



W.P.Nos.31867 to 31869 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	06.02.2023
PRONOUNCED ON	:	01.06.2023

CORAM :

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.Nos.31867 to 31869 of 2015

and M.P.Nos.1 & 2 of 2015 (in each case)

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| 1. R.Madhavan | ... Petitioner in W.P.
No.31867 of 2015 |
| 2. Ravi | ... Petitioner in W.P.
No.31868 of 2015 |
| 3. A. Theerthagiri | ... Petitioner in W.P.
No.31869 of 2015 |

Vs.

1. The Director General of Police,
Mylapore, Chennai 600 004
2. The Commissioner of Police,
Vepery, Chennai 600 007
3. The Deputy Inspector General of Police,
Salem Range, Salem.
4. The Superintendent of Police,
Krishnagiri District, Krishnagiri.
5. The Deputy Superintendent of Police,
Hosur Sub-Division, Hosur.



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6. The Inspector of Police,
Asthampatti Police Station,
Salem

... Respondents in all
writ petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent in Rc.Nos.257/155317/AP/2 (2) / 2011, 258/155318/AP/2 (2) / 2011 & 259/155319/AP/2 (2) / 2011 dated 17.01.2012 and quash the same to the extent of punishment of reduction of pay by two stages for two years without cumulative effect and to direct the respondents 1 to 4 to grant the petitioners the consequential benefits.

In all writ petitions:

For Petitioners : Mr.A.Mohan

For Respondents : Mr.Abishek Murthy,
Government Advocate

COMMON ORDER

These Writ Petitions have been filed challenging the impugned orders of the first respondent dated 17.01.2012 and consequently seeking for a direction to the respondents to disburse all the consequential benefits to the petitioners. Since the issue involved in all these writ petitions are one and the same, they are disposed of by this common order.



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2. According to the learned counsel for the petitioners, the petitioner in W.P.No.31867 of 2015 was serving as Head Constable in Palacode Police Station in Dharmapuri District and petitioners in W.P.No.31868 & 31869 of 2015 were serving as Head Constable and Constable in Thenkannikkottai and Uthangarai Police Stations in Krishnagiri District.

3. On 20.12.2007, the petitioners herein were deputed on Escort duty, to escort the prisoner/ murder case accused Iqbal Mansoori @ Iqbal Khan from Salem Central Prison to the Additional Sessions Court, Krishnagiri and after court hearing, from Krishnagiri to the Salem Central Prison. It is seen that the prisoner had escaped from the lawful custody of the petitioners under the guise of attending his nature's call.

4. As a result of the above incident, the petitioners were served with charge memos in P.R.Nos.18,19 & 20/P2/2008, dated 10.07.2008 under Rule 3(b) of Tamil nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955 and the same were renumbered as P.R.Nos.51, 52 & 53/2008, on 21.07.2008 by the fourth respondent.

5. Thereafter, the fifth respondent, who was the Enquiry Officer, had drawn the proved Minute dated 21.10.2009, proving all the charges from 1 to



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6 counts as against the petitioners. On the basis of the proved Minute, the second respondent, who is the Disciplinary Authority, agreed with the findings of the fifth respondent/Enquiry Officer, passed orders of dismissal from service dated 05.05.2011 in P.R.Nos.258, 259 & 260 of 2010 to the petitioners.

6. Aggrieved over the orders of dismissal, the petitioners preferred Appeals before the first respondent, who is the Appellate Authority and the first respondent passed an order by proceedings in Rc.Nos.258, 259 & 257/155318, 15319 & 15317/AP/2(2)/2011 dated 17.01.2012, modifying the punishment to that of reduction in pay by two stages for two years, without cumulative effect and reinstated the petitioners into service forthwith.

7. On the same set of facts, criminal case was registered by the sixth respondent in Crime No.763/2007 for the alleged offences under Sections 221, 224 and 109 IPC. After completion of investigation, charge sheet was filed in C.C.No.97 of 2009 and the same was taken into cognizance by the learned Judicial Magistrate, No.3, Salem. As the prisoner had admitted his



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guilt on 15.09.2009, the case was split separately and was proceeded separately in C.C.No.150 of 2009 by the learned Judicial Magistrate No.3, Salem. Upon completion of trial, the trial Court had acquitted the petitioners vide judgment dated 06.03.2015.

