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W.P.No.24282 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2023

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

WP No.24282 of 2018

Mr.M.Ramachandran

... Petitioner

-Vs-

1. State of Tamilnadu
rep. by its
Secretary Home (Police-IVA) Department
The Secretariat, Chennai -9.

2. The Director General of Police
Dr.Radhakrishnan Road, Mylapore,
Chennai – 600 004.

3. The Deputy Inspector General of Police
Tirunelveli Range, Tirunelveli.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records and quashing the order of the first respondent vide G.O.(D).No. 460 Home (Pol.IVA) Department dated 02.05.2018 confirming the order of the second respondent imposing the punishment of postponement of increment for 2



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years without cumulative effect and consequently direct the second respondent to grant conversion to the petitioner to Law and Order category as has been granted to his batchmates of the appointment year 2008 within time frame with proper seniority.

For Petitioner : Mr. K.Ravi Anantha Padmanaban
Senior Advocate

For Respondents : Mr. T.K.Saravanan
Government Advocate

ORDER

The Writ Petition has been filed in the nature of Certiorarified Mandamus seeking records relating to an order of the first respondent / Secretary Home (Police-IVA) Department in G.O.(D).No. 460 Home (Pol.IVA) Department dated 02.05.2018 which confirmed an earlier order of the second respondent by which the second respondent had imposed a punishment of postponement of increment for two years without cumulative effect and to direct the said second respondent to grant conversion to the petitioner to Law and Order category as had been granted to his batchmates of the appointment year 2008.



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2. In the affidavit filed in support of the Writ Petition, it had been stated that the petitioner was employed as Sub Inspector of Police, Armed formerly at Nagarcoil in Kanyakumari District, at the time of filing of the Writ Petition at Krishnagiri District. He had been issued with a charge memo that during the period of suspension, he should have stayed at the Head Quarters at Nagercoil in Kanyakumari District, to which place, he had been earlier transferred as Sub Inspector of Police. He was however at Burgur within Krishnagiri District. It was stated that the order of suspension was served on him at that particular place. It was also stated that the petitioner should have intimated to the Armed Reserve Police at Nagercoil about his stay at Krishnagiri.

3. The petitioner stated that he had explained the reasons why he was at Krishnagiri by stating that even prior to the service of the order of suspension on 18.08.2012, he had taken casual leave to go over to Krishnagiri District between 05.08.2012 and 07.08.2012. Thereafter, he was on medical leave for a period of 15 days. He had despatched the medical



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certificate which was dated 08.08.2012, on 08.08.2012 itself. It is therefore contended that without examining that particular medical certificate which he had obtained and had forwarded to the respondent at Nagercoil, the order impugned had been passed against him. It has therefore been stated that had this particular certificate been examined by the respondents, necessity for issuing the charge of unauthorised stayed at Krishnagiri would not have arisen. It was therefore contended that the Writ Petition should be allowed and the punishment imposed should be set aside by this Court.

4. A counter affidavit had been filed by the respondents wherein it had been stated that the charge memo had been issued to the petitioner under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 in PR.No. 20 of 2014 alleging that the petitioner herein was in Krishnagiri when he was transferred to Nagarcoil and was serving the period of suspension. It was stated that earlier the petitioner, who had been appointed on Grade- II Police Constable on 25.05.1998 and Sub Inspector on 18.01.2008 had been relieved on transfer from Krishnagiri



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District on 03.08.2012 and was placed under suspension on 18.08.2012 in accordance with the orders of the Deputy Inspector General of Police, Tirunelveli range. During the period of suspension, he was directed to reside in the Head Quarters at Nagercoil in accordance with Fundamental Rule 53. It was stated that he should never have left the place of Head Quarters without prior intimation or permission. It was further stated that he had however stayed at Krishnagiri and the order of suspension was also served at Burgur in Krishnagiri District.

5. This resulted in a charge memo being issued to him. Thereafter, the Deputy Superintendent of Police, Nagercoil Sub Division was appointed as Enquiry Officer. He held that the charges had been proved. The Deputy Inspector General of Police, Tirunelveli Range, after considering the further representation of the petitioner passed final orders on 09.04.2015 awarding the punishment of postponement of increment for a period of two years to operate to postpone his future increments. The appeal of the petitioner on 06.05.2015 was rejected by the Additional Director General of Police, Law



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and by order, dated 08.09.2015. It is thus claimed that the Writ Petition should be dismissed.

