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W.A.No.1180 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Appeal No.1180 of 2022
and
CMP.No.7448 of 2022

1. The Director General of Police,
Mylapore, Chennai - 600 004.
2. The Commissioner of Police,
Vepery, Chennai - 600 007.
3. The Additional Commissioner of Police (Traffic)
Kilpauk, Chennai - 600 010.
Now at Office of the Commissioner of Police,
Vepery, Chennai - 600 007.
4. The Superintendent of Police,
Tamil Nadu Commando Force,
Chennai 600 028.

.. Appellants

Versus

M.Arul, Gr.I PC 15082,
C2, Elephant Gate (Traffic),
Waltax Road, Chennai 600 079.
Now at
R.4, Pondy Bazaar Traffic Investigation,
Chennai - 600 017.
Respondent

..



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Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 12.07.2021 made in WP.No.43946 of 2016.

For Appellants : Mr.P.Kumaresan,
Additional Advocate General
assisted by Mr.Selvendran,
Special Government Pleader

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

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

The appellants / State are aggrieved by the order dated 12.07.2021 passed by the learned Judge in WP No. 43946 of 2016.

2. The necessary facts leading to the filing of this writ appeal are as follows:

2.1. The respondent herein was initially appointed as Grade-II Police Constable in the Police Department on 25.10.1993. While he was working as Police Constable, Tamil Nadu Commando Force, Chennai, he was placed under suspension on 11.08.2005 and was issued with a charge memorandum dated 22.08.2005 containing four charges alleging that he along with his colleagues indulged in leaking the General Knowledge and Psychology Question Papers with answers pertaining to the Written Examination for the selection of Grade II



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Police Constables (Men and Women) for the year 2003-2004 conducted by the Tamil Nadu Uniformed Services Recruitment Board, Chennai on 27.03.2005.

2.2. The respondent, on receipt of the charge memo, submitted his explanation denying the charges. Being dissatisfied with the explanation offered by the respondent, enquiry was conducted from 30.11.2005 to 07.02.2006 in which 12 out of the 8 prosecution witnesses were examined. At this stage, the respondent filed WP No.8917 of 2007 stating that during the pendency of the departmental enquiry, the Central Bureau of Investigation (CBI), with whom the investigation was entrusted, has submitted a report, in which, his name was not included. On the basis of the report of the CBI relied upon by the respondent, the learned Judge granted an order of interim stay.

2.3. By virtue of the interim stay granted by this Court, the order of suspension passed against the respondent was revoked by an order dated 07.10.2009 of the Inspector General of Police, Operations, Chennai - 600 028 and the respondent rejoined duty on 09.10.2009. In view of the revocation of the order of suspension, the respondent withdrew the said writ petition on 23.04.2010 and the enquiry against the respondent continued, in which the remaining 4 witnesses were examined. Ultimately, the Enquiry Officer viz., Commissioner of Police, Tirunelveli submitted an enquiry report holding that all the charges levelled against the respondent are proved. On receipt of the report



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of the enquiry officer, the Disciplinary Authority viz., Commissioner of Police, Chennai, after complying with all the formalities, passed an order dated 21.09.2011 imposing the punishment of postponement of increment for two years without cumulative effect.

2.4. The respondent did not prefer any appeal against the order of the disciplinary authority, however, he filed a Mercy Petition to the Director General of Police, Chennai on 27.12.2012. The Mercy Petition was rejected on 22.10.2016 as devoid of merits. Aggrieved by the same, the respondent has filed WP No. 43949 of 2016 praying to quash the Charge memo dated 22.08.2005 and the Order of punishment dated 21.09.2011 of the Disciplinary authority as well as the order of rejection of mercy petition dated 22.10.2016 of the Director General of Police and to direct the appellants to extend all the service benefits including promotion, regularisation of suspension period.

2.5. The learned Judge, by the order dated 12.07.2021, allowed the aforesaid writ petition mainly on the ground that enquiry was conducted against the respondent and others. One of the co-delinquents Maruthupandi, against whom similar charges were levelled, but whose name was not included in the charge sheet filed by the investigation agency, has approached this Court by filing WP (MD) No. 7118 of 2017 stating that different punishment was imposed on the delinquents against whom common enquiry was conducted and



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hence, the same is legally impermissible. The learned Judge, accepting the said submission of the co-delinquent Maruthupandi, allowed the writ petition bearing no.7118 of 2017 on 03.12.2019. Following the same, the learned Judge allowed the writ petition filed by the respondent herein, by the order impugned herein. Therefore, this appeal by the State.

