



WP No. 14000 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03.04.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

Writ Petition No. 14000 of 2017

and

WMP No. 15212 of 2017

R. Kannan

.. Petitioner

Versus

1. The State of Tamil Nadu,
Represented by its Secretary to Government
Home (Police-IV) Department
Secretariat, Chennai - 600 009.
2. The Director General of Police
Chennai - 600 004.
3. The Commissioner of Police
Chennai Suburban Police
Chennai.
Now Commissioner of Police
Vepery, Chennai-600 007

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 1st respondent in G.O.(D).No.500, Home (Pol.IV) Department, dated 21.04.2017 confirming the order passed by the 2nd respondent in his proceedings Rc.No. 89204/AP-3(2) 2011, dated 31.08.2014 and the order passed the 3rd respondent in his proceedings in P.R.No. 110/H.1/2010, dated 10.03.2011 and quash the same and direct the respondents to confer all the consequential benefits.



WP No. 14000 of 2017

For Petitioner

:

Mr. L. Chandrakumar
for M/s. C.S. Associates

For Respondents

:

Mr. T. Chezhiyan
Additional Government Pleader

ORDER

This Writ Petition is filed challenging the order passed by the first respondent in G.O.(D).No.500, Home (Police-IV) Department, dated 21.04.2017, confirming the order passed by the 2nd respondent in his proceedings Rc.No. 89204/AP-3(2) 2011, dated 31.08.2014 and the order passed the 3rd respondent in his proceedings in P.R.No. 110/H.1/2010, dated 10.03.2011, quash the same and direct the respondents to confer all the consequential benefits.

2. The writ petitioner was appointed as Sub Inspector of Police and posted at Armed Reserve on 02.06.1997. Thereafter, he was promoted as Inspector of Police and he was working as Inspector of Police at Ambattur Police Station. At this stage, a charge memo under Rule 3 (b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 dated 06.07.2020 was issued to him with three counts. The charge memo came to be issued to him on the ground the on 29.03.2010, the



WP No. 14000 of 2017

petitioner received information from Puthur Out Police Station that a person by name Gopalakrishnan complained before the Police that his bike (Two Wheeler) was robbed by two persons. The petitioner herein, on such intimation, rushed to Puthur Outstation and from the information collected there and he ventured to search for the alleged stolen vehicle. However, the petitioner during his search, found a bike as well as an auto. In that process, the petitioner did not properly conduct investigation as regards the utilisation of the autorickshaw bearing Registration No. TN 02 9122 for committing the robbery. In fact, the petitioner brought the autorickshaw as well as the two wheeler to the police station. Thereafter, on the next day viz., 30.03.2010 obtained a complaint from the complainant and belatedly registered a case. Subsequently, the authorickshaw which was utilised for committing the robbery was released by the petitioner on his own accord on 29.03.2010 by accepting and demanding a bribe of Rs.2,500/-. A similar charge memo was issued to the co-delinquent K. Arumugam.

3. Subsequently, to prove the charges, an Enquiry Officer



WP No. 14000 of 2017

was appointed. After conducting an enquiry, the enquiry officer submitted a report dated 07.12.2010 concluding that all the three counts were proved against the petitioner. Based upon the enquiry report, the third respondent has passed an order imposing the punishment of stoppage of increment for three years with cumulative effect by order dated 09.03.2011. Aggrieved by the same, the writ petitioner preferred an appeal on 10.04.2011 before the second respondent and the same was rejected on 31.08.2014. Thereafter, the writ petitioner has preferred a revision before the Government. The Government also rejected the revision petition in G.O.(D)No.500, Home (Police-IV) Department, dated 21.04.2017. Challenging the aforesaid orders, the petitioner has come up with this writ petition.

4. The main ground on which the present writ petition is filed is that the co-delinquent Arumugam, against whom also similar charges have been framed, has been exonerated from all the charges, but the petitioner alone was discriminated.

5. Mr.L.Chandrakumar, learned counsel for the writ



WP No. 14000 of 2017

petitioner argued that Mr. K. Arumugam, who was working as Head Constable with writ petitioner at the relevant point of time at Ambattur Police Station was also charged with the same misconduct. However, after enquiry, he was exonerated from all the three charges but the third respondent has intentionally imposed punishment for the writ petitioner without application of mind. The fact remains that the very same evidence, which was put against the petitioner, was considered in the case of the co-delinquent and he was exonerated from the charges. In support of his arguments, the learned counsel for the petitioner relied on the order passed by this Court in **N.Nandagopalan v. The Secretary to Government, W.P.No. 28301 of 2005 dated 24.04.2006**, the relevant Paragraph No. 9 of the order of this Court are as follows:-

"9. It is well settled in law that if employees are involved in the same incident, the Department should proceed against all or should not proceed against none. There is no discretion to proceed against some of employees and non action against the other employees, since they are identically placed and their involvement being identical. In the instruction submitted by the Government Advocate, it is not stated as to how the petitioner's involvement is not similar to other 28 persons. In the absence of such distinct feature, the proceedings conducted by the respondent against the petitioner and imposing punishment on the basis of the charge is illegal and hence the impugned



WP No. 14000 of 2017

order is set aside."

