



W.P.No.1781 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.1781 of 2023 and
W.M.P.Nos.1894, 1898 & 1899 of 2023

Santhanam

... Petitioner

Versus

- 1.Additional Chief Secretary to Government,
Home Department,
Secretariat, Chennai-9.
- 2.The Director General Prisoners/
Director General of Prisoners and Correctional Services,
Whannels Road,
Egmore, Chennai-8.
- 3.The Superintendent,
Central Prison, Madurai-16.
- 4.The Superintendent,
Borstal School, Pudukottai.
- 5.K.Jayabharathi,
Deputy Inspector General of Prisons,
Tiruchy Range, Tiruchy.
- 6.D.Pazhani,
Deputy Inspector General of Prisons,
Madurai Range, Madurai-16.



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7.Vasantha Kannan,
Additional Superintendent,
Central Prison, Cuddalore.

8.Jawahar,
Assistant Jailor,
Central Prison, Madurai-16.

9.Thirumurugan,
Sub Inspector (Technical),
Central Prison, Madurai-16.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus or any other appropriate writ, order or direction to call for the records relating to the issuance of impugned charge memo by 4th respondent in No.5889/SJ2/2022, dated 29.12.2022 and quash the same, consequently direct the 1st respondent to take appropriate action against the 5-9th Private Respondents in having conducted the illegal enquiry with the Petitioner from 14.9.2022 to 21.9.2022, direct the 4th respondent to permit the Petitioner to retire voluntarily from service notwithstanding the charge memo and direct the 2nd respondent to Review the impugned charge memo issued by 4th Respondent in No.5889/SJ2/2022, dated 29.12.2022 and cancel the same.

For Petitioner	:	Mr.V.Prakash, Senior Counsel for Mr.R.Thomas
For R1 to R4	:	Mr.V.Jeevagiridharan, Additional Government Pleader
For R5 to R9	:	No Appearance

ORDER

This Writ Petition has been filed to call for the records relating to issuance of impugned charge memo by the 4th respondent in No.5889/SJ2/2022, dated 29.12.2022 and quash the same, consequently



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direct the 1st respondent to take appropriate action against the 5th to 9th private respondents in having conducted illegal enquiry with the petitioner from 14.09.2022 to 21.09.2022 and direct the 4th respondent to permit the petitioner to retire voluntarily from service notwithstanding the charge memo and direct the 2nd respondent to review the impugned charge memo issued by the 4th Respondent in No.5889/SJ2/2022, dated 29.12.2022 and cancel the same.

2.The primary charge against the Writ Petitioner is that he was working as Superintendent in the cadre of Assistant Jailor at Sub Jail, Thanjavur. The petitioner has conspired with one Suresh, who was working as Grade-II Warder at Central Prison, Madurai and prepared a complaint making imputation against the superior officers on 30.08.2022. The said complaint has been forwarded to the petitioner's mobile number No.9976965653 through whatsapp by the said Suresh from his mobile No.9384178430. The charge proceeded as if on 14.09.2022, the petitioner appeared for enquiry in Central Jail, Madurai. During enquiry, it came to light that the petitioner erased all whatsapp messages received in mobile No.9976965653 and opened new whatsapp account in mobile



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No.7598185653. Similarly, the petitioner appeared on 15.09.2022 and informed that Suresh has handed over a letter indicating the petitioner is no way connected to that issue. However, on perusal of the Call Detail Records, it came to light that there are frequent conversations between Suresh and the petitioner at the relevant point of time. Therefore, the charge memo, dated 29.12.2022 in No.5889/SJ2/2022 has been issued to the effect that the petitioner and Suresh conspired together to publish imputation concerning the reputation of superior officers. Now, the same has been put into challenge in this Writ petition.

3.A counter has been filed by the 4th respondent reiterating the contention that there was conspiracy between Suresh and petitioner and there were frequent mobile phone conversations between them. Further, the petitioner also erased all the call history and whatsapp messages in his mobile phone and switched over to the new connection. Hence, opposed this Writ Petition.

