



W.P.(MD)No.21041 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD)No.21041 of 2014**

M.Mahendran

... Petitioner

vs.

1.The Director General of Police,  
Chennai.

2.The Additional Director General of  
Police,  
Chennai.

3.The Deputy Inspector General of  
Police,  
Ramanathapuram Range,  
Ramanathapuram.

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to impugned order passed by the 3<sup>rd</sup> respondent vide PR21/A2/2010, dated 18.06.2010 and the impugned order vide Rc.No.235843/AP 1(2)/2010, dated 03.10.2013, passed by the 1<sup>st</sup> respondent and to quash the same and consequently,



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to restore all service benefits of the petitioner.

***(Prayer amended, vide Court order, dated 09.09.2022, in WMP(MD)No.15720 of 2022 in WP(MD)No.21041 of 2014)***

For Petitioner : Mr.T.Antony Arul Raj  
For Respondents : Mr.J.John Rajadurai  
Government Advocate  
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### **ORDER**

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned order passed by the 3<sup>rd</sup> respondent, dated 18.06.2010 and the impugned order, dated 03.10.2013, passed by the 1<sup>st</sup> respondent and consequently to restore all service benefits of the petitioner.

2. The petitioner was serving as Sub Inspector of Police and joined the service in the year 1987 and promoted as Inspector of Police in the year 2000. The contention of the petitioner is that one local politician from Mahidi by name Boopathy Mani developed strained relationship with the petitioner who belong to the then ruling party. The petitioner seized his tractor because it involved in an



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unlawful activity. However, the said tractor was released because of the direction of the superior officer and the petitioner made entry to this effect immediately in the general diary and thereafter, released the tractor. The petitioner had also registered FIR against him in Crime No.46 of 2008. The said Boopathy Mani filed CrI.O.P.(MD)No.7747 of 2008 seeking transfer of investigation and also leveled false allegation against the petitioner with the superior officers. Infact he had signed the name of his wife Rajalakshmi while submitted petitions.

3. In this background, the petitioner was issued with charge memo, dated 18.03.2009, containing four articles of charges. The 1<sup>st</sup> charge was to the effect that the petitioner had taken Rs.500/- from one Murugesan on 21.02.2008 to give a certificate that his son Shankar was not having any cases in Keel Thooval Police Station. There was some connection between the said Murugesan, Boopathy Mani and the said Rajalakshmi. The contention of the petitioner is that the said Murugesan specifically stated that he was not enquired at all during the preliminary enquiry.



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4. The 2<sup>nd</sup> charge against the petitioner is related to release of tractor after getting Rs.10,000/- as illegal gratification. The release was carried out by the Head Constable Mr. Arumugam (669). The said Head Constable Arumugam was examined by the petitioner as defence witness and he deposed in favour of the petitioner.

5. The 3<sup>rd</sup> charge is that the petitioner took Rs.500/- for issuing non traceable certificate from one Madhavan, son of Periyasamy for getting driving license. Actually, the said Madhavan is a relative of Boopathy Mani. Madhavan also did not produce any evidence during the enquiry. But the said Madhavan admitted during cross examination that he made payment to one Shanmugavel who was not examined during the enquiry.

6. The other allegation is that the petitioner received Rs.2000/- for releasing one Neelamegam and Balasubramani on bail. Actually, the said accused were



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arrested and released on bail by the Sub Inspector of Police Vimala and the said Vimala was not examined during the enquiry.

7. For all these charges, the petitioner submitted an explanation. In the enquiry, it was held not proved. However, the appointing authority intended to deviate from the enquiry report and issued notice to this effect. The disciplinary authority has taken into the preliminary enquiry report and has passed the impugned order whereby the authority has imposed a punishment of reduction in pay by three stages for three years with cumulative effect, vide order, dated 18.06.2010. There was a suo moto revision by the 2<sup>nd</sup> respondent and the said order was confirmed. The petitioner submitted a mercy petition, dated 17.10.2010, to the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent by the impugned order, dated 03.10.2013, rejected the petition. A copy of the said order was served only on 26.11.2014. Aggrieved over the order passed in the mercy petition, the present writ petition is filed.



