



W.P.(MD)No.7217 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.03.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.7217 of 2018

and

W.M.P(MD)Nos. 6936 & 18946 of 2018

A. Sikkander Dulkarni

... Petitioner

Vs.

1.The Additional Director General of Police/
Inspector General of Prisons,
Egmore, Chennai – 600 008.

2. The Deputy Inspector General of Prisons,
Chennai Region,
Whannels Road, Egmore,
Chennai – 08.

3.The Superintendent of Prison,
Central Prison - I (Conviction),
Puzhal, Chennai.

4. Jeyaraman,
Jailor,
The Enquiry Officer,
Central Prison – 2, (Remand),
Puzhlal, Chennai.

... Respondents



W.P.(MD)No.7217 of 2018

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, calling for the records pertaining to the impugned punishment order passed by the 1st respondent in his proceedings in No. 29719/ES3/2017-5 dated 04.10.2017, confirming the order passed by the 2nd respondent and 3rd respondents in No. 3/4/Mu.Vu./2017, dated 20.06.2017 and No. 2982/Po3/2016, dated 21.12.2016, respectively and quash the same.

For Petitioner : Mr.N.Sathish Babu

For R1 to R3 : Mr.M.Lingadurai
Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned order, dated 04.10.2017 and confirmed by the 2nd and 3rd respondents, dated 20.06.2017 and 21.12.2016 respectively.

2. The petitioner was appointed as Secondary Grade Warder on 01.05.1989 and was posted in Central Prison, Madurai. Thereafter, he was promoted and was working as Chief Head Warder, Sub Jail, Kodaikanal, Dindigul District. A charge memo, dated 23.03.2016 was issued containing two charges.



W.P.(MD)No.7217 of 2018

WEB COPY

The 1st charge is that on 23.02.2016 at 09.05 a.m., the petitioner left the prison without any intimation and reported to duty only in the evening at 06.52 p.m. The 2nd charge is that the petitioner reported to duty on 23.02.2016 at about 06.52 p.m., while inspection was carried out through scanning, it came into light that the petitioner had brought a mobile phone charger in his bag. The petitioner has submitted an explanation on 05.04.2016, thereafter an enquiry was conducted.

3. The contention of the petitioner is that none of the witnesses have deposed in support of the respondents' case. Even though, there is no supporting witness to the case of the respondents, the enquiry officer has concluded the enquiry, by holding the charges are partially proved and submitted his report on 25.10.2016. Based on the enquiry report, a Show Cause notice was issued to the petitioner directing to submit his explanation and the petitioner has also submitted an explanation on 10.11.2016, wherein the petitioner had prayed to exonerate him from the charges based on the evidences of P.W.1 to P.W.3. But, without appreciating the same, the respondents have imposed punishment of stoppage of increment for three years with cumulative effect on 21.12.2016. Thereafter, the petitioner has filed an appeal and the same was dismissed and then



W.P.(MD)No.7217 of 2018

WEB COPY

review petition was filed and the same was also dismissed. Aggrieved over the same, the writ petition is filed.

4. The respondents have filed counter stating that on 22.03.2016 the petitioner had left from the duty place at 09.05 a.m. and had not reported to duty back until 06.52 p.m. At the time of entry, the petitioner was stopped to regular security check up by the then Night Officer Mr.Vellaichamy, Assistant Jailor and on such security check, it was found that the petitioner was carrying mobile phone charger in his bag. The incident was recorded in CCTV footage as well. The Enquiry officer had conducted enquiry after affording opportunity to the petitioner. The enquiry officer has found the petitioner guilty since as per the enquiry officer, even if the petitioner had absent-mindedly brought the mobile charger, the petitioner has not handed over the same to the gate keeper voluntarily, but only after it was discovered using the scanner, he took it outside and handed over at the prison gate and hence the enquiry officer has held the charges was proved partially. Therefore, the reasons cited by the petitioner cannot be accepted. Hence the respondents pray to dismiss the writ petition.



W.P.(MD)No.7217 of 2018

WEB COPY

5. Heard Mr.N.Sathish Babu, learned counsel appearing for the petitioner and Mr.M.Lingudurai, learned Special Government Pleader appearing for the respondent Nos.1 to 3. Perused the material documents available on record.

6. The 1st charge against the petitioner is that the petitioner has left the premises without informing the respondents. The contention of the petitioner is that he was not allowed inside the prison to work. But the contention of the respondents is that the petitioner voluntarily left from the place. If the plea of the respondents ought to be accepted, then the respondents would have marked absence if the petitioner left the premises and had not reported to duty. But the respondents have not submitted any evidence to prove that the respondents have marked the petitioner's absence in any record. Moreover, if the petitioner had left the premises, then the respondents would have noted the same in the CCTV camera and no such evidence was produced before the enquiry officer to prove the same. Even if it is taken that the charge is proved, then the punishment of stoppage of increment for three years with cumulative effect is disproportionate.



W.P.(MD)No.7217 of 2018

WEB COPY

7. As far as the 2nd charge is concerned, the petitioner brought the mobile charger to the prison premises, which is a banned article. During the scanning process the charger was deducted, immediately the petitioner has removed the same and kept it outside. The enquiry officer has held that the 2nd charge is partially proved. The reasoning given by the enquiry officer is that the petitioner is well aware that such banned article cannot be brought into the prison premises and the fact that the petitioner has brought the mobile charger is admitted and hence it is partially proved. The petitioner had submitted that inadvertently it was kept in his bag and it was not deliberate act. Moreover, the petitioner has immediately removed the same and kept it outside. Therefore, this Court is of the considered opinion that the punishment of stoppage of increment for three years with cumulative effect is too harsh and touches the conscious of this Court.

8. In view of the foregoing reasons, this Court is of the considered opinion that the punishment of stoppage of increment for three years with cumulative effect is disproportionate. Normally the case ought to be remitted to the authorities for reducing the punishment, but at this juncture the Learned



W.P.(MD)No.7217 of 2018

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Counsel submitted that the petitioner has voluntarily retired from service. Since there is no employer and employee relationship, the case cannot be remitted back to the authorities. Therefore, this Court is directing the respondents to impose the punishment of stoppage of increment for six months without cumulative effect and the effect of this order shall be granted to the pensionary benefits. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of the order.

9. With the aforesaid observation, this writ petition is disposed of.

No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
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07.03.2023

To

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W.P.(MD)No.7217 of 2018

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W.P.(MD)No.7217 of 2018

S.SRIMATHY, J

ksa

**Order made in
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