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(ii) The learned counsel for the petitioner also placed reliance on the decision in the case of **Director General of Police and Others v. G. Dasayan** reported in **1988 (2) SCC 407** in which another decision of this Court reported in **2002 WLR 449, T.R. Venkatachary v. The Special Officer, Corporation of Madurai and another** was discussed. The relevant Paragraph No.5 of the order reads as follows:-

"5)As rightly argued, the order of dismissal imposed on the petitioner is violative of Article 14 of the Constitution of India. In this regard, the learned counsel for the petitioner has very much relied on a Division Bench decision of this Court in *M.Rajamanickam v. The Executive Director, Bharat Heavy Electricals Limited*, reported in 1997 W.L.R. 536 : 1997 (3) L.L.N. 550. In similar circumstance of imposing punishment of removal on one person, the Division Bench, after referring to the principle laid down by the Supreme Court in *Sengara Singh v. State of Punjab* (1983 (4) SCC 225), has held as follows: (Para 26) "26. We are of the view that there is no iota to evidence which would differentiate the case of the present appellant from that of the other employee Meenakshsundaram. This discrimination is writ large on the record and the Court cannot overlook the same. Therefore, we see no justification in treating the appellant differently without pointing out how he was guilty of more serious misconduct or the degree of indiscipline in this case was higher than compared to that of Meenakshisundaram. The learned counsel for the management failed to explain to us the



WP No. 14000 of 2017

distinguishing features and therefore, we are satisfied in putting both of them in the same bracket. Therefore, we have no hesitation to come to the conclusion that the treatment meted to the present appellant suffers from the vice of arbitrariness and Article 14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Article 14 of the Constitution of India. The Court must accordingly interpose and quash the discriminatory action."

6. The learned counsel for the petitioner submits that if several delinquents are involved in a delinquency and the Departmental Proceedings was conducted against all however varied punishment is imposed, it is not legally sustainable. The learned Counsel also placed another judgment reported in **Akhilesh Kumar Singh v. State of Jharkhand and Others, dated 14.12.2007** of Hon'ble Supreme Court in Civil Appeal No. 5943 of 2007. In that case, it was held that the Head Constable was tried along with another co-delinquent, but after enquiry, different punishments have been imposed upon them although they faced identical charges.

7. The learned counsel for the respondents, on the other hand, contended that the petitioner has failed to discharge his duty and also adopted corrupt practices. Hence, the Enquiry Officer concluded that all the



WP No. 14000 of 2017

charges are proved, based on which the disciplinary authority, appellate authority as well as the revisional authority, after thorough examination of the material evidence, has awarded the punishment for his dereliction of duty and hence, the writ petition is not maintainable.

8. On a perusal of the records shows that on 25.03.2010 the writ petitioner has received a complaint from Puthur Out Station stating that a person namely Gopalakrishnan alleged that his two wheeler was robbed by two persons and requested to trace out his two wheeler. On receipt of such intimation, the petitioner proceeded to the Puthur Out Station, conducted investigation and searched a two wheeler as well as an autorickshaw. The Autorickshaw was handed over to the Head Constable, namely, Arumugam, who, alleged that on the basis of the instructions given by the petitioner, he released the autorickshaw to the owner.

9. During the enquiry, the complainant Gopalakrishnan was not examined. The said Gopalakrishnan is the best person to be examined during the enquiry to assess the nature of delinquency committed by the



WP No. 14000 of 2017

petitioner and the co-delinquent. According to the petitioner as well as the co-delinquent, the complainant Gopalakrishnan no way stated that the auto bearing Registration No.TN-02-9122 was used for the commission of Robbery and hence, the vehicle was released to the owner. Even to falsify this statement, the complainant Gopalakrishnan ought to have been examined in the enquiry but it was not done.

10. The fact remains that similar charges were framed against the Head Constable, namely, K.Arumugam. The charges framed against the petitioner and the co-delinquent Arumugam are one and the same. The charges emanated out of the same incident relating to the complaint given by one Gopalakrishnan, complaining theft of his two wheeler. In the enquiry, the evidence made available, both against the petitioner and co-delinquent Arumugam are identical and similar. However, for the reasons best known, the co-delinquent was exonerated while the petitioner was imposed with the punishment. When the material evidence relied on as against the petitioner and the co-delinquent are similar, it is not known as to how the petitioner alone can be imposed with the punishment.



WP No. 14000 of 2017

11. In the light of the above, this Court is of the view that when two persons were charged with similar charges, exonerating one and imposing punishment against the other is arbitrary. The Appellate Authority has also failed to appreciate the above facts while rejecting the appeal. Similarly, the Revisional Authority also did not take note of the above facts. Therefore, this Court is inclined to allow this writ petition on the aforesaid ground.

12. Accordingly, the writ petition is allowed. No costs. The respondents are directed to confer all consequential service and monetary benefits to the petitioner.

03.04.2023

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Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

To

1. The Secretary to Government
The State of Tamil Nadu,
Home (Police-IV) Department



WP No. 14000 of 2017

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V.BHAVANI SUBBAROYAN. J.,



WEB COPY



WP No. 14000 of 2017

msm

W.P.No. 14000 of 2017

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