3. Mr. Kumaresan, learned Additional Advocate General appearing for the appellants would contend that the respondent was given adequate opportunity to defend the enquiry proceedings and was permitted to cross-examine the witnesses examined on the side of the appellants. It is not the case of the respondent that the enquiry conducted was a farce. In such circumstances, the learned Judge ought not to have interfered with the order of punishment imposed by the disciplinary authority. Furthermore, the respondent did not challenge the order of punishment passed by the disciplinary authority at the first instance, but he has preferred only a mercy petition before the Director General of Police to review the same. While so, the order passed by the learned Judge, in setting aside the orders passed against the respondent, is perverse and unsustainable in law. The learned Additional Advocate General further contended that considering the past service rendered by the respondent, the disciplinary authority, notwithstanding the gravity of the charges, had taken a



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very lenient view and imposed a minor punishment. It is also submitted that the respondent was not a single person involved in the alleged offences and there had been 41 similar police personnel and hence, quashing the order of punishment imposed on the respondent will be a bad precedent and give wrong signal to the act of disincentive to other police personnel. That part, in matters relating to departmental proceedings, the judicial review under Article 226 of The Constitution of India is very limited. Without considering all those aspects in proper perspective, the learned Judge erred in allowing the writ petition filed by the respondent, thereby setting aside the orders of disciplinary authority as well as the appellate authority. Stating so, the learned counsel sought to allow this appeal by quashing the order impugned herein.

4. Mr. Venkataramani, learned Senior Counsel appearing for the respondent would submit that after conducting common enquiry, the disciplinary authority had imposed different punishment on the delinquents, who were charged with the similar charges. While the respondent was imposed with the punishment of stoppage of increment for two years, other delinquents were awarded with the punishment of "Reprimand" or "Censure". Such a course adopted by the disciplinary authority is legally impermissible. Therefore, taking note of the fact that the respondent was grossly discriminated in the matter of



imposition of punishment, the learned Judge has rightly allowed the writ petition filed by the respondent by setting aside the orders of punishment and rejection of mercy petition by the order impugned herein, which does not require any interference at the hands of this court.

5. We have heard the learned Additional Advocate General appearing for the appellants as well as the learned Senior Counsel for the respondent and also perused the materials placed before us.

6. It is an admitted fact that though the respondent was charge sheeted by the department, his name was not included in the final report filed by the CBI. The enquiry conducted by the department against him, ended in the order of punishment of withholding increment for two years without cumulative effect. Challenging the order of punishment passed by the disciplinary authority, he did not file appeal, but he preferred mercy petition before the appellate authority, who rejected the same. Thereafter, the respondent filed WP.No.43946 of 2016 to set aside all those orders passed against him. The learned Judge, following the earlier order dated 03.12.2019 passed in WP(MD)No.7118 of 2017 in respect of the co-delinquent, allowed the said writ petition, in favour of the respondent herein, by the order impugned in this writ appeal. For better



appreciation, the observation of the learned Judge is reproduced below:

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“7.The petitioner herein is also similarly placed as that of M.Maruthupandi, wherein his name was initially shown as accused in Crime No.2600 of 2005 and his name was later dropped at the time of framing of charges. The action initiated by the respondents in imposing the punishment of Black Mark for the co-delinquent Dharmaraj and dropping the other co-delinquent T.Radhakrishnan from the disciplinary action, would amount to discrimination, insofar as the petitioner herein is concerned. Therefore, the petitioner herein, who was imposed with a punishment of withholding of increment for two years without cumulative effect, deserves similar orders as that of Marudhupandi's case (supra).”

7. Now, the only point requires to be considered by this court in this writ appeal is, whether the learned Judge is right in allowing the writ petition by holding that the order of punishment passed by the disciplinary authority would amount to discrimination, as the respondent was imposed with the punishment of stoppage of increment for two years without cumulative effect, whereas his co-delinquents were imposed with the punishment of black mark and dropping of the disciplinary action.

