



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2023

CORAM

THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.19927 of 2017  
and  
W.M.P.No.21496 of 2017

P. Shubavathy

.. Petitioner

Vs.

The Secretary to Government,  
Social Welfare and Nutritious Meal Programme,  
(SW8) Department, Fort St. George,  
Chennai – 9.

.. Respondent

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records connected with the Government order issued in G.O.(Pa).No.101 Social Welfare and Nutritious Meals (Sa.Na.8(2)) Department dated 10.06.2016 and Letter No.1970/Sa.Na.8(2)/2017 – 1 dated 03.04.2017 passed by the respondent herein and to quash the same and consequently direct the respondent to promote the petitioner as Superintendent notionally.

For Petitioner

.. Mr. S. Ilamvaludhi

For Respondent

.. Mr. K. Surendharan, AGP



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## ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus, seeking interference with an order in G.O (Pa) No.101 Social Welfare and Nutritious Meals Sa.Na.8(2) Department dated 10.06.2016 and Letter No.1970/Sa,Na.8(2)/2017-1 dated 03.04.2017 passed by the respondent, the Secretary to Government, Social Welfare and Nutritious Meal Programme (SW8) Department, Chennai and direct the respondent to promote the petitioner as Superintendent notionally and grant such other monetary benefits consequently.

2.The petitioner was working as Chief Store Keeper in the office of the Government Children Home, Thanjavur and on deputation as Superintendent in-charge at Government Observation Home, Cuddalore. At that particular point of time, a charge memo was issued to the petitioner under Rule 17(b) CCA (D&A) Rules. The primary charge emanated from the fact that four children who were in the Government Observation Home at Cuddalore had escaped from the home. Holding that the petitioner as Superintendent in-charge had a primary duty to ensure that there was no



such escape of juveniles who were in the Government Observation Home, the charge memo came to be issued against the petitioner herein. An Enquiry Officer had been appointed and report was submitted, in which the charges were held not proved.

3.This fact is stressed by the learned counsel for the petitioner, who also pointed the surrounding circumstances leading to conclude that the charges were held not proved, namely, that there were four other staff members and more importantly, in accordance with the rules as contemplated under the Tamil Nadu Juvenile Justice (Care and Protection of Children Rules) 2001, the follow up action which the superintendent should take namely, lodging a police complaint and immediately the staffs going over to the nearest railway station and bus stand searching for the children, were undertaken by the petitioner herein. This fact was taken as a mitigating circumstance by the enquiry officer and orders were passed that the charges had not been proved.

4.This particular order of the enquiry officer had however been interfered with and subsequently an order had been passed by the



Commissioner of Social Defence dated 24.11.2011 in No.16470/A1/2009. A

review of the enquiry report was done and it was noted that twelve children alone were kept in Government Observation Home at Cuddalore, on the date of escape of the four children on 29.11.2009. It was also observed that the children had earlier committed offences under the Indian Penal Code and were facing trial before the Juvenile Justice Board. It was also stated that the duty of the superintendent was to ensure the safety and security of the children and also to ensure that they were brought before the Juvenile Justice Board to undergo necessary proceedings pending against them. It was also stated that there were six staff who had the responsibility to guard the children against any untoward activities. They included the cook between 6.00 AM to 5.00 PM on 29.11.2009 who was on guard duty, another cook between 6.00 AM to 4.00 PM who was on kitchen duty, watchman who was on duty between 4.00 PM to 7.00 AM on the next day 1<sup>st</sup> guard duty, another watchman who was on duty between 6.00 PM to 8.00 AM on the next day, 2<sup>nd</sup> guard duty, a sanitary worker who was on weekly off duty and another watchman who was on unauthorised absence.



5.It was stated that the children had escaped between 8.30 AM and 9.00 AM on 29.11.2009. It was stated that the cook P.Rajamurthy in the guard duty at that particular point of time was not on duty at the time of escape and he was made responsible for the escape. There was also the cook who was on the duty in the kitchen. It was stated that she was also responsible. Though these explanations had been given by the petitioner herein, the Commissioner, Social Defence, had thought it fit to interfere with the enquiry officer's report absolving the petitioner of all charges and imposed punishment of cut off increments for two years without cumulative effect.

6.Thereafter, since this punishment was imposed, the petitioner's prospects of promotion to the post of superintendent was seriously affected. Holding that particular promotion should not be so affected, the petitioner had filed W.P.No.4060 of 2012. By an order dated 18.02.2014, a learned Single Judge of this Court had examined the entire issue once again and had stated as follows in paragraph No.12 of the order:

*“12.Secondly, for the reasons stated above, the punishment of stoppage of increment for two years without cumulative*



*effect against the petitioner, in my considered opinion, cannot be viewed as unreasonable.”*

7.It was the finding of the learned Single Judge that the punishment of stoppage of increment for a period of two years without cumulative effect was cannot be viewed as unreasonable. In paragraph No.11, another reason was also given. Let me extract paragraph No.11 also:

*“11.For two reasons, the impugned order cannot be interfered with. Firstly, as per Rule 70(viii) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (General Act 56 at 2000) and its Amended Act, 2006, all the staff who are dealing with children, are accountable for the safety of children. Admittedly, in the present case, when the petitioner was serving as Superintendent (In-Charge), Government Observation Home, Cuddalore, on 29.11.2009, four inmates escaped from the home due to the carelessness of the petitioner. The petitioner has submitted her explanation stating that in her absence, she arranged security and guard round the clock, but, the same was rightly rejected by the disciplinary authority, overruling the report submitted by the Enquiry Officer, by properly giving a differing note to the petitioner to submit her explanation as to why the disciplinary authority should not deviate from the report of*



