



WEB COPY



W.P.No.1972 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

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THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

W.P.No.1972 of 2017

and

W.M.P.Nos.1954 & 1955 of 2017

A.Elangovan

.... Petitioner

Vs

1. The Secretary to Government,
Home (Police V) Department,
Fort St.George, Chennai – 600 009.

2. The Commissioner of Police,
Chennai Suburban Police,
St.Thomas Mount, Chennai – 600 016. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorari to call for the records connected with the Government order issued in GO (2D) No.245 Home (Police V) Department, dated 28.04.2016 (served on 05.08.2016) passed by the 1st respondent and proceedings issued in S.O.No.52 of 2011 PR.No.93/H1/2010 dated 09.05.2011 passed by the 2nd respondent and quash the same.

For Petitioner : Mr.S.Ilamvaludhi
For Respondents : Mr.M.Shahjagan
Special Government Pleader

ORDER



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This Writ Petition has been filed for issuance of a Writ of certiorari

to call for the records connected with the Government order issued in GO (2D) No.245 Home (Police V) Department, dated 28.04.2016 (served on 05.08.2016) passed by the 1st respondent and proceedings issued in S.O.No.52 of 2011 PR.No.93/H1/2010 dated 09.05.2011 passed by the 2nd respondent and quash the same.

2. The case of the petitioner is that he joined as Police Constable and retired from service as Head Constable. While he was working in T3 Korattur Police Station, a charge memo was issued under Rule 3(b) of Tamil Nadu Police Subordinate Service Rules in PR.No.93/H1/2010. The charge was that, on 29.10.2009 at 12.15 hrs a message was passed over on mike to Sub Inspector of Police, viz., Senguttuvan that the petitioner should go to the specified spot where law and order problem arose, as one Baskaran, who is running a mechanic shop, was a tenant under the landlord viz., Pachiappan, who had tried to evict the said Baskaran from the premises, as a result, the said Baskaran obtained an interim order from the competent Civil Court. Even though an order was shown to the said Pachiappan, he shut down the shutter and constructed a wall. The



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charge memo states that the petitioner has not stopped the work but he had left the spot, according to the charge memo states that even after the report of the Sub Inspector, he was not available in the spot. Two contrary statement were made by the charge memo issuing authority. After the charge memo, an Enquiry Officer was appointed viz., the Assistant Commissioner of Police, Police Control Room and he has given his minute that the charges were proved. The Enquiry Officer's minute was perverse and he has not assigned any reason to come to a conclusion regarding the charges framed.

3. Further, it was the submission before the Enquiry Officer that the Sub Inspector of Police, Seguttuvan, had informed the petitioner to go and inspect the spot and he has also gone and saw the incident. Since the incident is purely civil in nature, the police cannot interfere in the same. The Enquiry Officer has said it may be civil in nature, but it is the duty of the petitioner to see the order of the Court and he would have not permitted the said Pachiappan to do the said construction work. The conclusion of the Enquiry Officer is beyond the scope of his powers. In pursuance to the report submitted by the Enquiry Officer, the



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Commissioner of Police, by his proceedings in PR.No.93/H1/2010 dated 09.05.2011, imposed a punishment of black mark.

4. After the Order's of the Commissioner of Police, the petitioner made a representation to the Government by way of an appeal and the same was rejected by the Government in G.O.(2D).No.245 Home (Police V) Department, dated 28.04.2016, which is erroneous and not in conformity with the orders passed by this Court in various cases and prayed for setting aside the said G.O.(2D).No.245 Home (Police V) Department, dated 28.04.2016, passed by the first respondent, stating that there is no materials to show that the said punishment has to be imposed on him and the charge has not been proved. The case of the petitioner is that the incident is a fight between the landlord and the tenant which is civil in nature and the petitioner, working in Law and Order side, absolutely has no power to intervene and to use police force. Therefore, the petitioner sought of mercy to set aside the proceeding of the 2nd respondent. Moreover, the said Baskaran has not deposed that the petitioner had kept quiet during the occurrence and in absence such a statement, it is not fair on the part of Enquiry Officer to come to a



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conclusion that he has not done anything on that day and prayed for setting aside the said order.

5. The learned counsel for the petitioner would submit that in the departmental proceedings, three witnesses were examined and nine exhibits were marked and the charge were framed against the delinquent and without any appropriate evidence the enquiry officer has held that the charges against the petitioner is proved and subsequently, the Commissioner of Police, Chennai Sub Urban Police, has awarded a punishment of black mark. The petitioner has preferred an appeal to the Government and the same has been rejected.

6. The petitioner would submit that the respondent had issued the punishment order in an hurried manner and failed to consider the fact that the said occurrence is a fight between the landlord and the tenant and it is civil in nature and the petitioner working in law and order cannot interfere in the issue since there is no law and order problem and hence prayed to set aside the proceedings of the 2nd respondent.

7. The learned counsel for the respondent would submit that the



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enquiry officer has conducted the enquiry only as per rules and procedures and he has given all reasonable opportunities to the petitioner to cross examine the prosecution witness and to submit his defense documents. Only after careful examination of all the documents and the oral evidence the enquiry officer has held that the charge against the petitioner has been proved. Further, the petitioner was given a lenient punishment of Black Mark on 09.05.2011 and he has retired from service on 31.05.2011. Further on 11.06.2011, the petitioner has appealed to the Government. The Government, after careful consideration of the appeal, had rejected the same in G.O (2D) No.245, Home (Police V), Department, dated 28.04.2016 on the ground that the petitioner had not putforth any fresh point to reconsider the above punishment imposed on the petitioner.

8. On going through the averments and also the counter filed by the respondent, it is seen that the petitioner has not prevented the landlord from construction of wall inspite of the interim order obtained by the tenant in the competent Civil Court. The Sub Inspector of Police had stopped the construction and instructed the petitioner to prevent



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further construction there. The petitioner left the spot without obeying the instruction of the higher official. As a result, there was violation of the Court order and the tenant lodged a complaint. Since a case has been registered to the police, the petitioner cannot state that it being a civil case, he has no power to intervene and moreover it is only a lenient punishment awarded by the authority with a black mark in PR.No.93/H1/2010. Further there is no monetary loss for the petitioner and it is only a black mark and nothing survives for a fresh consideration since the petitioner has already retired from service. Hence, this Court is not inclined to interfere with the said proceedings.

9. In the result, this Writ Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No

Neutral citation : Yes/No

Speaking/Non Speaking order

To



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