



W.P.No.18407 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.18407 of 2011
and M.P.No.1 of 2011

S.Mathiyalagan

... Petitioner

Vs

1.The Principal Secretary to Government
Home Department,
Fort St.Georgge,
Chennai – 600 004.

2.Director General of Police,
Chennai 600 004.

3.The Deputy Inspector General of Police,
I/c.Thanjavur Range, (Trichy Range, Trichy),
Thanjavur.

4.The Superintendent of Police,
District Police Office,
Thanjavur.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records

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relating to the impugned order passed by the first respondent herein in his proceedings G.O.2(D).No.192 Home (Police.VI) Department dated 15.04.2010 and the order passed by the second respondent herein in his proceedings R.C.No.029452/AP.I(1)/2009 dated 17.03.2009, and the order passed by the third respondent herein in his proceedings C.No.B2/APPEAL 46/2008 dated 24.12.2008 and the order passed by the fourth respondent herein in his proceedings P.R.No.96/2007, I/r 3(b) dated 09.08.2008 and quash the same and consequently direct the respondents to grant all the consequential service and monetary benefits including the promotion to the petitioner.

For Petitioner : Mrs.Nirmala Daisy
M/s.G.Bala and Daisy

For Respondents : Mr.R.Neethi Perumal
Government Advocate

ORDER

This Writ Petition had been filed challenging the order of punishment that had been imposed upon the petitioner and for a direction to direct the respondent to grant all consequential service benefits and monetary benefits including promotion to the petitioner.

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2. Heard Mrs.Nirmala Daisy, learned counsel for M/s.G.Bala and Daisy, learned counsel for the petitioner and Mr.R.Neethi Perumal, learned Government Advocate appearing for the respondents.

3. Mrs.Nirmala Daisy, learned counsel for the petitioner would submit that the petitioner had joined in the police service as Grade - II Constable in the year 1988 and was promoted as a Grade – I Constable in the year 1999. He was also further promoted as Head Constable in the year 2005. While he was working at the Vattathikottai Police Station, the Sub-Inspector of Police, one K.Ravichandran had conducted a prohibition raid on 04.09.2007 and had arrested two individuals by name Thangarasu and Anbanandan for they having been found in position of illicit arrack. It is understood that the said two individuals, during the investigation had made an allegation that the petitioner and two others were in receipt of regular *mamool*, that is to

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be paid to the Police Station. Based upon the said statement made by the said individuals, a charge memo was issued to the petitioner and the petitioner had submitted a detailed explanation. Not being convinced with the explanation submitted by the petitioner, an enquiry officer was appointed to conduct the enquiry. During the enquiry, 5 witnesses were examined. The first witness was the Sub-Inspector, who had conducted the raid and arrested the individuals and to whom the alleged statement by the arrested persons were made. The second and third witnesses are the persons who gave statement that the petitioner had received the bribe from them. The fourth witness was the DSP who had conducted the preliminary enquiry on the basis of the statement made by the two individuals and who had ordered transfer of the petitioner and two other policemen. The fifth witness was also a DSP of the Police Department.

4. She would submit that during the enquiry, the third witness was not present and he was dispensed with. The second witness who had made the complaint had retracted the statement and had stated that

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no such incident had taken place. But, however, the witnesses 1, 4 and 5 who proceeded on the basis of the statement by the witnesses 2 and 3, had deposed that such a statement by witness 2 and 3 were made before them. Based on the said enquiry, the enquiry officer had filed a report concluding that the misconduct on the side of the petitioner had been proved upon and on such basis the petitioner was issued with 2nd show cause notice, for which he had also submitted his explanation. Not being satisfied with the explanation submitted and not considering the fact that the complainant had not supported the case of the Department and having also treated him as hostile proceeded to issue an order of punishment of postponement of increment for a period of two years with cumulative effect. An Appeal and a Review filed against the order also met the same fate.