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*the Enquiry Officer. In reply to the said notice, when the petitioner repeated her same explanation, by taking note of the lapse committed by the petitioner, which resulted in escapement of four inmates from the Observation Home on 29.11.2009, as per Rule 70, the disciplinary authority found her guilty and thereby imposed only the lighter punishment holding her responsibility.”*

8.The writ petition was dismissed. The petitioner then filed writ appeal in W.A.No.1102 of 2014 which came up for consideration before the Division Bench on 27.08.2014. The Division Bench once again examined the entire issue and also extracted the entire portion of the order of the learned Single Judge and finally gave their opinion as follows:

*“3.Having regard to the fact situation, wherein it was found proved that due to dereliction of duty, four inmates escaped from the Government Observation Home, Cuddalore, when the petitioner was serving as Superintendent (In-charge) and the entire aspects were examined and it was found that the incident occurred on account of dereliction of duty on the part of the appellant/petitioner, the authorities have taken a sympathetic view in imposing minor punishment of*



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*withholding two increments without cumulative effect. There is no grievance that proper opportunity was not afforded or there was any perversity or illegality in the process of enquiry.*

*4. We have examined all aspects and are of the considered view that the order rendered by the learned Single Judge does not suffer from any illegality or irregularity, warranting interference and as such, the writ appeal is dismissed. No order as to costs.”*

9. They had very specifically held that the incident had occurred “on account of dereliction of duty on the part of the appellant / petitioner herein”. They had also held that “the authorities have taken a sympathetic view in imposing minor punishment of withholding two increments without cumulative effect”. These are two significant conclusions reached by the Division Bench namely, that there was dereliction of duty on the part of the petitioner and that the punishment of cut off increments for two years without cumulative effect was the result of a sympathetic view taken by the authorities.



10.The learned counsel for the petitioner argued that these observations of the Division Bench should only be taken as an obiter and should not come in the way of this Court while examining the facts in the present writ petition.

11.In the present writ petition, challenge is to the impugned order which came to be passed subsequently, wherein, the punishment of cut off increments for two years without cumulative effect was further reduced by the Government to cut off increment for a period of one year without cumulative effect. In the impugned order in G.O.(Pa).No.101 Social Welfare and Nutritious Meals (Sa.Na.8(2)) Department dated 10.06.2016, the explanation given by the petitioner was once again re-examined by the Government and it had been stated that the petitioner herein had not produced any fresh reasons to interfere with the fact that the charges had been held proved by the Commissioner, Social Defence and the review of the petitioner was rejected but the punishment was further reduced. This was communicated to the petitioner herein. The punishment imposed was cut off increment for a period of one year without cumulative effect.



12. The learned counsel for the petitioner placed reliance on Rule 82 of the Tamil Nadu Juvenile Justice (Care and Protection of Children Rules) 2001. This Rule stipulates the duties and responsibilities of the officer in-charge of a Juvenile Home. The petitioner who seeks promotion as superintendent should be well versed with the rules. If she ever wants to be promoted as superintendent, she must first ensure the safety of the children and there is proper control over the staff. Instructions should be issued for smooth and effective functioning of the institution and moreover, the officer in-charge/superintendent shall be the custodian of not only the records, but also must ensure proper sanitary and hygienic condition and more importantly pay surprise visits, once a fortnight, during night and ensure that the institutional management is in control and there is vigil during the night.

13. All the duties would require constant supervision by the petitioner of not only the facilities available in the observatory home at Cuddalore where the petitioner was the superintendent in-charge, but more importantly, ensure “vigil” which would include ensuring the safety of the children and ensuring that the children do not escape from the Government observatory



home.

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14.This is very important, because the four children who had so escaped were already facing charges and trial for the various offences under the Indian Penal Code. There was always a possibility of them being inflicted harm or they could harm others. Therefore, the petitioner was responsible to look after them with much more diligence. If they were to escape, the responsibility must be thrust on the superintendent as the primary person, who had failed in discharge of duty.

15.The words used by the Division Bench were “dereliction of duty”. It must also be kept in mind that there were only twelve children at that particular point of time. Therefore, the petitioner cannot claim that proper vigil could not be maintained. There were also staff. Only two of them were absent, but the others were there. Had the petitioner followed the rules as stated, then there could be co-operation among the staff in ensuring that the children did not escape. If the children escaped, then ultimately the responsibility should be taken by the person who was termed in the rule as “officer in-charge”.



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16.It was also contended that, the petitioner was only an in-charge superintendent. But still the petitioner having taken that particular duty and responsibility to discharge had the primary responsibility to ensure that no harm happened to the children and also ensure to produce them before the Juvenile Justice Board during the hearings of the trial. Therefore, once the children escape, then it is clear that the petitioner had derelicted from duty and that is the finding of the Division Bench.

17.The Division Bench had commented that imposing of punishment of cut off increments for two years without cumulative effect itself was due to a sympathetic attitude adopted by the respondent. When that punishment was reduced to cut off increment for just one year without cumulative effect, then it has to be held more sympathy had been extended to the petitioner. As a matter of fact, favouritism could also be stated to have been extended to the petitioner by imposing such minor punishment, when the life of four children were at risk when they escaped. Those lives could never have been replaced, if some harm had fallen on the children.



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18.The learned counsel for the petitioner stated that the observations of the Division Bench should not play on the mind of this Court. The observations of the Division Bench are binding and has to be taken into consideration. The punishment imposed is upheld. The petitioner had retired on attaining the age of superannuation, I would only wish her well. No further relief can be granted to her.

19.Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

05.09.2023

Index:Yes/No  
Neutral Citation:Yes/No  
Speaking Order: Yes/No  
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To

The Secretary to Government,  
Social Welfare and Nutritious Meal Programme,  
(SW8) Department, Fort St. George,  
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**C.V.KARTHIKEYAN,J.**

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