



W.P.(MD).No.10022 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.10022 of 2017

and

W.M.P(MD)No.7675 of 2017

S.Muthuraman

... Petitioner

Vs.

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

2.The Deputy Inspector General of Police,
Railways,
Chennai-4.

3.The Superintendent of Police,
Railways,
Trichy.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to impugned order passed by the Director General of Police, 1st Respondent herein in RC No.000130/AP.IV(2)/2016 dated 03.01.2017 upon a review against the appellate order passed by the Deputy Inspector General of



W.P.(MD).No.10022 of 2017

Police, 2nd respondent herein in RC.No.A2/5443/2015 dated 29.10.2015 pursuant to the final order of 'Removal from service' passed by the Superintendent of Police, Railways, Trichy 3rd respondent herein in PR.No. 17/2014 u/r. 3(b) of T.N. Police Subordinate Services (Discipline and appeal) Rules dated 21.08.2015, quash the same and consequently direct the respondents to reinstate the petitioner as Grade I PC in Railway Protection Force with back wages.

For Petitioner : Mr.A.John Vincent

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

This petition has been filed challenging the punishment of removal from service passed by the original authority.

2. The petitioner had joined the service in the year 2002 as Grade-I Police Constable attached to Railway Protection Force, Karaikudi. The brief facts of the case as stated in the affidavit is that one Mr.A.Arockiasamy, Grade-I Police Constable of the same RPF preferred a petition to the Inspector of Police alleging that on 26.08.2012 his wife's mobile phone Nokia C20 model



W.P.(MD).No.10022 of 2017

was lost. Based on the enquiry from call details, it was seen that the petitioner has stolen and sold it to one Chithra and thereafter it has changed hands, then finally the mobile's display was broken and the mobile could not be repaired, finally it became scarp. On 05.07.2013, the Special Sub Inspector recommended to the Inspector of Police to take action against both the persons, since the defacto complainant preferred a petition for action after settling the dispute and received Rs.3,500/- (Rupees Three Thousand and Five Hundred only) from the petitioner. The Inspector of Police also recommended to the Deputy Superintendent of Police to take action and on the same date, Inspector of Police recorded the statement of witness. Pursuant to which, department action was initiated. A charge memo with a list of documents and witnesses were served on the petitioner on 10.07.2014 and the petitioner submitted explanation. From 14.10.2014 and on various dates until 27.01.2015 the enquiry was conducted and then the enquiry report has held the charges were proved. Based on the enquiry report the petitioner was removed from service on 21.08.2015. Aggrieved over the same, the petitioner had filed an appeal before the Deputy Inspector General of Police, the 2nd respondent herein on 12.09.2015 and the same was dismissed on 29.10.2015. The petitioner preferred Review cum Mercy Petition and the same was dismissed on 31.07.2017.



W.P.(MD).No.10022 of 2017

Aggrieved over the same, the present writ petition is filed.

3. The respondents have filed counter and it is stated that the allegation against the petitioner is serious in nature. It is evident that during the enquiry, the petitioner had attended the ear-boring ceremony which was conducted in the place of Grade-I Police Constable, namely Arockiasamy and the petitioner had accepted that he had stolen the mobile phone from his place. In pursuance of the report of the Special Sub-Inspector of Police, preliminary enquiry was conducted and thereafter, disciplinary proceeding was initiated. The Deputy Superintendent of Police recommended to take disciplinary action against the petitioner as well as the said Arockiasamy for his delayed complaint. Based on the recommendation, the said Arockiasamy was transferred to some other place. The respondents have initiated disciplinary proceedings against the petitioner. After elaborate enquiry, the Enquiry Officer has held the charge is proved. Therefore, the disciplinary authority has imposed punishment of compulsory retirement. On appeal and review, the same was not confirmed. Hence, the punishment imposed on the petitioner was confirmed. Since the petitioner has not raised any legally sustainable ground, the petitioner's punishment cannot be



W.P.(MD).No.10022 of 2017

interfered with and prayed to dismiss the writ petition.

4. Heard Mr.A.John Vincent, learned counsel for the petitioner and Mr.R.Suresh Kumar, learned Additional Government Pleader for the respondents and perused the records.

5. The present writ petition is filed that the respondents have imposed a punishment of removed from service, but on perusal of records it is seen that the respondents have imposed a punishment of compulsory retirement. The averment stated in the affidavit is incorrect.

