



W.A. (MD) No.16 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

RESERVED ON : 20.12.2022

PRONOUNCED ON : 28.02.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.A(MD).No.16 of 2022

and

CMP(MD).No.403 of 2022

1.The Director General of Police
Tamil Nadu

2.The Additional Director General of Police
Guindy
Chennai

3.The Superintendent of Police
CCIW CID
Guindy
Chennai

4.The Commissioner of Police
Greater Chennai
Chennai

...Appellants/Respondents

Vs

M.Maruthupandi

...Respondent/Petitioner



W.A. (MD) No.16 of 2022

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 03.12.2019 passed in WP(MD).No.7118 of 2017.

For Appellants : Mr.Veera.Kathiravan
Additional Advocate General
Assisted by Mr.M.Sarangan
Additional Government Pleader

For Respondent : Mr.M.P.Senthil
For Mr.D.Venkatesh

J U D G M E N T

(Made by **R.VIJAYAKUMAR,J.**)

The respondents in the writ petition are the appellants.

2.The petitioner had challenged an order passed by the first respondent in the writ petition under which he has confirmed the punishment imposed by the Disciplinary Authority to the effect of postponement of increment for two years without cumulative effect.

Factual Background:

3.The Police Department had conducted Written Examination for the recruitment of Grade-II Constables for the year 2003-2004. The delinquent who was a Police Constable was alleged to have committed a misconduct of leakage of general knowledge question paper for the exams conducted by the Tamil



W.A. (MD) No.16 of 2022

Nadu Uniformed Services Recruitment Board, Chennai on 27.03.2005. Based upon the said allegation, the petitioner was suspended on 11.08.2005. A charge memo was issued to the petitioner on 19.08.2005 calling for explanation. The charge memo was accompanied with a statement of various officers connected with the said incident. The petitioner had submitted his explanation on 10.07.2013. An enquiry was conducted and report came to be filed. After furnishing a copy of the enquiry report, a show cause notice was issued to the petitioner calling for explanation on 16.05.2013. The petitioner had submitted his explanation on 10.07.2013.

4. Not being satisfied with the explanation offered by the writ petitioner, the Disciplinary Authority had proceeded to pass an order of imposition of punishment of postponement of increment for two years without cumulative effect. The petitioner had filed an appeal before the first respondent in the writ petition on 24.09.2014. The first respondent was not convinced with the appeal grounds and proceeded to confirm the order passed by the Disciplinary Authority by an order dated 21.11.2016.

5. The order of the first respondent in the writ petition was challenged by the writ petitioner in W.P(MD).No.7118 of 2017 mainly on the ground that



W.A. (MD) No.16 of 2022

there was discrimination in imposition of punishment between various co-delinquents who were similarly placed. The respondents in the writ petition have filed a detailed counter disputing the said discrimination by contending that the co-delinquents were not similarly placed as that of the writ petitioner.

6. The writ Court was pleased to consider the case of one Mr.Dharmaraj and Mr.T.Radhakrishnan and compared those two co-delinquents with the writ petitioner and proceeded to hold that the petitioner has been imposed with a higher punishment than those co-delinquents without any proper explanation. The writ Court arrived at a finding that there is a discrimination as against the writ petitioner when compared to the said Dharmaraj and T.Radhakrishnan and proceeded to allow the writ petition. This order is under challenge by the department.

Contentions of the learned Additional Advocate General appearing for the appellants are as follows:

7.The writ petitioner is a Grade-I Constable and he misused his official capacity and he was involved in the leakage of general knowledge question paper in the examination that was conducted by the Tamil Nadu Uniformed Services Recruitment Board.



W.A. (MD) No.16 of 2022

WEB COPY

8. An F.I.R was registered relating to leakage of the said question paper in Crime No.2600 of 2005 as against 92 persons. In the said F.I.R, the petitioner was arrayed as Accused No.26. The case was investigated by the Central Bureau of Investigation (CBI) and a final report was filed on 12.12.2006 in which the writ petitioner's name was dropped. However, dropping of the petitioner's name from the criminal case will not absolve the delinquent of his misconduct and delinquency in performing his official duties.

9. The petitioner was issued a charge memo on 19.08.2005 and after conducting a departmental enquiry, the charges as against the writ petitioner were proved and he was awarded with punishment of postponement of increment for two years without cumulative effect. The said order was also confirmed by the Appellate Authority.

10. The learned Additional Advocate General had further contended that for a serious misconduct, punishment of stoppage of increment for two years without cumulative effect has been imposed by the Disciplinary Authority and the same was confirmed by the Appellate Authority. When the enquiry has been



W.A. (MD) No.16 of 2022

conducted following the principles of natural justice by a competent authority, this Court ought not to have interfered in the quantum of punishment. The power of judicial review is meant only to ensure that the individual receives fair treatment and it cannot be used by way of an appeal.

