



W.P.(MD)No.21494 of 2017

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.21494 of 2017

S.Manamoorthi

... Petitioner

Vs.

1.The Additional Director General of Police
cum Inspector General of Prisons,
O/o.the Additional Director General of Police
cum Inspector General of Prisons,
No.6, Whannels Road,
Egmore,
Chennai – 600 008.

2.The Deputy Inspector General of Prisons,
Madurai Range,
Madurai – 16.

3.The Superintendent of Prisons,
Central Prison,
Palayamkottai,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned order in No.2573/Pho1/2016 dated 20.07.2016 on the file of the third respondent and the impugned order in No.2418/Mu.Vu/2016 dated 12.12.2016 on the file of



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the second respondent and the impugned order in No.3116/ES3/2017 dated 06.06.2017 on the file of the first respondent and the consequential order in No.3116/ES.3/2017 dated 12.09.2017 on the file of the first respondent and quash the same as illegal.

For Petitioner : Mr.T.S.Mohamed Mohideen,
For Mr.J.Imran Khan.

For Respondents : Mrs.D.Farjana Ghoushia,
Special Government Pleader.

ORDER

This Writ Petition has been filed to quash the impugned orders dated 20.07.2016, 12.12.2016, 06.06.2017 and the consequential order dated 12.09.2017.

2. The petitioner was appointed as Secondary Grade Warder at Central Prison, Trichy on 20.10.1983 and promoted as Chief Head Warder and further promoted as Assistant Jailor on 25.07.2015. Thus, the petitioner has rendered more than 34 years of unblemished service. On 02.04.2016, a charge memo was issued and the petitioner has submitted his explanation on 11.04.2016 and categorically stated that on 31.03.2016, the petitioner was entrusted with the work of supervising at Remand Prisons Block III at about 4 p.m. and he took care of Gate Keeper charge. Since one Athithan, a Secondary Grade Warder who was in



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charge of Gate Keeping was sick with stomach problem and therefore he sought permission to attend his nature call, then the petitioner has immediately entrusted the work to Balaselvan. At that point of time, the food and articles were continuously supplied by the relatives of the prisoners to the prisoners in Jail and further several prisoners were brought from Court to Jail. A Secondary Grade Warder, Thirumalai Nambi, who was appointed in the year 2011 was assigned in the checking and inspection work. For the purpose of smooth functioning of the checking and inspection process, the petitioner has entrusted the work to Balaselvan, who was appointed in the year 2005 and posted Thirumalai Nambi at the Gate as Gate Warder. The said Thirumalai Nambi without getting permission has negligently opened the Gate due to which the prisoner had escaped and the petitioner was busy with the work entrusted to him such as verifying the prisoners, issuing acknowledgment receipts, verifying the signatures in the Bail Bond, verifying the adjournment dates of the cases, allocating prison to the prisoners etc. The petitioner submitted a detailed reply to the third respondent. The third respondent without considering the reply, issued the impugned order dated 20.07.2016, wherein, the punishment of stoppage of increment without cumulative effect for a period of three years was issued. The contention of the petitioner is that whenever the charges were issued under Rule 17(a) of the Tamil



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Nadu Civil Services (Discipline and Appeal) Rules, if the respondent inclined to impose a punishment of three years which will adversely affect the payment of pension and other withholding of increments, then the respondents ought to follow the procedures laid down in Rule 17(b) of the said Rule. In the present case, the respondents have not followed the procedures laid down in Rule 17(b) of the said Rule, but imposed the punishment of three years which will affects the petitioner. Hence, the petitioner filed this Writ Petition.

3. The respondents are filed a counter stating that while the petitioner was performing his duty at the Gate, one Life Convict Prisoner namely Sudalai Muthu has escaped through the Main Gate. During the lock-up time, one prisoner was found missing. All the officers and other men went on searching the missing prisoner all through the prison, but all in vain, the prisoner was not found anywhere. On investigation, it was found that the said Sudalai Muthu escaped through the Main Gate, where the petitioner was in duty at the Main Gate. Due to negligent and lethargic attitude of the petitioner, a charge memo was issued to the petitioner under 17(b) of the said Rule. The enquiry was concluded with the imposition of the punishment. Therefore, the respondents submitted that the imposition of punishment is as per Rule and it is proportionate and therefore prayed to dismiss this Writ Petition.