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8. The respondents have filed a counter affidavit stating that the petitioner has received illegal gratification of Rs.500/- from one Shankar, Rs.10,000/- from one Boopathy Mani and one Madhavan for granting fresh license and Rs.2,000/- from one accused Neelamegam and Balasubramanian. The enquiry officer has held that the charges are not proved. Dissenting note (Minutes) was issued to the petitioner. After receiving the explanation from the petitioner, the Deputy Inspector General of Police, Dindigul range has passed an order imposing a punishment of reduction of scale of pay by three stages for three years with future postponement of increment. The same was confirmed in the mercy petition. The petitioner was granted sufficient opportunity to defend the case. The authorities have taken the preliminary enquiry report and has thoroughly gone into the deposition of the affected parties. Thereafter, the authority had come to the conclusion that the petitioner has committed such offences.

9. The respondents have categorically stated that during the preliminary enquiry as well as the oral enquiry, one Tr.Velu, PW-4 who was also present in



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Keelathooval, the fact that the Inspector of Police had issued the certificate after getting Rs.500/- from Murugesan. During the oral enquiry PW-7 Murugesan had turned hostile. However, during the cross examination the said PW-7 Murugesan had admitted that he only had signed the preliminary enquiry statement in Ex.P-7. Hence, the charge against the petitioner was correctly held as proved by the punishing the authority by drawing the dissenting minute. Likewise, Boopathy Mani, Velu and Mangalam have clearly deposed against the petitioner and have stated that the petitioner himself came to the spot where the tractor was released by the petitioner by receiving the amount from the Boopathy Mani. Even though the Deputy Inspector has instructed the petitioner release the tractor, the petitioner is not bound to obey the illegal orders issued by his superiors. The petitioner ought to have examined the Tahsildar, Muthukulathur in defence and ought to have proved his innocence. Therefore, the claim of the petitioner cannot be entertained and the punishment was imposed based on the records, evidence and deposition of witnesses. Hence, the respondents prayed to dismiss the writ petition.



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10. Heard Mr.T.Antony Arul Raj, learned Counsel appearing for the petitioner and Mr.J.John Rajadurai, learned Government Advocate appearing for the respondents and perused the records.

11. As far as the 1<sup>st</sup> charge is concerned, the petitioner has received Rs. 500/- from Murugesan for issuing a certificate to certify that his son Shankar is not having any cases against him. The contention of the petitioner is that the said Murugesan has specifically deposed before the enquiry officer that he has never visited the police station regarding this, his son came on vacation from army and enquired regarding the certificate. The said Murugesan further deposed before the enquiry officer that he was not enquired regarding this by any officer and he has not spoken to the Panchayat President regarding the complaint at all. The enquiry officer has taken the deposition of Murugesan into consideration and has held that the charge is not proved. However, the disciplinary authority has deviated from the enquiry officer's findings. On perusing the impugned punishment order, it is seen that the appointing authority has stated that the deposition of the prosecution



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witnesses would prove the charge and the explanation of the delinquent cannot be entertained. Absolutely, there is no reasoning stated in the impugned punishment order. Even in the dissenting note it has been stated that the witness has not seen the delinquent receiving the amount.

12. As far as the Charges 2 and 3 are concerned, the specific stand of the petitioner is that he has not released the tractor. In such circumstances, the petitioner had received the amount and released the tractor will not arise at all. Hence, all the four charges ought to be held not proved. As rightly pointed out by the learned Counsel for the petitioner, the respondents have not enquiry one Vimala, Sub Inspector of Police who is an appropriate witness for Charge No.4. Therefore, charge no.4 also ought to be held not proved. Based on this enquiry officer has held all the four charges are not proved. The enquiry officer had elaborately discussed about each and every charge and has held that the charges are not proved.



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13. The disciplinary authority has relied on the preliminary enquiry report alone and has come to the conclusion that the charges are proved and the subsequent deposition of witness was not taken into account. It is settled preposition that based on the preliminary enquiry report, charges cannot be held as proved. If the respondents' argument is to be accepted, then enquiry itself is not necessary, based on preliminary enquiry anybody can be punished, which preposition would make the disciplinary proceedings mockery.

14. There are several judgments where it has been held that the preliminary enquiry report cannot be taken into consideration to confirm the punishment. More so, when the enquiry officer has held that the charges are not proved. In the case of M. Ramakrishnan Vs. the Superintendent of Police and another in W.P.No. 28893 of 2008 vide order dated 18.09.2009 has held that view taken solely on the statements recorded during the preliminary enquiry is unsustainable. The disciplinary authority cannot simply rely on the preliminary report and impose a





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**S.SRIMATHY, J**

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