11.The learned Additional Advocate General had further contended that the writ Court was not correct in comparing the writ petitioner with the said Dharmaraj and T.Radhakrishnan. As far as the said T.Radhakrishnan is concerned, the enquiry authority has found that the charges as against him have not been proved. Based upon the said enquiry report, the charges against him have dropped by the Government. However, the petitioner has been found guilty in the enquiry report and hence, the petitioner cannot compare himself with the said T.Radhakrishnan.

12.The learned Additional Advocate General had further stated that all the delinquents who have been found guilty in the enquiry report have been imposed with same punishment of stoppage of increment for two years without cumulative effect. The enquiry was conducted as against 43 delinquents. All of them who were found guilty in the enquiry, were awarded with same



W.A. (MD) No.16 of 2022

punishment. The petitioner attempted to compare himself with Mr.K.Dharmaraj, the Head Constable. Since he had retired, the question of awarding of stoppage of increment for a period of two years would not arise and hence, he was awarded with black mark by the Commissioner of Chennai on 09.07.2011. Therefore, the petitioner cannot compare himself with the said Dharmaraj.

13.He had further stated that while comparing delinquents, the role played by each one of them have to be taken into consideration. Unless all of them are standing on the same footing, they cannot be treated equally and imposed with a same punishment. In the present case, the petitioner has compared himself with the said T.Radhakrishnan who was found not guilty in the enquiry proceedings. However, the petitioner has been found guilty in the enquiry proceedings. The petitioner attempted to compare himself with one Dharmaraj who had already retired and hence, he was awarded with a punishment of black mark. Therefore, the petitioner had projected himself to be on par with the said Dharmaraj and Radhakrishnan who were not equally placed on par with the writ petitioner. He had further contended that all the delinquents after being found guilty have been awarded with punishment of stoppage of increment for two years without cumulative effect except those who have retired



W.A. (MD) No.16 of 2022

in the meantime. There is no discrimination in awarding punishment among the co-delinquents who were found guilty in the enquiry report.

14.The learned Additional Advocate General had further contended that the writ Court ought to have seen under what circumstances, the petitioner was awarded with the said punishment and how he cannot be compared with the said Dharmaraj and T.Radhakrishnan. Without considering the context, the writ Court has proceeded to arrive at a finding that the writ petitioner has been discriminated in awarding of punishment. Hence, he prayed for allowing the writ appeal and restore the punishment imposed by the department as against the respondent/writ petitioner.

Contentions of the learned counsel appearing for the respondent/writ petitioner:

15.The learned counsel appearing for the respondent/writ petitioner had contended that when so many persons were involved in the same incident, all of them have to be treated equally by the department. In fact, the criminal proceedings were dropped by C.B.I as against the writ petitioner. The said Dharmaraj had also pleaded alibi during the departmental proceedings along



W.A. (MD) No.16 of 2022

with the writ petitioner. Hence, when the petitioner is on par with the said Dharmaraj, the petitioner ought not to have been imposed with a different punishment.

16.The learned counsel had further contended that the petitioner has no role whatsoever to play in the alleged leakage of question paper of general knowledge examination conducted by the Tamil Nadu Uniformed Services Recruitment Board. The petitioner had not even faced the trial but the name of the petitioner has been dropped by C.B.I even at the time of filing the final report. This would clearly indicate that the petitioner was not at all involved in the said offence or a misconduct in performing his official duty.

17.The learned counsel for the respondent had relied upon a Division Bench judgement of High Court reported in **1997 Writ L.R. 536 (M.Rajamanickam Vs. The Executive Director, Bharat Heavy Electricals Ltd., Trichy and another)** and contended that when apology is accepted with regard to the co-delinquent and he was let off, punishing imposition upon the writ petitioner should also have been cancelled.



W.A. (MD) No.16 of 2022

18.The learned counsel for the respondent had further relied upon a judgement of the Hon'ble Supreme Court reported in **(2008) 2 Supreme Court Cases 74 (Akhilesh Kumar Singh Vs. State of Jharkhand and others)** to contend that when there is no difference between the proved misconduct of the petitioner and others, he should have been treated equally on par with others. He had further relied upon another judgment of the Hon'ble Supreme Court reported in **(2008) 8 MLJ 518 (SC) (Man Singh Vs. State of Haryana and others)** to contend that Article 14 is applicable to initiation of departmental proceedings even to executive or administration action of the State.

19.The learned counsel for the respondent had further relied upon a Division Bench Judgment of our High Court reported in **2009 (3) CTC 388 (V.Arulkumar Vs. Housing and Urban Development Corporation Limited (HUDCO), represented by the Board of Director, New Delhi and another)** to impress upon the Court that punishment on similarly situated delinquent and officers facing identical charges should be dealt with similarly.

20.The learned counsel had further relied upon a Division Bench judgement of our High Court dated 17.12.2019 in **W.A(MD).Nos.1218 and**



W.A. (MD) No.16 of 2022

1219 of 2015 (in the case of Secretary to Government Vs. S.Bright Solomon

and another) to contend that the power of judicial review can be exercised in those co-delinquents when charges or misconduct were identical. Hence, he prayed for sustaining the order passed by the writ Court and to dismiss the writ appeal.