5. She would contend that the enquiry officer had submitted a perverse report by simply relying upon the evidences of 1, 4 and 5 who were all witnesses, who have stated that witness 2 and 3 had deposed

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before them that the petitioner was involved in collecting bribe from them. On the contrary, the persons who is alleged to have made statement before them during the course of the enquiry had wriggled out of such statement and had given a clean chit to the petitioner. She would submit that it is to be noted that the statements obtained by witnesses 1 and 4 were behind the back of the petitioner and therefore, it could not be relied upon by the enquiry officer to come to conclusion that the misconduct had been proved. The witnesses are 1, 4 and 5 are only hearsay witnesses who cannot speak the facts and their statement ought not to have been relied upon by the enquiry officer. She would submit that even though the petitioner had raised these contentions in his reply to the 2nd show cause notice as well as in the Appeal and the Review, the respondents had failed to consider these aspects and fell into the error of granting punishment. Hence, she would pray this Court to interfere with the order impugned in this Writ Petition and consequently, direct the respondents to grant all monetary and attendant benefits including promotion.

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6. Mr.R.Neethi Perumal, learned Government Advocate for the respondents would submit that it is true that the second witness namely Thangarasu had denied the allegation and therefore, he was treated as a hostile witness. Further, the other witness Anbanandan was dispensed with as his whereabouts were not known. He would contend that dispensing with was not objected to by the petitioner and that his evidence was also not sought to be necessary to substantiate the charges as the charges were held to be proved by the enquiry officer considering the records that were available before him. The Disciplinary Authority having concurred with the findings of the enquiry officer had imposed the punishment. According to him, the punishment that had been imposed on the petitioner on the proved misconduct itself was a lenient view taken. He would submit that the 2nd witness has given a statement before the 1st witness who was the Investigating Officer and he had deposed about the giving of such a statement by them, which is also supported by the statement given by them during the preliminary

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enquiry. Therefore, he would submit that there is no infirmity or illegality in the order passed by the respondents and the punishment is also not disproportionate to the proved misconduct.

7. I have considered the submissions made by the learned counsels appearing for their respective parties and perused the materials available on record before this Court.

8. The petitioner had been proceeded with by issuance of a charge memo based upon a statement made by two individuals in a criminal case. However, during the enquiry, one of the witness who had made such a statement had retracted the statement and he had been treated hostile and admittedly, the respondents have dispensed with the other witness as his whereabouts were not known. However, in the counter filed by the 4th respondent it had been categorically averred that there is no necessity to examine him to substantiate the charge as the same had been proved by the evidence of other witness and the

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documents including the statement given by the said person to hold that the charges have been proved.

9. The witnesses who had spoken about the delinquency are the witnesses 1, 4 and 5. The 1st witness was the Investigating Officer under whose command the raid had been conducted and the statement had been given by the accused in that case indicating that the petitioner and two others have taken bribe on behalf of the Police Station concerned. Based upon the said statement, a charge memo has been issued. To prove the said statement it is necessary that the maker of the statement would have to be examined. One of the maker of the statement namely Thiagarajan had been examined as 2nd witness and he had retracted the statement given during the enquiry. The 2nd person namely Anbanandan had not been examined as his whereabouts were not known. The third witness was the then DSP, who based upon these statement had enquired the said Thangarasu and Anbanandan had issued orders of transfer of the petitioner and two others. The fifth witness was also a

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person who had been enquired that such a statement had been made by two individuals. According to him, all three witnesses were not direct witness and are only hearsay witnesses reproducing the statement made by Thangarasu and Anbanandan. On the contrary, one of the maker of the statement namely Thangarasu had retracted the statement and had indicated that the petitioner had not demanded any such money or any such money was paid to him. When that being the case, I am of the view that the charges framed against the petitioner had not being substantially proved even on the preponderance of probability. The basis of which the charge memo had been framed itself had fallen like a pack of cards.

10. Therefore, I am of the view that the enquiry report submitted by the enquiry officer is wholly perverse and is not based on any material records available before him to directly implicate the petitioner on the allegation.

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11. I have already found that the statement of other witnesses and the documents were all on the basis of statement made by two accused and their evidences cannot be taken into account to hold that the petitioner as having committed such a misconduct. Therefore, the punishment imposed by the Disciplinary Authority and confirmed by the Appellate Authority will have to be necessarily be interfered with.

12. In fine, this Writ Petition is allowed. The order impugned in this Writ Petition is set aside and the petitioner is entitled to all monetary and terminal benefits including the promotion as claimed in this Writ Petition. However, there shall be no order as to cost.

28.11.2023

gba

Index : Yes/No

Speaking order : Yes/No

Neutral Citations : Yes/No

To

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Home Department,

Fort St. George,

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K.KUMARESH BABU,J.

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