



W.P.(MD).No.17515 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.07.2023

PRONOUNCED ON : 27.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.17515 of 2020

and

W.M.P(MD)No.14663 of 2020

M.Velladurai

... Petitioner

Vs.

1.The Principal Secretary to the Government,
Home Department,
Secretariat,
Fort St. George,
Chennai.

2.The Director General of Police,
No.1, Dr.Radhakrishnan Salai,
Mylapore,
Chennai – 4.

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

4.The Superintendent of Police,
Thoothukudi,
Thoothukudi District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order made in G.O(2D)No.176 dated 21.05.2015 passed by the first respondent confirming the impugned order made in Rc.No.164235/AP2(1)/2011, dated 29.06.2012 passed by the second respondent modifying the impugned order made in C.No.C4/AP.124/2010, dated 23.02.2011 passed by the third respondent confirming the impugned order made in C.No.F1/P.R61/2010, dated 29.09.2010 passed by the fourth respondent and quash the same and consequently direct the respondents to restore the petitioner's seniority and grant consequential promotion and service benefits to the petitioner.

For Petitioner : Mr.A.Rajaram

For Respondents : Mr.N.Muthu Vijayan
Special Government Pleader

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order made in G.O(2D)No.176 dated 21.05.2015 passed by the first respondent, confirming the impugned order made in Rc.No.164235/AP2(1)/2011, dated 29.06.2012 passed by the second respondent, modifying the impugned order made in C.No.C4/AP.124/2010, dated 23.02.2011



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passed by the third respondent, confirming the impugned order made in C.No.F1/P.R61/2010, dated 29.09.2010 passed by the fourth respondent and consequently direct the respondents to restore the petitioner's seniority and grant consequential promotion and service benefits to the petitioner.

2.The learned counsel appearing for the petitioner took me through the various contention and grounds raised by him in the Writ Petition insisting this Court to quash the impugned order of punishment inflicted on the petitioner in disciplinary proceedings by the respondents.

3.Per contra, the learned Special Government Pleader appearing for the respondents took me through the defence in his counter-affidavit and prayed for dismissal of the Writ Petition.

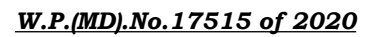
4.Heard Mr.A.Rajaram, learned counsel appearing for the petitioner and Mr.N.Muthu Vijayan, learned Special Government Pleader appearing for the respondents and perused the entire materials available on record.



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5.The petitioner was appointed as a Grade II Police Constable on 01.11.1995 and subsequently he was promoted as Grade-I NK (Driver) with effect from 19.02.2003 and presently, he is discharging his duties as Head Constable at Armed Reserve, Thoothukudi District. The petitioner's wife is Petchithai and she has five brothers and one younger sister, namely Sivakami. Her father and brothers are living in Srivaikuntam, Thoothukudi District. Her younger sister Sivakami was married to Sivasubramanian, who served as Sub-Inspector of Police, Kadayam Police Station, Tirunelveli District. Due to the matrimonial in differences between Sivasubramanian, Sub Inspector of Police and his wife Sivakami, they were living separately. Sivakami was living with her parents and brothers. Due to the family feud between the parents and brothers of Sivakami with Sivasubramanian, Sub-Inspector of Police, who was not amenable with them in various issues, taking forward his matrimonial life with Sivakami amicably, the relatives of Sivakami ie., the relatives of the petitioner's wife Petichithai, were expecting a right time to take revenge on the said Sivasubramanian. While so, the parents, brothers and relatives of Sivakami/Petichithai conspired to murder Sivasubramanian on 07.01.2010 and in the process of executing the



6. In furtherance to the same, the petitioner was placed under suspension with effect from 19.01.2010 for his highly



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reprehensible conduct in having failed to inform the superiors about the conspiracy by his relatives for murdering Sivasubramanian, Sub-Inspector of Police, Kadayam Police Station, Tirunelveli District, which was well known to him through his wife and her relatives. However, during the period of suspension, the petitioner was paid with subsistence grant and admissible Dearness Allowance under the Fundamental Rules. During the course of the said investigation, the petitioner had given a statement that he had the knowledge of the conspiracy of his relatives even before the murder. His own statement sufficiently proved his failure to inform such an important matter which endangered the life of another Police Officer.