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4. Heard Mr.T.S.Mohamed Mohideen, learned counsel for Mr.J.Imran Khan, learned counsel, appearing for the petitioner and Mrs.D.Farjana Ghoushia, learned Special Government Pleader, appearing for the respondents and perused the records.

5. The first contention that was raised by the learned counsel for the petitioner is that the disciplinary proceeding was conducted under Rule 17(a) of the said Rule, but the respondents have imposed major punishment of stoppage of increment for 3 years with cumulative effect. The respondents have relied on Rule 17(a) proviso of the said Rule. The relevant portion is extracted hereunder:

“Provided further that, in every case where it is proposed, after considering the representation, if any, made by the Government servant, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay without cumulative effect for a period exceeding 3 years or to withhold increment of pay with cumulative effect for any period, the procedure laid down in sub-rule (b) shall be followed before making any order imposing on the Government servant any such penalty”.

In the said Rule, it has been categorically stated that if the punishment is proposed by the respondents which will affect the amount of pension to withhold the increment without cumulative effect after the period of 3 years, then the



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procedures laid down under 17(b) of the said Rule ought to be followed. In the present case, the respondents have followed the summary proceedings without conducting proper enquiry. Therefore, the claim of the petitioner is that the summary proceedings are illegal and against Rule 17(a) proviso of the said Rule.

6. Therefore, this Court is of the considered opinion that the respondents have imposed 3 years punishment under 17-a of the Tamil Nadu Civil Services (Discipline and Appeal) Rules which is against the aforesaid proviso. Therefore, this Court is inclined to interfere with the punishment.

7. The next contention raised by the petitioner is that the revision authority has not passed a speaking order, whereas, the revision authority has stated that the case of the petitioner was considered by other authorities and no grounds were raised to reconsider the punishment imposed by the punishing authority. The reasoning that has been stated is only a single line. The petitioner relied on the judgment of the Madras High Court in the case of ***K.Kandasamy Vs Deputy Inspector General of Police*** reported in ***2006 (4) MLJ 1382***, wherein, it has been held that the appellate authority ought to consider after due application of mind as per rule 27(2) of the Central Civil Services (Classification, Control and Appeal)



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Rules 1965. When the appellate authority passed any order without applying their mind, then the impugned order is liable to be interfered with. In the present case also, the respondents have not considered and applied their mind and had not passed any speaking order. Therefore, the impugned order is liable to be interfered with.

8. The next ground that was raised by the petitioner is that the petitioner was on the verge of his superannuation and retired from service on 30.04.2016. The punishment order was passed on 20.07.2016 and the punishment would come to an end in the year 2019. Any punishment that is imposed should be within the service period, but the punishment is beyond the service period and the petitioner ought to undergo the punishment during the retirement period. Therefore, on this ground also, the punishment is liable to be interfered with.

9. Therefore, this Court is of the considered opinion that the punishment imposed by the respondents is disproportionate. The allegation against the petitioner is that he had acted negligently and left one prisoner escaped from the prison. Therefore, this Court is inclined to modify the punishment of stoppage of increment for 3 years and reduce to six (6) months. The respondents are directed



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to implement the modified punishment and disburse the monetary and service benefits to the petitioner within a period of eight (8) weeks from the date of receipt of a copy of this order.

10. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs.

18.10.2022

Index : Yes / No
Internet : Yes

Nsr



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cum Inspector General of Prisons,
O/o.the Additional Director General of Police
cum Inspector General of Prisons,
No.6, Whannels Road,
Egmore,
Chennai – 600 008.
- 2.The Deputy Inspector General of Prisons,
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- 3.The Superintendent of Prisons,
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S.SRIMATHY, J

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