21.We have carefully considered the submissions made on either side and perused the records and judgements cited on either side.

22.The first respondent in the writ appeal is a Grade-II Constable who was issued with a charge memo for a misconduct of leaking question paper for the exams conducted by the Tamil Nadu Uniformed Services Recruitment Board, Chennai.

23.In the Departmental Enquiry, he was found guilty and he was imposed with a punishment of postponement of increment of 2 years without cumulative effect. The appeal filed by the first respondent before the Appellate Authority was also dismissed. Challenging the same, he had filed the writ petition.

24.A perusal of the affidavit in the writ petition discloses that the petitioner had mainly challenged the imposition of punishment on the ground of



W.A. (MD) No.16 of 2022

discrimination when compared to two other co-delinquents. The petitioner has referred to the case of one Dharmaraj, Head Constable who was found guilty in the Departmental Enquiry, but he was simply awarded with a black mark and was let of. The petitioner had further relied upon a case of one Mr.T.Radhakrishnan who was charge sheeted in a criminal case, but he was discharged by the High Court.

25.The petitioner had further contended that even though the said Radhakrishnan was found guilty in the Departmental proceedings, he was not awarded with any punishment. Therefore, according to the learned counsel for the petitioner, the petitioner has been discriminated when he is placed on par with two other co-delinquents namely the said Dharmaraj and Mr.T.Radhakrishnan.

26.The writ Court was pleased to accept the contention of the writ petitioner and allowed the writ petition on the only ground of discrimination. The writ Court had further found that no explanation has been offered by the Department for treating the writ petitioner in a different way than that of his co-delinquents who are similarly placed. On the said ground, the writ petition



W.A. (MD) No.16 of 2022

has been allowed. Challenging the same, the present writ appeal has been filed by the Department.

27.The learned Additional Advocate General appearing for the Appellant/Department has pointed out that all the co-delinquents have been imposed with same punishment of postponement of increments for a period of two years without cumulative effect. He had further pointed out the said Dharmaraj, Head Constable had retired when the enquiry report was submitted. Therefore, the Department was not in a position to impose punishment of stoppage of increment on the retired person and proceeded to award black mark to the said K.Dharmaraj. Therefore, the petitioner cannot compare himself with the said Dharmaraj and contended that he has been discriminated.

28.The learned Additional Advocate General had further pointed out that Mr.T.Radhakrishnan was exonerated in the enquiry proceedings. However, the petitioner was found guilty in the enquiry proceedings and hence, he cannot compare himself with Mr.T.Radhakrishnan.

29. Apart from these two co-delinquents namely Dharmaraj and Mr.T.Radhakrishnan, the writ petitioner was not able to point out any other person who had been imposed with a lesser punishment or exonerated even



W.A. (MD) No.16 of 2022

though he was similarly placed. Therefore, it is clear that the petitioner who is still in service cannot compare himself with the said Dharmaraj who had retired when the enquiry report was submitted. He cannot compare himself with Mr.T.Radhakrishnan who was exonerated in the departmental enquiry. The writ Court proceeded to allow the writ petition only comparing the writ petitioner with these two co-delinquents which we find is not legally sustainable.

30.It is settled position of law that the co-delinquents who are facing similar charges have to be treated equally and imposed with similar punishment. However, when one of the co-delinquents stands on a different footing, the question of invoking the principles of discrimination will not arise. Therefore, in the present case, we find that the Department has not discriminated the writ petitioner in imposing punishment of postponement of increments for two years without cumulative effect.

31.It is also brought to the notice of this Court that all other co-delinquents who were found guilty in the enquiry report have been imposed with same punishment. Therefore, we are not in agreement with the decision cited by the learned counsel appearing for the writ petitioner, in view of the fact



W.A. (MD) No.16 of 2022

that the petitioner in the present case stands on a different footing when compared to other co-delinquents who were referred to ,in the writ affidavit.

32.In view of the above said deliberations, we find that the order of the Writ Court in allowing the writ petition on the ground of discrimination in imposition of punishment is not legally sustainable and the same is set aside. This Writ Appeal is allowed and the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.,)

(R.V.J.,)

28.02.2023

Index :Yes/No
Internet :Yes/No
NCC : Yes/No
msa



W.A. (MD) No.16 of 2022

To

WEB COPY

- 1.The Director General of Police
Tamil Nadu
- 2.The Additional Director General of Police
Guindy
Chennai
- 3.The Superintendent of Police
CCIW CID
Guindy
Chennai
- 4.The Commissioner of Police
Greater Chennai
Chennai



WEB COPY



W.A. (MD) No.16 of 2022

**D.KRISHNAKUMAR, J.
AND
R.VIJAYAKUMAR, J.**

msa

Pre-delivery Judgment made in
W.A(MD).No.16 of 2022
and
CMP(MD).No.403 of 2022

28.02.2023