



W.A.No.2518 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.A.No.2518 of 2018 and

CMP No.20361 of 2018

1. The Director General of Police,
Tamil Nadu, Chennai-4.

2. The Principal Secretary to Government,
Home (Police VI) Department,
Secretariat, Chennai-9.

... Appellants

VS

B.Mohamed Meera
Respondent

...

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 01.09.2017 made in W.P.No.27864 of 2013 on the file of this Court.

For Appellants : Mr.P.Anandakumar, Addl.Govt.Pleader

For Respondent : Dr.C.Ravichandran



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J U D G M E N T

(Judgment of the Court was delivered by D.KRISHNAKUMAR, J.)

Challenging the order passed by the Writ Court in W.P.No.27864 of 2013 dated 01.09.2017, this intra Court Appeal has been filed.

2. The brief facts, which lead to file the present appeal are as follows.

The respondent herein/writ petitioner was appointed as Grade-II Police Constable in the police department on 17.11.1998 and subsequently he was promoted as Grade-I Police Constable and further promoted as Head Constable during the year 2004. While the writ petitioner was working as Head Constable, a case in TDP Case No.25/2007 was registered against him and two other officials namely, S.S.Anandan, formerly Reserve Sub Inspector of Police and Oli Mohamed, Head Constable and in that case, the writ petitioner was arrayed as A2. Further, in the above case, totally 9 charges were framed against the accused persons and as far as the writ petitioner is concerned, six charges were framed against him. The allegations against the accused persons are that they demanded amount of Rs.250, Rs.200, Rs.500, Rs.600, Rs.400 from the riders of the two wheelers



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on 24.05.2005 and 25.05.2005 and only on receipt of the same amounts, they released the vehicles, thereby, they failed to maintain absolute integrity and devotion to duty in Government Service. After enquiry proceedings, the Tribunal found that the charges framed against the accused were proved and filed a Report. Based on the above report, the first appellant herein imposed punishment of compulsory retirement on the writ petitioner, vide order dated 03.08.2010 and the Appeal filed by the writ petitioner before the second appellant herein was also ended against him, vide rejection order dated 31.07.2013. Therefore, challenging the above order of compulsory retirement and the order of rejection the Writ petitioner filed the Writ Petition.

3. The Writ Court, by its order dated 01.09.2017, has given a finding as extracted hereunder.

9. Therefore, the order imposing the punishment of compulsory retirement dated 03.08.2010 and the consequential order dated 31.07.2013, rejecting the appeal are set aside. This Court directs the reinstatement of the petitioner, however, the petitioner is not entitled to the salary for the period when he was compulsorily retired until the period of his reinstatement, as this Court thinks that this would be sufficient punishment for the petitioner for the proved misconduct. The



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respondents are directed to pass orders reinstating the petitioner within a period of four weeks from the date of receipt of a copy of this order. It is also made clear that on being reinstated, the petitioner, except for backwages, is entitled to all other benefits like continuity of service, seniority, any further promotion etc.

Challenging the above order, the appellants/government have preferred the present Writ Appeal.

4. The learned counsel for the Appellants submitted that the evidence of the witnesses reveals that the respondent/writ petitioner was assisting the officials in discharging their duty for apprehending the riders of two wheeler, who were violating the traffic rules. Therefore, the writ petitioner being a responsible Head Constable at the time of occurrence, he also equally responsible for the offence committed by the Reserve Sub Inspector/A1. He further submitted that, the first appellant, after considering the enquiry report filed by the Tribunal and also considering the evidence of PW1 to PW7 and also the evidence of the official witness RW1, has passed the final order by imposing punishment of compulsory retirement. Further, the Statutory Appeal filed by the writ petitioner was also



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carefully considered by the second appellant herein and after gone through the findings of the Commissioner for Disciplinary proceedings, has rightly rejected the Appeal by order dated 31.07.2013. The learned counsel further submitted that though the learned Single concluded that the writ petitioner has involved in the above said occurrence and not interfered with the findings of the authorities concerned, has wrongly observed that the punishment of compulsory retirement is excessive and has modified the punishment, as stated supra. Therefore, the order of the Writ Court is liable to be set aside.

5. The learned counsel for the respondent/ writ petitioner submitted that, there is no specific allegation as against the writ petitioner for demanding gratification or acceptance of gratification from the traffic violators. In support of his contentions, he relied upon the evidence of individual witnesses viz. PW1 to PW7 and submitted that the above witnesses have not made any specific statement as against the respondent for demanding illegal gratification. Further, there is no materials to show that the respondent had involved in receipt of bribe amount from the violators.



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He further submitted that, A2/ Mr.S.S.Anandan, formerly Reserve Sub Inspector of Police is the authority concerned for receiving the said amount and only as per his instructions, the amounts were collected and handed over to him.

5.1. The learned counsel for the respondent/writ petitioner also submitted that, there is no direct evidence to prove that the respondent along with other officials had received the illegal gratification. Further, the Appellate Authority has not passed reasoned order and the order is not in accordance with law and the provisions of the Rules. Therefore, the Writ Court has passed the order, by setting aside the orders passed by the first and second appellant herein, which does not warrants any interference by this Court.

6. We heard the learned counsel for the appellants and the learned counsel for the respondent and perused the materials available on record.



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7. A perusal of the records show that totally 9 charges were framed with regard to collecting money from 9 traffic violators, out of which, 6 charges were framed as against the writ petitioner and A1 for receiving money from 6 difference traffic violators. According to the appellants, PW4 -Thiru.Sarath Prasad, PW6 - Thiru K.C.Senthilkumar and PW7 -Thiru S.Viswanathan in their evidence have categorically stated that the Sub Inspector and Head Constable (Writ Petitioner) demanded money and the writ petitioner received all the amount. Therefore, it is argued by the appellants that the contention of the writ petitioner that he had only assisted the superior, who involved in corruption is not acceptable and the Writ Court has not considered the evidence of the violators properly and hence, the order passed by the Writ Court is liable to be set aside.

