



W.P.No.34292 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.01.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.34292 of 2017

and

W.M.P.Nos.33696 of 2018 and 38162 of 2017

C.Chandraseelan
Son of Chellappan
Inspector of Police (compulsory Retired)
No.5, Inspector Quarters,
PRS Campus, Dr.Balasundaram Road,
Coimbatore 641 044.

.. Petitioner

/versus/

1.Government of Tamil Nadu,
represented by Additional Chief Secretary,
to Government,
Home (Police) Department,
Secretariat, Chennai 600 009.

2.The Director General of Police,
Tamil Nadu, Chennai 600 004.

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

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent relating to the order in G.O.(2D) No.280, Home



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(Pol.2) Department, dated 06.09.2017 and G.O.(D) No.967, Home (IVA)

Department, dated 16.08.2018 to quash the same and issue consequential directions to the respondents to reinstate him in service with all consequential benefits of continuity of service, back pay etc.

(Prayer amended vide order dated 25.01.2023 made in W.M.P.No.33696/2018 in W.P.No.34292/2017 by MSRJ)

For Petitioner :Mr.M.Ravi

For Respondents :Mr.T.Chezhiyan
Additional Government Pleader
for R1 to R3

ORDER

The petitioner, while serving as Special Sub Inspector of Police under the respondent department, was levelled with two counts of charges through charge memo dated 07.04.2013. The said charges are as follows:-

Count No.:1:

Highly reprehensible conduct in having accompanied Tr.R.Suresh Kumar, Inspector of Police and Tr.V.Murugan, HC 702 of Special Branch, Nagercoil on 26.08.2008 and brought one Duraisingh, S/o Lekshmana Perumal, Nariparai colony, Levingipuram, Radhapuram Taluk, Tirunelveli District from Thangam theatre to Vadasery P.S under the guise of interrogation without any specific grounds and left the station when the secured person got fainted with intention to put the blame on others.



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Charge No.II:

Gross neglect of duty in having failed to inform the G.D. Incharge officer to make necessary entries in the GD or in any other relevant records of Vadasery P.S about the securing and bringing of Duraisingh, S/o Lekshmana Perumal, Nariparai colony, Levengipuram, Radhapuram Taluk, Tirunelveli District to Vadasery PS on 26.08.2008 for the purpose of interrogation.

2. Together with the petitioner, one I.Jamal, Inspector of Police and V.Murugan Police Constable were also subjected to disciplinary proceedings in connection with the same delinquency. In the Enquiry conducted, the charge against the petitioner was held to be proved. Further, the explanation submitted by the petitioner was not accepted and accordingly, the Disciplinary Authority had imposed punishment as “Compulsory Retirement” by an order dated 06.09.2017. Against which, the petitioner preferred review petition before the first respondent and the same was dismissed on 16.08.2018. Both the impugned orders are put under challenge in the present writ petition.



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3. Learned counsel appearing for the petitioner placed reliance on the decision of this Court in ***I.Jamal and V.Murugan v. The Additional Chief Secretary to Government, Home Department of Tamil Nadu, Secretariat, Chennai and others in W.P.(MD)Nos.21111 and 20750 of 2018, dated 05.11.2019*** respectively, whereby the punishment of “Compulsory Retirement” imposed on the co-delinquents came to be modified by this Court into “stoppage of increment for two years without cumulative effect”. The relevant portion of the order reads as follows:-

“11.As far as the petitioner in W.P.(MD)No.20750 of 2018 is concerned, the charge is that he accompanied Sureshkumar, Inspector of Police and C.Chandraseelan, Sub-Inspector of Police, Special Branch, Nagercoil, Kanniyakumari District, and when Duraisingh, who was brought to Vadasery Police Station for interrogation, fainted and left the Station with an intention to put the blame on others and that he failed to inform the Officers In-charge of G.D to make necessary entries in the G.D., or any other relevant records of Vadasery Police Station about bringing Duraisingh, for the purpose of interrogation. From the above two charges levelled against the petitioner, it is seen that he accompanied Sureshkumar, Inspector of Police and Chandraseelan Sub Inspector of Police, Special Branch, Nagercoil, to Vadachery Police Station on the date of incident and left the Police Station, when Duraisingh fainted, with an intention to put blame on