8. The learned counsel for the petitioners brought to the notice of this Court that the trial Court, in its findings, has held that the prisoner did not escape due to the negligence on the part of the escort police personnel but due to the failure to provide '*Strong Escort*' for the prisoner. In view of the findings rendered by the trial Court, the petitioners were completely exonerated from all sort of allegations, blames and charges in connection with the escape of the prisoner.

9. The trial Court, also rendered its finding that there was no evidence to substantiate the fact that the petitioners were responsible for the escape of the prisoner, and had admitted that the petitioners rendered their cooperation in assisting the Special Party to nab the escaped prisoner and hence, taking into consideration of the above subsequent developments, has modified the



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punishment to that of reduction in pay by two stages for two years, without cumulative effect and reinstated the petitioners into service forthwith.

10. According to the learned counsel for the petitioners, in view of the judgment passed by the learned Judicial Magistrate No.3, Salem in C.C. No.97 of 2009, it is just and necessary to modify/set aside the punishment given by the 1st Respondent on an appeal preferred by the petitioners, which was not done by the Appellate Authority. Hence, challenging the orders passed by the Appellate Authority, the petitioners have preferred the present writ petitions.

11. On the other hand, Mr.Abishek Murthy, learned Government Advocate appearing for the official respondents, would submit that on 18.12.2007, Mr.B.Narasimman, Inspector of Police, working in Armed Reserve, Krishnagiri had deputed one Mr.Abdul Razzak, Sub Inspector of Police and 25 police personnel from Armed Reserve, Krishnagiri, to escort prisoners from Salem Central Prison to various Courts in Krishnagiri District through allocated Krishnagiri registered vehicles.



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12. While so, the Sub Inspector of Police has handed over the passport and details of the above prisoner to escort from Salem Central Prison to the First Additional Sessions Court, Krishnagiri District and also instructed the petitioners that a Police bus No.TN 24 G 0076 is allocated for the escort of the prisoner.

13. It is the contention of the learned Government Advocate that the petitioners have violated the escort rules by boarding Dharmapuri District Police Vehicle i.e. Eicher Van TN 29 G 0359, which is bound for Dharmapuri district, instead of boarding the assigned police bus No.TN 24 G 0076 for Krishnagiri. On the day of occurrence, at about 11:30 a.m. the petitioners got down from the vehicle along with the prisoner for having lunch at a hotel, which act is in violation of the escort rules.

14. Further the learned Government Advocate drew the attention of this Court regarding the incident that occurred a week before 20.12.2007, where a woman constable, by name Kalaiselvi was given two bus warrants



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Nos.47188 and 47189. She went to the Courts by Police vehicle and used only one bus warrant bearing Sl.No. 47189 for the return journey and returned the unused bus warrant No.47188 to Armed reserve, and the said warrant was obtained by the petitioners on 18.12.2007, which the petitioners did not return the unused bus warrant to Armed reserve. Therefore, retaining the unused bus warrant, the petitioners have committed offence of manipulating the police records.

15. The learned Government Advocate submitted that on the day of occurrence, one among the petitioner, namely Madhavan, had halted at Dharmapuri, due to personal reasons, and thereafter, only two petitioners, viz.Ravi and Theerthagiri accompanied the prisoner and boarded the bus at Dharmapuri and using the one unused bus warrant, they had taken four tickets, including Madhavan, and escorted the prisoner and produced him before the First Additional Sessions Court, Krishnagiri and got remand extension upto 21.01.2008. Later, they came back to Dharmapuri through TNSTC Bus No.TN 29 N 1732 and again took four tickets by using another bus warrant.



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16. At this juncture, the petitioner Madhavan, who had earlier halted at Dharmapuri, joined the other petitioners again at Dharmapuri bus stand, whereas the petitioners Ravi and Theerthagiri halted at Dharmapuri bus stand and from thereon, the prisoner was accompanied only with the petitioner Madhavan towards Salem. The prisoner, taking cue of the fact that he was escorted only by a single police personnel, pushed the police person and escaped from the spot. After the escape, the petitioner Madhavan contacted the other petitioners and instructed them to assemble in Salem Bus stand and preferred a false complaint. Based on the false complaint, a case was registered in Hasthampatty PS Cr.No.763/07 u/s 224 IPC on 21.12.2007 at 00.30 a.m. It is relevant to note that the above acts of the petitioners are against the violation of Escort Rules and the instructions issued in the Passport.