6. It was also stated that the petitioner had been originally placed under suspension consequent to his involvement in Crime No. 2 of 2012 registered by the Vigilance and Anti Corruption , Krishnagiri for alleged offences under Sections 7, 13(1)(a), 13(1)(b) & 13(1)(d) read with Section 13(2) of PC Act, 1988. It had been stated that since he had been suspended, he should have stayed at Nagercoil in Kanyakumari District and violation of that particular direction necessitated issuance of charge memo. It was contended that the Writ Petition should be dismissed.

7. Heard the learned Senior counsel appearing for the petitioner and also the learned Government Advocate appearing for the respondents.

8. The facts which are not denied or disputed are that a case was registered in Cr.No. 2 of 2012 under Sections 7, 13(1)(a), 13(1)(b) &



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13(1)(d) read with Section 13(2) of PC Act, 1988 against the petitioner by the Vigilance and Anti Corruption Department, Krishnagiri. Consequent to registration of such FIR, the petitioner was placed under suspension on 18.08.2012. Earlier to that the petitioner had been transferred on administrative grounds from Krishnagiri District since the FIR was registered at Krishnagiri. He was posted to Nagercoil at Kanyakumari District. The petitioner however, took casual leave, according to him, with permission from 05.08.2012 to 07.08.2012. He then, took according to him, medical leave for a period of 15 days from 08.08.2012. The order of suspension was dated 16.08.2012 and was with effect from 18.08.2012. It was sought to be served on him but unfortunately, the petitioner was at Burgur on that particular date.

9. The only issue is the claim of the petitioner that he had availed medical leave on and from 08.08.2012 for a period of 15 days and that necessary certificate in that regard had been discharged to Nagercoil in Krishnagiri District and without perusing the same, the order of suspension



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had been passed on 16.08.2012. This is an issue on fact and therefore, the respondents were sought to be examine whether such medical leave certificate had actually been forwarded by the petitioner herein.

10. It is now disclosed that the medical certificate of leave/ extension of leave had been issued to the petitioner herein, stating that he was suffering from lower back ache and recommending absence of duty for 15 days with effect from 08.08.2012. This was issued by Dr. M.Devendran, Civil Assistant Surgeon of Government Head Quarters Hospital, Krishnagiri. This particular certificate had been received by the Deputy Superintendent of Police at Nagercoil Sub Division on 15.08.2012. Therefore, it is seen that if this particular certificate had been examined in its proper light, the order of suspension might not have been issued on 16.08.2012. The Punishment for unauthorised absence from the place of Head Quarters where the petitioner had been directed to stay during the period of suspension, namely Nagercoil in Krishnagiri District. However, a plausible explanation had been given by the petitioner herein. This



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particular explanation or the medical certificate had not at all been considered either while framing the charge memo or during the course of the enquiry. There is no reference to the same.

11. It is clear that the respondents had been swayed by their presumption that the petitioner had never applied for leave at all. But however, that the medical certificate was forwarded to the respondent was also confirmed by information received by the petitioner under the Right to Information Act. In view of these facts since this particular certificate had not been taken into consideration, the entire proceedings of the respondents have to held as misguided and have to be interfered with by this Court.

12. The basis of the charge memo was absence from Nagercoil. A plausible explanation had been given that the petitioner was suffering from lower back ache which was certified by the Civil Assistant Surgeon at Government Head Quarters Hospital at Krishnagiri. Since this particular document had not been considered, though available with the respondents, I



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hold that the entire proceedings stands vitiated. Once the proceedings stands vitiated, the order of punishment has also to be interfered with by this Court.

13. It is also seen that by an D.O.No. 217/2015, C.No.L1/40785/2012 dated 02.03.2015, the Superintendent of Police at Krishnagiri District had treated the entire suspension period from 18.08.2012 till 12.01.2015 as duty for all purposes under Fundamental Rules 54(1)(a). Since it had been so ordered, it only follows that the punishment has to be set aside. There is no left to be re-examined. The charge memo had been issued alleging absence of the petitioner at Nagercoil, but since a plausible explanation had been given which goes to the root of the charge memo, the same will have to be set aside. All Consequential and subsequent proceedings are therefore null and void. The impugned orders are set aside.



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14. Accordingly, the Writ Petition stands allowed. The reliefs sought for by the petitioner are granted. No costs.

vsg

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Index: Yes/No

Neutral Citation: Yes/No

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C.V.KARTHIKEYAN,J.



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