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others. The petitioner was subordinate to the above two Officers and when they have not taken any steps when the said Duraisingh fainted with during investigation and did not inform the Officers, who were In-charge of the G.D., the petitioner being the subordinate cannot be expected to act contrary to the action of the Superior Officers. In view of the same, the punishment of compulsory retirement of the petitioner is disproportionate to the charges levelled against him. At the same time, the petitioner is guilty of lapses, as he failed to record the incident in the G.D. In view of the charges levelled against the petitioner with regard to the lapses on his part while working under Sureshkumar, Inspector of Police and punishment imposed after nine years of the incident, it will be just and equitable if a lesser punishment is imposed rather than the punishment of compulsory retirement. Therefore, the punishment of compulsory retirement is set aside and punishment of stoppage of increment for two years without cumulative effect is ordered.

12.For the above reason, the respondents are directed to reinstate the petitioners within two weeks from the date of receipt of a copy of this order. The punishment of stoppage of increment shall be implemented from the date of original order of compulsory retirement. The petitioners are entitled to promotion when their immediate junior was promoted and the petitioner will be entitled to all monetary benefits after the expiry of punishment period.”



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4. As against the above said order, the respondents had preferred a Writ Appeal in W.A.(MD) Nos.1048 and 1081 of 2020, which came to be dismissed on 01.03.2021. Thereafter, the respondents had implemented the modified punishment of stoppage of increment for two years without cumulative effect to both the delinquents through their proceedings dated 18.11.2022 (V.Murugan, Sub Inspector of Police) and 13.12.2022 (I.Jamal, Inspector of Police). In the above said modified order, the non-employment period spent by the co-delinquents was treated as eligible leave and duty period for all purposes. In view of the finding of this Court extracted above, the punishment imposed on the petitioner is liable to be modified into one of stoppage of increment for two years without cumulative effect.

5. This Court, taking into account that the punishment of compulsory retirement of the co-delinquents was disproportionate to the charge levelled against him, has modified into a lesser punishment. Since the delinquency with regard to the case of co-delinquents viz., I.Jamal and V.Murugan are one and the same as that of the petitioner, the common order of this Court passed in W.P.(MD) Nos.21111 and 20750 of 2018



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dated 05.11.2019 would be applicable to the present petitioner also.

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Accordingly, the punishment of compulsory retirement can be modified for the petitioner also on the ground that the punishment is disproportionate to the charges levelled against him. This Court has also taken into account that though the incident for which the charges levelled against the petitioner was on 26.08.2008, the respondents had levelled the charges only on 07.04.2013, which is almost about 5 years.

6. The Hon'ble Supreme Court as well as this Court in various decisions had held that such belated initiation of disciplinary proceedings can cause serious prejudice to the delinquent officer and on that account they have interfered with the disciplinary proceedings as well as the punishment imposed. Therefore, I am of the view that the punishment of compulsory retirement imposed on the petitioner can be modified into a lesser one.

7. Accordingly, the impugned orders passed by the first respondent in G.O.(2D) No.280, Home (Pol.2) Department, dated 06.09.2017 and G.O.(D) No.967, Home (IVA) Department, dated 16.08.2018 are quashed



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and the Writ Petition stands allowed. Consequently, there shall be a direction to the second respondent herein to pass an appropriate order modifying the original order of compulsory retirement imposed on the petitioner in G.O.(2D)No.280, Home (Pol.2) Department, dated 06.09.2017 into “stoppage of increment for two years without cumulative effect” and consequently, pass orders extending all the service and monetary benefits including the backwages for the period of unemployment, regulating the petitioner's period of unemployment and on par with the orders passed in the case of *I.Jamal in W.P.(MD)No.21111 of 2018 dated 05.11.2019* and *V.Murugan in W.P.(MD)No.20750 of 2018 dated 05.11.2019*. Such order shall be passed preferably within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

25.01.2023

Index:yes/no
Speaking order/non speaking order
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To:

- 1.The Additional Chief Secretary to Government,
Government of Tamil Nadu,
Home (Police) Department,
Secretariat, Chennai 600 009.
- 2.The Director General of Police,
Tamil Nadu, Chennai 600 004.
- 3.The Deputy Inspector General of Police,
Tirunelveli Range, Tiruvnelveli.



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M.S.RAMESH, J.

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