17. He further submitted that the escort in-charge officer, Thiru.Abdul Razzak, Sub-Inspector, made a complaint against the three Police personnel/ petitioners herein on 21.12.2007 at 13.00 hrs, based on which, the section of law of the above case was altered to 221, 224 and 109 IPC and the petitioners



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were arrested and sent for remand. The petitioners were placed under suspension with effect from 21.12.2007 FN. Thereafter, the Deputy Superintendent of Police, DCRB, Krishnagiri District was directed to conduct a detailed preliminary enquiry against the allegations leveled against the issue. Accordingly, the Deputy Superintendent of Police, Krishnagiri District has submitted his enquiry report. Based on the findings of the preliminary enquiry report, the petitioners were served with charge memos under rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955 in P.R.Nos.51, 52 & 53/2008, on 21.07.2008.

18. The learned Government Advocate contended that the prisoner, who was involved, is a case in which, one advocate Madanagopal was shot dead in a daring incident in Chennai. The above facts clearly establish irregularities such as taking the prisoner to a hotel and transporting him by a Government bus etc. These irregularities and omissions contributed to the escape of the accused from custody. Therefore, the charges are correctly proved and warrants punishment. However, taking into account the fact that the accused officer along with others, who were involved in the escort had



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gone to Madhya Pradesh in search of the accused and taken all efforts to trace him out, the 1st respondent passed orders in Rc.No.258, 259 & 257/155318, 15319 & 15317/AP/2(2)/2011 dated 17.01.2012 modifying the order of punishment of dismissal into that of reduction in pay by two stages for two years without cumulative effect and he is reinstated in to service.

19. According to the learned Government Advocate, it is relevant to state that the 1st respondent had reduced the punishment on showing some leniency because the petitioners have gone along with other police official to Madhya Pradesh in search of the accused and taken all efforts to trace him out and not for disproving the charges framed against them.

20. Moreover, the learned Judicial Magistrate Court, Salem vide its Judgment dated 06.03.2015 had held that accused are acquitted on the ground for benefit of doubt, and has observed that '*Strong Escort*' had to be provided to the accused involved in the murder case. Further, it is also relevant to state that the Court below, did not deal with the violations of Escort Rules and it is a well settled principle of law that yardstick and



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standard of proof in criminal case is different from the one in disciplinary proceedings while the standard of proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in a departmental proceeding is preponderance of probability.

21. Even though the criminal case which was registered against the petitioners ended in acquittal, it can be seen that in the departmental proceedings, the charges have been correctly held as proved beyond reasonable doubt based on the records/evidence adduced during the inquiry and imposed with punishment of dismissal from service by the second respondent on 05.05.2011 and on appeal, the punishment was also modified into that of reduction in pay by two stages for two years without cumulative effect by the 1st respondent on 17.01.2012. Therefore, considering the above facts and circumstances of the case, the request of the petitioners has to be rejected, thereby dismissing the writ petitions.

22. Heard the learned counsel for the petitioners as well for the respondents and perused the materials placed before this Court.



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23. Perusal of records would reveal the fact that the petitioners were acquitted from the Criminal Court in C.C.No.150 of 2009, only on the ground of benefit of doubt and therefore, the same cannot be termed as an honourable acquittal. No doubt, the petitioners herein have violated the escort rules, which favoured the prisoner to escape from the clutches of the petitioners, thereby disturbing law and order. Due to the carelessness in duty in allowing the prisoner to escape from custody and their failure to adhere to the mandatory provisions of the Tamil Nadu Police Standing Orders in the matter of escorting high risk prisoners, charges were framed against them and after enquiry, as per the procedure laid down, the petitioners were imposed with punishment of dismissal from service. Moreover, the disciplinary action against the petitioners, under departmental proceedings cannot be equated with the judgment of the criminal Court.

24. Considering the grave nature of misconduct committed by the petitioners, the Disciplinary Authority had imposed the punishment of dismissal and the Appellate Authority, by taking a lenient view with regard to



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J.NISHA BANU, J.,

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Common Order made in
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Dated:
01.06.2023