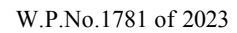
4.Mr.V.Prakash, learned Senior Counsel appearing on behalf of Mr.R.Thomas, learned counsel for the petitioner, submitted that the



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petitioner is about to retire from the service in this month and he has been falsely implicated merely on the ground that he has erased the whatsapp messages in his mobile phone. Merely because he has erased the said messages, the conspiracy cannot be presumed. On perusal of the Call Detail Records relied upon by the learned Additional Government Pleader, indicates that except for three phone calls for few seconds on 30.08.2022, there were no other conversations. Even assuming that there are conversations between Suresh and the petitioner, that cannot be a ground to presume the conspiracy. Further, the entire charge has been framed to protect the superior officers who committed irregularities. It is also brought to the notice of this Court based on the allegation circulated in whatsapp by Suresh, action has been taken against the erring officials and they were proceeded with the domestic enquiry for the grievous charges slapped under 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

5. Whereas the learned Additional Government Pleader appearing for the respondents 1 to 4 submitted that the mobile phone of the petitioner has been sent for forensic examination and report has been received from the Forensic Expert. The Forensic Report clearly shows that the whatsapp



7. Normally, when the charges are framed and there are materials to substantiate the same, the Court will slow in exercise the jurisdiction under Article 226 of Constitution of India to interfere. At the same time, when the charge has been slapped at the fag end of one's service in order to prevent retirement, the Court can very well interfere with the same.



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8.The crux of the charge is that one Suresh, Grade-II Constable in Central Jail, Madurai and the petitioner, Assistant Jailor in Sub Jail, Thanjavur had conspired together to tarnish the image of the superior officers. Suresh has prepared a complaint making allegation against the superior officers and forwarded the same to the petitioner's mobile phone, however, the same has been erased by the petitioner. Further allegation is that there were mobile phone conversations between the petitioner and Suresh. Therefore, there is a conspiracy between them to tarnish the image of the superior officers. Much reliance also placed on the Forensic Report to sustain the charge against the petitioner. This Court would not have been embarked to examine the same, but the manner in which the charge has been framed at the fag end of the service, this Court undertook the exercise to see whether the charges even framed against the petitioner would be established. The allegation of conspiracy has to be necessarily rejected for the simple reason that the petitioner has just received the messages sent by Suresh, Grade-II Warder, of course, the same contains some allegation against the superior officers for irregularities. Just because one has received such messages from other through whatsapp, the conspiracy cannot be presumed. Yet other circumstances relied upon to show that there were



three conversations at the relevant point of time. On perusal of the Call Detail Record makes very clear that on 30.08.2022, after receiving the messages at 09.49 a.m., the petitioner had mobile phone conversations with Suresh at 09.50 a.m for 39 seconds, at 09.52 a.m for 82 seconds and at 09.57 a.m for 8 seconds. It is a normal human conduct of any person who allegedly involving a conspiracy, the duration of the phone call would be more. No one would stop the phone call with very few seconds for such alleged conspiracy. It is also normal human conduct of any one to call other side when he receives allegation against the superior officer. The possibility of questioning the person who sent the messages about the superior officer would also been a reason for such conversation. Merely on some few seconds of phone call, it cannot be presumed that there is a clear cut of conspiracy. Therefore, the alleged theory of conspiracy put against the petitioner for merely erasing the messages, cannot be valid in the eye of law.

9.The messages might have been erased fearing any departmental action by the superior officers. That apart, based on the complaint circulated in the whatsapp, now action has been taken against the erring officials. The communication, dated 08.12.2022 sent by the Director



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General of Police/Director General of Prisons & Correctional Services, Egmore, Chennai to the Principal Accountant General (Audit-II), Anna Salai, Chennai, makes very clear that the superior officers named in the whatsapp message have been departmentally proceeded for the charges under Sections 17(a) and 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rule. It is relevant to note that based on such messages, a preliminary enquiry has been conducted against the officers named in the said message and based on the enquiry report, charges have been framed against them. Therefore, it cannot be said that only to tarnish the image of the superior officers, the messages have been prepared. Though certain messages appears to be overstated, the fact remains that it will also reason to conduct preliminary enquiry and the enquiry report is also filed finding that there are irregularities committed by the superior officers.

10. In such view of the matter, this Court is of the view that the charge memo has been issued against the petitioner is only to harass him at the last stage of his service and in order to save the superior officers from their irregularities committed. Hence, the charge memo suffers from malice and even the materials relied upon by the learned Additional Government



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Pleader will not sufficient to move the charge against the petitioner.

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11.In the light of the above discussions, the impugned charge memo, dated 29.12.2022 in No.5889/SJ2/2022 issued by the 4th respondent is hereby quashed. Accordingly, this Writ Petition stands allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index : Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
Speaking Order/Non-Speaking Order

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To

- 1.The Additional Chief Secretary to Government,
Home Department,
Secretariat, Chennai-9.
- 2.The Director General Prisoners/
Director General of Prisoners and Correctional Services,
Whannels Road,
Egmore, Chennai-8.
- 3.The Superintendent,
Central Prison, Madurai-16.
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Borstal School, Pudukottai.

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N.SATHISH KUMAR, J.
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