8. In this context, it is relevant to refer to the following decisions of the Hon'ble Supreme Court as well as this Court. In **M. Raghavelu vs. Government of A.P. and another [(1997) 10 Supreme Court Cases 779]**, it was contended on behalf of the appellant that the persons, who are directly responsible for the delinquency have been let off, while the appellant, who has been responsible for the charge indirectly, has been imposed with the punishment. In Para Nos.4 and 5, the Honourable Supreme Court held thus:



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"4. Mr. A.V. Rangam, learned counsel for the appellant, submits that the appellant was not factually in charge of the building construction, as admitted by the enquiry officer, and as a matter of fact, the persons, namely the Deputy Executive Engineer and the Supervisor, who were directly in charge of the building construction were similarly charged for identical misconduct and on the same set of evidence, though in different proceedings, they were exonerated of the charge. The Government who is the punishing authority, accepting the recommendation, exonerated them of the charge.

5. The argument of the learned counsel for the appellant is that if the persons directly in charge of the construction work were found not guilty of the charge framed, the appellant, who was indirectly in charge of the work, cannot be punished for similar charge levelled against him. We find force in the argument of the learned counsel for the appellant and we do not think that the argument of the learned counsel for the respondent that the enquiry officer in this particular case has gone into the merits and has given different finding should be accepted. As pointed out earlier, on the basis of the same set of evidence the officers who were directly in charge of the construction work were exonerated of the charge and we see no reason to pick out the appellant alone for finding him guilty of the charge."

9. In **Director General of Police and others v. G. Dasayan [AIR**

1998 Supreme Court 2265], the Hon'ble Supreme Court had an occasion to consider the question of discrimination, if the disciplinary authority imposes different punishment to the delinquents in the departmental enquiry. This was recorded by the Hon'ble Supreme Court in Para Nos. 8 to 10 and they are as follows:

"8.The third ground that the co-delinquents except the Head Constable were let off though the charges were identical, it is stated by the learned counsel for the appellants that the Disciplinary Authority did not agree with the findings of the Enquiry Officer so far as those two delinquents were concerned. However, the Head Constable, who was also charged along with the respondent, was compulsorily retired by the disciplinary authority.

9. Mr. Muralidhar, learned counsel appearing for the respondent, while agreeing with the contentions of the learned counsel for the appellants on the first two grounds, submitted that the order of dismissal at any rate cannot be sustained and if at all an order of compulsory retirement as was made in the case of Head Constable, who



was tried along with the respondent, has to be imposed.

10. We have perused the order of the Tribunal and the relevant documents. We find merit in the arguments of the learned counsel for the appellants. At the same time, we are of the view that as pointed out by the learned counsel for the respondent that a punishment of compulsory retirement in the case of the respondent as well would meet the ends of justice on the facts and circumstances of this case."

10. Further, this Court, in ***R. Karuppannan v. Tamil Nadu Water Supply and Drainage Board*** [1992 MLJ Volume I Page No.303] had dealt with a similar case. In that case, this Court, by placing reliance on the decision of the Honourable Supreme Court in *E.S. Reddy vs. Chief Secretary, Government of Andhra Pradesh*, AIR 1987 SC 1550, held that when two persons are responsible, one alone cannot be made a scapegoat. This Court, after referring to the decision of the Hon'ble Supreme Court, mentioned supra, has held in para No.10 as follows:

".....From the above observations, it is clear that when two persons are responsible, one alone cannot be made a scape-goat. In this case, a reading of the punishing authority clearly shows that the Superintending Engineer has been let off pitying him, at the same time inflicting a punishment on the petitioner. In my view, this itself is sufficient to show that the order passed in this case offends Article 14 of the Constitution, and has got to be set aside on that ground alone."

11. On going through the aforesaid decisions, it is clear that the disciplinary authority cannot impose different punishment on the delinquents for similar charges. This is more so that the evidence relied on by the disciplinary authority to let off one of the delinquents and to use the same evidence to inflict



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punishment on the other delinquent. In the present case, one of the co-delinquents, against whom similar set of charges were levelled, was exonerated from the entire departmental proceedings, but the other co-delinquents, including the respondent herein, were imposed with varied punishments and hence, the same would certainly amount to discrimination. Accordingly, the learned Judge has rightly concluded that the punishment awarded to the respondent herein cannot be sustained. We do not find any infirmity in such conclusion arrived at by the learned Judge, warranting our interference.

12. In the result, the writ appeal fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

J.]

[R.M.D., J.]

[J.S.N.P.,

03.01.2023

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R. MAHADEVAN, J.
and
J.SATHYA NARAYANA PRASAD, J.

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