



W.P.No.25704 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06..11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.25704 of 2010

A.Subramanian

... Petitioner

Vs

1.The Superintendent of Police,
Tirunelveli District.

2.The Deputy General of Police,
Tirunelveli Range, Tirunelveli.

3.The Director General of Police,
Mylapore, Tamil Nadu, Chennai-4.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the respondents 1 to 3 in connection with the impugned orders passed by them in PR No.38/2009 dated 02.08.2009, C.No.C4/AP123/2009 dated 12.10.2009 and RC No.30968/AP2(1)/2010 dated 10.09.2010 respectively and quash the same and pass such further orders.

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

For Respondents : Mr.A.M.Ayyadurai
Government Advocate

ORDER

This Writ petition has been filed challenging the orders of the disciplinary authority and the order of the appellate as well as the Revisional Authority in which the punishment of reduction in time scale of pay for three stages for three years and also to postpone the future increment that had been inflicted upon the petitioner.

2. Heard Mr.K.Venkataramani, learned Senior Counsel for Mr.M.Muthappan, learned counsel for petitioner Mr.A.M.Ayyadurai, learned Government Advocate appearing for respondents.

3. The learned Senior Counsel for the petitioner, at the outset would take me through findings of the enquiry officer and contend that the enquiry officer has given a finding against the petitioner based upon



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the preliminary enquiry in which the witnesses had spoken out the delinquency as against the petitioner. Further, he had also taken me to the findings of the enquiry officer, wherein, the witnesses have categorically denied the statement of charges as against the petitioner and he had also taken me to the specific statement of witness during the course of the enquiry that no amount had been stolen by anyone and had recorded the statement in favour of the petitioner. He would submit that such a finding given by the enquiry officer upon which the 1st respondent had imposed a punishment that to without assigning any reasonings as to why he had not accepted the explanation given by the petitioner to the findings of the enquiry officer is itself according to him arbitrary, amounting to colourable exercise of power. He would further submit that the Appellate Authority had also not given any finding as to how the charge against the appellant had stood proved. He would submit that the Revisional Authority had however, held that even though the complainant had turned hostile, the other witnesses has spoken about the matter and therefore, had refused to entertain the

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Review Petition. He would submit that in this scenario, the entire disciplinary proceedings initiated against the petitioner is devoid of merits and therefore, sought this Court to interfere with the punishment awarded to the petitioner.

4. Countering his arguments, the learned Government Advocate appearing on behalf of the respondent would submit that even though the complainant had retracted her statement in the preliminary enquiry, the other witnesses had deposed against the petitioner substantiating the delinquency and therefore, he would submit that there is no infirmity or illegality committed by the respondents in awarding the punishment which had been affirmed in the Appeal and in the Review.

5. I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record before this Court.

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6. A charge had been framed against the petitioner based upon a complaint of one Sheela that the petitioner herein had taken away a sum of Rs.11,500/- during an enquiry which had been initiated by the petitioner. Even though in her complaint, a sum of Rs.6,500/- alone had been taken handed over back to the complainant and the remaining amount has been appropriated by the petitioner, however, during the oral enquiry, the complainant/Sheela had retracted her statement and had specifically stated that no amount had been missing from her house. The same is not denied by the respondents. Even in the order passed by the Revisional Authority namely the 3rd respondent herein, the same had been expressly stated.

7. A perusal of the report of the enquiry officer would show that there were about five witnesses in support of the disciplinary proceedings. A reading of the extract of the deposition given by the said five witnesses did not even suggest to the mind of this Court that the petitioner had committed any delinquencies as charged against her.

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When that be so, this Court is not able to comprehend as to how she should be punished of a delinquency which had not been proved. Further, either the disciplinary authority of the Appellate Authority or the Revisional Authority had not applied their mind on the report of the enquiry officer. The enquiry officer had proceeded to give a finding on the delinquency being proved by solely relying upon the statement recorded during the preliminary enquiry and not on the statement of witnesses that were recorded by him.

8. In such event, I do not find any reason why the orders impugned in this Writ Petition should not be interfered with. In fine, this Writ Petition is allowed and the orders impugned in this Writ Petition are set aside. However, there shall be no order as to costs.

06.11.2023

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Speaking order : Yes/No

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Neutral Citations : Yes/No

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To

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K.KUMARESH BABU,J.

Gba

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