7.As a disciplined member of the police force, the petitioner miserably failed to act honestly, instead he connived with the conspirators for such a grave murder. Pursuant to the same, the petitioner was dealt with the charge in Punishment Roll No.61 of 2010 under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 departmentally. In the said punishment roll, the charges levelled against the petitioner had been substantially proved by the enquiry officer on the basis of the material evidences. The disciplinary authority/the fourth respondent ie., the



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Superintendent of Police, Thoothukudi District fully agreed with the conclusions of the drawing enquiry officer, who held that the charges against the petitioner as proved and awarded the punishment of "Reduction in rank by one stage for three years with cumulative effect" on 29.09.2010. As against the same, the petitioner preferred an appeal before the Appellate Authority/the third respondent ie., the Deputy Inspector General of Police, Tirunelveli Range, who in turn confirmed the said punishment holding that the petitioner's delinquency is grave in nature and hence, the quantum of punishment is also in proportion to the gravity of the charge on 23.02.2011. Thereafter, the petitioner submitted a review petition before the second respondent/the Director General of Police, Chennai. The Director General of Police, Chennai while dealing with the petitioner's review petition, dated 29.06.2012 has observed as follows:-

"12.The written statement of the petitioner sounds natural. He admits his knowledge about the conspiracy, but at the same time, he states that he warned against the commission of the murder. Thus, it does not appear to be concocted to implicate the petitioner. There was also no motive for the Inspector to implicate the petitioner in this transaction.



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The petitioner has enclosed statements purportedly from some neighbours that the petitioner and his wife were taken away in a police vehicle. As already mentioned, this is not relevant because the petitioner admits that he was enquired in Alwarkurichy Police Station and the manner in which he was taken to the station does not make any significant difference of the facts.

13. Under these circumstances, I agree with the enquiry officer and disciplinary authority that the charge is proved. However, I take into account the fact that the petitioner had in fact tried to dissuade the conspirators from going ahead with the murder. He might have also been under the impression that his caution would have had an effect."

8. On the basis of the said observation, the Director General of Police was pleased to modify the punishment inflicted on the petitioner as "Reduction in rank by one stage for two years without cumulative effect". Thereafter, the petitioner preferred a mercy and memorial petition to the first respondent/Government with a requisition to set aside the modified punishment awarded to him. The Government carefully examined the petitioner's mercy petition and connected records and outrightly rejected the same vide G.O(2D) No.



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176/Home/Police.VI/Dept., dated 21.05.2015. The operative portion of the same is extracted as follows:-

3) *The Government have examined the petition of Thiru.M.Velladurai, Head Constable 2265, Thoothukudi District to cancel the modified punishment of "Reduction in rank by one stage for two years without cumulative effect" carefully and independently along with the connected records. For the proved charge, a higher punishment was given which was modified to the current punishment by the Director General of Police. The punishment is reasonable considering the gravity of the charge. In his petition read above, he has not adduced any new point for consideration. Hence, no modification to the existing punishment is required. The Government have, therefore, decided to reject the petition of Thiru.M.Velladurai, Head Constable 2265, Thoothukudi District. Accordingly, the Government order that the petition of Thiru.M.Velladurai, Head Constable 2265, Thoothukudi District to cancel the modified punishment of "Reduction in rank by one stage for two years without cumulative effect" imposed on him in Punishment Roll No.6/2010 be rejected as devoid of merits."*



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9. Though the learned counsel appearing for the petitioner vehemently contended that the Government ought not to have confirmed the punishment vide impugned G.O(2D) No. 176/Home/Police.VI/Dept., dated 21.05.2015, considering the fact that the allegations are clearly proved by the departmental enquiry and was carefully examined by the authorities in each and every level of appeal and finally confirmed, this Court is not inclined to interfere with. The learned Special Government Pleader appearing for the respondents also insisted that the petitioner, who is one of the members of the disciplined force having the responsibility to protect the life of people, failed to act in a duty-bound manner, which resulted in murdering a police officer. He also further insisted that the petitioner was awarded with the proportionate punishment considering the grave charges levelled and proved as against him. Even then, the same was modified to some extent by the review authority. The Government has rightly rejected the petitioner's mercy petition and hence need not be interfered with.



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10.The Hon'ble Apex Court in a Judgment in B.C.Chaturvedi Vs. Union of India and others reported in 1995 (6) SCC 749, in paragraph No.12 has held as follows:-

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere



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where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co- extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal."