8. According to the respondent/Writ Petitioner, on the date of occurrence, he has not received any bribe amount from the violators, whereas, he received fine amounts from the violators and for the same receipts were also issued to them, and the received fine amounts were handed over to the Reserve Sub Inspector Thiru S.Anandan and hence, the



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writ petitioner was nothing to do with the alleged demanding of bribe amount.

9. The learned counsel for the respondent/ writ petitioner brought to the notice of this Court the evidence of prosecution witnesses and argued that PW3- S.Velmurugan had not deposed that either the writ petitioner demanded illegal gratification or he paid illegal gratification to him; PW4- Sarath Prasath and PW7-S.Viswanathan in their evidence had not deposed that they paid the fine amount to the writ petitioner and they had not even mentioned about the name of the writ petitioner; PW5- M.Palanisamy and PW6- K.C.Senthilkmar had not deposed that they paid the amount to the writ petitioner and he released their vehicle only on receipt of that amount. He further submitted that, the Tribunal without taking into consideration of the above evidence of witnesses had concluded that the writ petitioner had involved in the afore said occurrence and hence, the charges framed against him are proved. It is contended by the respondent/writ petitioner that though he made explanation, it was not considered by the first appellant herein, and only taking into account that the writ petitioner had not denied his presence



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at the place of occurrence and also not denied the receipt of money from the violators and handed over to the Reserve Sub Inspector of police, had imposed such excessive punishment of compulsory retirement. Further, the second appellant also rejected the appeal filed by the writ petitioner, by passing stereotypic order. Therefore, the appeal filed the Government is liable to be dismissed.

10. It is relevant to note that the learned Single judge while passing order, has observed that, there is no discussion in the findings of the disciplinary authority and only on the observations of the enquiry officer/Tribunal, the disciplinary authority held that the petitioner was assisting his superior, during vehicle check up. Hence, on the said ground, the punishment of compulsory retirement was set aside by the Writ Court.

11. Admittedly, the learned Single Judge has found that, the writ petitioner was assisting his higher officer while vehicle check up. Therefore, we cannot brush aside that the petitioner had not involved in the aforesaid incident. The learned counsel for the respondent/ writ petitioner also pointed



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out that, there is no specific allegation against the writ petitioner that he received the gratification. But, it was admitted by the writ petitioner that he received the amount and handed over to the Reserve Sub Inspector Mr.S.S.Anandan. Against the other two charged officers, namely, Mr.S.S.Anandan, Reserve Sub Inspector and Mr.Oli Mohammed, Head Constable, after enquiry, punishment was also imposed on them. According to the appellants, the punishment imposed on the above two officers had become final and they have not preferred any appeal. However, the petitioner being present on the date of occurrence and being a party to the charged officials, we cannot say that there was no direct involvement of the writ petitioner in receiving the bribe amount. Though there is no evidence as against the writ petitioner to prove that he had directly demanded bribe amount, he did not deny that, he was present at the scene of occurrence and on the date of occurrence he had received money from the traffic violators and handed over it to the Reserve Sub Inspector Thiru S.Ananthan. Therefore, the writ petitioner was also a party to the above said occurrence, which had taken place on 24.05.2005 and 25.05.2005, as alleged in the charges. It is to be noted that, the writ petitioner had attained the age of



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superannuation on 30.06.2022 and after the date of occurrence, it has been passed 14 years.

12. At this juncture, it is useful to rely upon the decision of the Hon'ble Supreme Court in ***Union of India and others Vs. Ex.Constable Ram Karan, reported in (2022) 1 Supreme Court Cases 373*** and the relevant paragraphs are extracted as under.

24. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the Court, normally, the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The scope of judicial review on the quantum of punishment is available but with a limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the court to substitute its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons.

25. The principles have been culled out by a three-Judge Bench of this Court way back in ***B.C.Chaturvedi V. Union of India wherein, it was observed as under : (Sec p.762, para 18)***

18. A review of the above legal position would establish that the disciplinary authority and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with



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the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. **The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mold the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.**

26. It has been further examined by this Court *in Lucknow Kshetriya Gramin Bank V. Rajendra Singh as under: (SCC p.382, para 19)*

19. The principles discussed above can be summed up and summarised as follows:

19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

19.2. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

19.3. limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the Court.

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate



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authority with direction to pass appropriate order of penalty. The Court by itself cannot mandate as to what should be the penalty in such a case.

19.5. The only exception to the principle stated in para 19.4. above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable."

Therefore, in the light of the above decision of the Hon'ble Supreme Court, we inclined to modify the order passed by the learned Single Judge.

13. Accordingly,

(i) The order passed by the Writ Court dated 01.09.2017 in W.P.No.27864 of 2013 is modified by imposing punishment of stoppage of increment for three years with cumulative effect.

(ii) the appellants are directed to calculate the service period of the writ petitioner from the date of compulsorily retirement till the age of



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superannuation i.e., on 30.06.2022, in accordance with law.

WEB COPY (iii) In other respects, the writ petitioner is entitled to get all the service and monetary benefits.

(iv) in sofaras the backwages is concerned, the period from the date of compulsorily retirement till the date of order passed by the learned Single Judge is excluded.

(v) The first respondent is directed to settle the entire service and monetary benefits to the writ petitioner, within a period of 12 weeks from the date of the receipt of the copy of this order.

14. With the above modification, the Writ Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.)

(K.G.T.J.)

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