



W.P.No.12838 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2023

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.No.12838 of 2013

P.Jaishankar

.... Petitioner

VS

1. The Deputy Inspector General of Police,
Villupuram range,
Village.

2. The Additional Director General of Police,
Law & Order,
Chennai - 4.

3. The Director General of Police,
Chennai - 4.

.... Respondents

Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorari to call for the records of the respondent in connection with the impugned order passed by the 1st respondent in R.O.No.364/2006.C.No.B2/ PR.29/06 dated 21.08.2006, by the 2nd respondent in RC.No.228130/AP.I(2)/2006 dated 07.12.2006 and by the 3rd respondent in RC.No.243160/API(2)/2007 dated 21.07.2010 and quash the same.



W.P.No.12838 of 2013

For Petitioner : Mr.Venkataramani,
Senior Counsel
for Mr.M.Muthappan

For Respondents : Mr.Abishek,
Government Advocate.

ORDER

This writ petition has been filed challenging, (i) the order passed by the 1st respondent, awarding a punishment of postponement of increment for three years without cumulative effect, (ii) the order passed by the 2nd respondent modifying the punishment into that of postponement of increment for one year without cumulative effect and (iii) the order passed by the 3rd respondent confirming the order of the 2nd respondent modifying the original punishment to postponement of increment for one year without cumulative effect.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3. The case of the petitioner is that while he was working as Sub-Inspector in Sankarapuram Police Station, Villupuram, he was issued with a charge memo by the 1st respondent alleging as follows:

"Gross neglect of duty in having failed to control prohibition offences in Sankarapuram P.S. limits during the



W.P.No.12838 of 2013

month of 10/2005.

Gross neglect of duty in having failed to take action on the 10 DTO Messages pending as on 26.10.2005 regarding prohibition offenders as DTO Messages issued from S.B. Office through Dy. Supdt. of Police, Thirukoilur and also directly.

Gross neglect of duty in having failed to take action on the A.B.C. list of Prohibition offenders issued to him through the Dy.Spdt. of Police. Thirukoilur.

Reprehensible conduct in having connived with Bootleggers in Viriyur Village Sankarapuram P.S.Limits, encouraging distillation of illicit arrack and collection of money as illegal gratification from them."

4. After conduct of enquiry, the petitioner was imposed with a punishment of withholding the increment for three years without cumulative effect. The petitioner filed an appeal against the same and a review petition has also been filed and finally, an order was passed modifying the punishment into one that of withholding the increment for one year without cumulative effect. However, the finding given therein is that there is no direct evidence of bribery and the deposition of witness would also indicate that there is slackness on the part of the petitioner.

5. It is the contention of the petitioner that only based on the report of the Addl.Superintendent of Police one PEW Tmt.Lakshmi, he was placed



W.P.No.12838 of 2013

WEB COPY

under suspension. The said Addl.Superintendent of Police, PEW Tmt. Lakshmi Villupuram directed him to collect an amount of Rs.50,000/- due to WPC Driver 1766 Patchaiammal from one Jaiuddin of Shankarapuram. On the petition filed by Patchaiammal, CSR No.85/2005 was issued and the petitioner enquired Jiaudeen in the presence of WPC Patchaiammal, who promised to settle the amount and subsequently, did not pay the amount as promised by him. Due to which, the said ADSP abused the petitioner for not making Jaiudeen settle the amount to Patchaiammal. The petitioner told her that as a government servant, he can only make an enquiry and he cannot do anything other than in accordance with law. But the said ADSP Lakshmi threatened him with dire consequences. Therefore, based on the false preliminary report of the said ADSP, the petitioner was not only placed under suspension but also issued with a charge memo. It is stated that the petitioner, while serving in Shankarapuram Police Station has registered as many as 67 cases and also registered 12 cases in Thuraiyur Village and in all the cases, the petitioner has arrested the accused and sent them to judicial custody. During enquiry, on his side, the petitioner examined 6 witnesses and marked 21 documents. After the enquiry was over, the petitioner submitted a detailed written statement of defence and requested the enquiry



W.P.No.12838 of 2013

WEB COPY

officer to consider the facts and to drop further action. The petitioner has specifically stated that there is motive behind the action of ADSP Lakshmi and also the perfunctory manner in which the prohibition raid was conducted and there is also no evidence to fix him with the alleged delinquency. The petitioner also filed a detailed representation dated 21.08.2006 for the enquiry officer's report. The disciplinary authority agreed with the findings of the enquiry officer and without discussing any points raised by the petitioner, passed an order on 21.08.2008. The appeal filed against the same was also rejected by the 2nd respondent/appellate authority on 07.12.2006 without considering the points raised by the petitioner. The mercy petition filed by the petitioner before the 3rd respondent was also rejected, however, the punishment was modified into one of postponement of increment for a period of 1 year without cumulative effect.

6. This is the second round of litigation. The petitioner has already filed a writ petition in W.P.No.28693/2007 challenging the order passed by the 3rd, 2nd & 1st respondents therein dated 21.08.2006, 07.12.2006 & 19.06.2007 respectively. A counter affidavit has been filed in the said writ petition. However, it was the contention of the petitioner that in the counter



W.P.No.12838 of 2013

also, the respondents have not stated anything with regard to the points raised by him. Considering the same, this Court quashed the impugned order and remanded the matter back to the first respondent by order dated 31.03.2010 in W.P.No.28693 of 2007, to ascertain and decide the issue raised by the petitioner and to pass fresh order within two months. However, the points in issue have not been met and considered by the respondents.

7. It is the contention of the petitioner that he was only a Sub-Inspector of Police (L&O) and there was Prohibition Enforcement Wing(PEW) to deal with prohibition offences and it is the bounden duty of PEW to conduct surprise raid in order to eradicate prohibition offences and on failure to do the duty on their part, the petitioner cannot be found fault with. It is also the contention of the petitioner that the punishment imposed on him is excessive, exorbitant and disproportionate to the nature of delinquency.

8. The issues raised by the petitioner as referred supra have not been gone into by the respondents and it remained undecided. Further, as the impugned order dated 21.08.2006 passed by the 1st respondent is a non-speaking one, the order cannot be sustained. Against which, the appeal filed



W.P.No.12838 of 2013

by the petitioner before the appellate authority/2nd respondent was also rejected confirming the findings of the enquiry officer without discussing the points raised by the petitioner. Further, the petitioner has also filed a review petition dated 23.12.2011, for which, there was no response. As the points raised by the petitioner are not discussed and decided by the authorities, it has to be presumed that the charges levelled against the petitioner are not proved beyond reasonable doubts.

9. For the reasons discussed above, this Court is of the opinion that the impugned orders are liable to be set aside, accordingly, set aside. The Writ Petition is allowed. No costs.

27.02.2023

Index: Yes/No
Speaking/Non-speaking order
vsi

To

1. The Deputy Inspector General of Police,
Villupuram range,
Village.
2. The Additional Director General of Police,
Law & Order,



W.P.No.12838 of 2013

WEB COPY

Chennai - 4.

3. The Director General of Police,
Chennai - 4.

J.NISHA BANU,J.



WEB COPY



W.P.No.12838 of 2013

vsi

W.P.No.12838 of 2013

27.02.2023