and confirmed by the first respondent who is one and the same is contrary to the law. In other words, the disciplinary authority has imposed the punishment and the mercy petition was considered by the

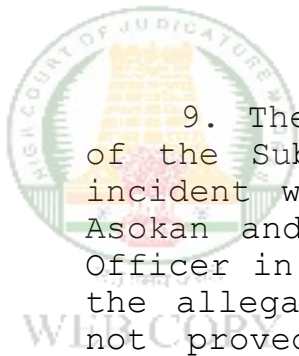


same person. The disciplinary authority has taken the statement of the witness deposed before the Sub Collector under 145 proceedings. The respondents failed to take the Sub Collector's report and the enquiry officer's report, where both the report states, the allegation against the petitioner is distorted and not proved. The statements made by P.W.1 to P.W.7 in the preliminary enquiry was taken into account and the disciplinary authority has imposed the punishment. The preliminary enquiry statements cannot be taken for imposing punishment, since after preliminary enquiry there are two other enquiries by the District Collector as well as the Enquiry Officer and the said preliminary enquiry would merge with the subsequent enquiry report. In such circumstances, again by taking the preliminary enquiry statements and imposing the punishment would be against law and it is alien to service jurisprudence.

6. The respondents have filed counter affidavit stating that the petitioner and other PCs were directed to bring the said Samikannu, Saravanan and Asokan. On that day evening the delinquent and two others went to the above address and knocked the doors of the room where the above counter petitioners were staying. Then the petitioner and two other constables abused and assaulted the counter petitioners without any reasons. Therefore, based on the complaint, disciplinary proceedings were initiated and the oral enquiry was conducted by the Deputy Superintendent of Police, Thanjavur Town, where it has been held charge has not proved, on dis-agreeing with the enquiry officer, the disciplinary authority (i.e.) the Superintendent of Police, had issued a show cause notice, dated 17.06.1991. By considering the explanation submitted by the petitioner, the impugned punishment was inflicted on the petitioner. Subsequently, the appeal and the mercy petition were rejected. The witnesses have stated that the petitioner and other two police constables humiliated the above three persons and brought them to the police station to present punishment was inflicted. Therefore, there is no infirmity in the punishment and the respondents prayed to dismiss the writ petition.

7. Heard Mr.V.P.Rajan, learned Counsel for the petitioner and Mr.P.Thambidurai, learned Government Advocate (Civil Side) for the respondents and perused the records.

8. The contention of the petitioner is that the third respondent who was the disciplinary authority has imposed the punishment, the same officer was sitting as an authority to hear the mercy petition. In other words, the first and third respondent are the same person. Therefore, the order passed in the mercy petition order is against the principles of natural justice. Therefore, this Court is of the considered opinion that the first respondent order is hit by the principles of natural justice, since the person who acted as disciplinary authority was promoted and then the same officer has considered the mercy petition.



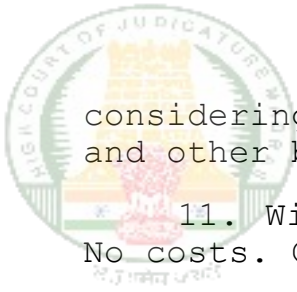
9. The next contention raised by the petitioner is in respect of the Sub Collector's order, where it has been stated that the incident was distorted by accused namely Samikannu, Saravanan and Asokan and there is no truth in the statement. Even the Enquiry Officer in the disciplinary proceedings have rendered a finding that the allegations against the petitioner and the two constables are not proved in respect of these two reports. The disciplinary authority intended to deviate from the report based on the statements of P.W.1 to P.W.7 who deposed before the preliminary enquiry officer. The petitioner has relied on the judgments rendered in ***T.Pitchai Vs. The Deputy Inspector General of Police, Tirunelveli Range, Tirunelveli and another*** reported in **2006 (2) MLJ 202** wherein it has been held that the punishment imposed on the basis of statement made before the preliminary enquiry is not sustainable in law. The relevant portion of the above judgment which reads as follows:

"The second respondent therefore relied on the said statement obtained during the preliminary enquiry and the said statements were not corroborated in the regular enquiry after framing of charges. In para.8 of the dissenting note, the second respondent states as follows:

"In view of the foregoing conclusions I have given much weight to the statements of P.Ws.1 to 7, P.W.10 given before the preliminary enquiry officer and the report of preliminary enquiry officer i.e P.W.11 and the exhibits filed by them and Exs.P-1 to P-7, Exs.P-13 and P-14 and the charge against the delinquent is "PROVED" under preponderance of probability as per the various rulings made in various judgments quoted above".

Learned Counsel for the petitioner also cited a decision of the Honourable Supreme Court reported in Union of India Vs. Mohd. Ibrahim, (2004) 10 S.C.C.87, the Honourable Supreme Court in the facts and circumstances of the case before it held that the order of dismissal was vitiated as the findings have been based on consideration of statement of the persons examined during the preliminary enquiry and for the said fact the Tribunal set aside the order of dismissal which was upheld by the High Court and there is no error in the said order setting aside the dismissal order".

10. Therefore this Court is of the considered opinion that the statement recorded during the preliminary enquiry cannot be put against the delinquent, when in the final enquiry, a finding has been rendered the charges are not proved. Therefore, the impugned order is liable to be set aside and the impugned order is set aside. The respondents are directed to give the consequential effect by



considering the petitioner's case for granting increment, promotion and other benefits.

11. With these observations, the writ petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Assistant Registrar (CS-III)

// True Copy //

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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 Director General of Police,
Chennai-600 004.

2.The Deputy Inspector General of Police,
Thanjavur Range, Thanjavur.

3.The Superintendent of Police,
Thanjavur District,
Thanjavur.

+1 CC to M/s.SPL.GP. (SR-22062,25814[F] dated 28/04/2022)

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