11.This Court is fully in consonance with the observations that judicial review is not an appeal from a decision, but the same is meant to ensure that the delinquent receives fair treatment, this Court is not inclined to reappreciate the evidence and to arrive at an independent finding on the evidence which has been adduced by the petitioner in the disciplinary proceedings. Moreover, this Court also has taken note of the fair opportunity which has been provided by the disciplinary authority to defend his case and prove his innocence.



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12.A critical perusal of the records which were made available before me would reveal that during oral enquiry, 2 P.Ws were examined and 5 exhibits were marked. The delinquent cross-examined all the witnesses and also produced one defence witness in his favour though he did not produce any document. After the completion of the oral enquiry, the delinquent has also submitted his further written statement of defence on 15.07.2010. The delinquent was also served with a copy of the minute prepared by the enquiry officer on 02.09.2010 with a memo directing him to submit his representation if any on the same and he also duly submitted his further explanation on 07.09.2010. The delinquent had insisted that he had given a statement of having knowledge about the conspiracy of murdering Sivasubramanian only because of compulsion at the time of investigation. But the delinquent at the time of departmental enquiry, did not proceed to rebut the charge against him. The contention of the delinquent regarding the non-inclusion of the statement of incoming and outgoing calls between his wife Petchithai and one Ayyappan on behalf of the prosecution has nothing to do with the case of the prosecution in any way.



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13.This Court is of the considered view that it is the prime duty of the delinquent to produce the same in his favour to prove that he was not guilty. Having failed to produce the incoming and outgoing calls between his wife and one Ayyappan, the delinquent cannot claim his innocence.

14. The Hon'ble Supreme Court in a Judgment in **Director General R.P.F. and Ors. vs. Ch. Sai Babu** reported in **MANU/SC/0067/2003**, in paragraph No.6 has held as follows:

“6. As is evident from the order of the learned Single Judge there has been no consideration of the facts and circumstances of the case including as to the nature of charges held proved against the respondent to say that penalty of removal from service imposed on the respondent was extreme. Merely because it was felt that the punishment imposed was extreme was not enough to disturb or modify the punishment imposed on a delinquent officer. The learned Single Judge has not recorded reasons to say as to how the punishment imposed on the respondent was shockingly or grossly disproportionate to the gravity of charges held proved against the respondent. It is not that in every case of imposing a



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punishment of removal or dismissal from service a high court can modify such punishment merely saying that it is shockingly disproportionate.

Normally, the punishment imposed by disciplinary authority should not be disturbed by high court or tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be maintained, and the department/establishment in which the concerned delinquent person works.”

The theory of reasonable opportunity and the principles of natural justice have evolved to uphold the rule of law and to assist the delinquent to vindicate his rights.

15. In this case, the respondents have fully been reasonable by giving an appropriate opportunity to the petitioner to defend his case without violating the principles of natural justice.



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16.It is a settled proposition of law that once the charges levelled against the delinquent employee are proved, then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority having kept in view the nature and gravity of the charges, findings of the enquiry officer, the entire service records of the petitioner and all the relevant factors relating to the petitioner has exercised its discretion and has imposed appropriate punishment as provided in the Rules. That apart, in review, the Director General of Police with a considerate mind has modified the punishment from "Reduction in rank by one stage for three years with cumulative effect" to "Reduction in rank by one stage for two years without cumulative effect".

17.In furtherance to the same, this Court is inclined to observe that the punishment imposed on the delinquent petitioner is neither shocking nor grossly disproportionate to the gravity of the charges proved against him. As a disciplined member of the Uniformed Service, he ought to have promptly informed his higher authorities about the information which he came across with respect to a



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conspiracy to murder his colleague, Sub Inspector of Police with immediate effect. Since he failed to do so, this Court, upholding the punishment imposed on him, is not inclined to interfere with the impugned G.O(2D) No.176/Home/Police.VI/Dept., dated 21.05.2015, passed by the first respondent.

18. Accordingly, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes
Index : Yes
Internet : Yes
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To

- 1.The Principal Secretary to the Government,
Home Department,
Secretariat,
Fort St. George,
Chennai.
- 2.The Director General of Police,
No.1, Dr.Radhakrishnan Salai,
Mylapore,
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- 3.The Deputy Inspector General of Police,
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- 4.The Superintendent of Police,
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L.VICTORIA GOWRI, J.

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Pre-Delivery Order made in
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