6. The contention of the respondents is that the petitioner is a responsible officer, who is serving in the disciplined uniformed service. If he has found some mobile phone, he ought to have handed over the mobile phone to the said Arockiasamy and requested him to hand over the same to the rightful owner. But, the petitioner has taken the mobile phone and kept with himself, which will amount to stealing the mobile phone. Hence, the act of the petitioner is



W.P.(MD).No.10022 of 2017

highly deplorable. While conducting enquiry, there is no violation of principles of natural justice and the petitioner has also accepted the charge. Therefore, the respondents submitted that the petitioner cannot turn around and contest the case.

7. The learned counsel appearing for the petitioner submitted that even in the explanation to the charge memo, the petitioner has categorically explained he has enquired the persons in and around the people within the premises of the said Arockiasamy house, but none claimed ownership. Moreover, it was found near the kitchen and he has enquired the cook, who was present there. Since none of them claimed ownership, the petitioner with an intention to hand over to the owner, had kept the mobile in his pocket. But, inadvertently left the place without remembering that the mobile phone is in his pocket and he forgot the same. Since the mobile was in switch off mode and nobody claimed ownership of the mobile phone, he was intending to give it to one Chithra, who was serving in his mothers' place. The said Chithra tried to repair the phone for her own use and the same could not be repaired.



W.P.(MD).No.10022 of 2017

WEB COPY

8. The Learned Counsel appearing for the petitioner further submitted that the petitioner had joined the service in the year 2002 and was serving in the post with unblemished record. The said incident cannot be termed as a theft, since the petitioner's intention was not to steal the mobile phone. Since there was none claimed ownership of the mobile phone, he has taken it along with him inadvertently. Moreover, when the petitioner intended to hand over to the said Chithra, he was under the impression that since nobody had claimed mobile phone all these months, he was inclined to hand it over to Chithra, so that it can be used. Unfortunately, the said Chithra has handed over to her son and the son has sold the mobile phone to the mobile shop. After repairing, the location of the mobile was detected and the entire episode was narrated and the petitioner was alleged stealing the mobile phone. Further submitted that in the cross examination of the said Chithra and one Muthu, who was the mobile phone shop owner, it would be evident that the petitioner has not intentionally steal the mobile. Since it was lying without any claimant, he thought it fit to be put under use. Moreover the petitioner is only 47 years old and he has 13 more years of service and hence, the learned counsel prayed to modify the punishment.



W.P.(MD).No.10022 of 2017

WEB COPY

9. However, the Learned Additional Government Pleader appearing for the respondents vehemently opposed to the plea of the petitioner to modifying the punishment and submitted that stealing is the habitual manner of the petitioner. Once he caught while stealing, he would seek apology for the incident, which is a regular practice to him. For which, he relied on the communication dated 17.05.2013 of the Superintendent of Police, Trichy, wherein it is stated that apart from the above incident, the petitioner had taken a ladies' purse from a house and took five golden finger rings. When he was caught, he had sought forgiveness with tears and hence, by showing mercy on him, the victim refused to give complaint. Since the petitioner is habitual offender, the co-workers are afraid to serve along with him, fearing that they would be un-necessarily dragged in such offence committed by the petitioner. The learned Additional Government Pleader relied on the judgment reported in **2006 (2) SCC 373 Paragraph No.15 (Government of A.P and others Vs. Mohd. Nasrullah Khan)**, which is extracted hereunder.

“This takes us to the last submission of the counsel for the respondent. Learned counsel for the respondent contended that the offence, said to have been committed, being minor in nature and no loss being caused to the owner of the property, inasmuch as the



W.P.(MD).No.10022 of 2017

WEB COPY

same had been recovered on the spot, lenient punishment may be awarded in place of dismissal from service. We are unable to countenance this submission. The gravity of the offence must necessarily be measured with the nature of the offence. The respondent was a member of a disciplined force holding the rank of Head Constable. The duty assigned to him was a “bandobast” duty during the visit of the then President Bill Clinton, who ran a security risk of the highest grade. His misconduct could have led to serious security lapse resulting in fatal consequences. But, because of timely detection by the electrician, PW 4, the lens was recovered and immediately restored. We entirely agree with the inquiry officer that the charges are serious in nature, being committed by a member of a disciplined force, who deserved stringent punishment. To instill the confidence of the public in the establishment, the only appropriate punishment in such cases is dismissal from service, which has been correctly awarded.”

10. After hearing the rival submissions this Court is of the considered opinion that the petitioner might have inadvertently taken the phone, but when he had handed over the phone to one Chitra, he failed to uphold the integrity and pride of the uniformed service. The petitioner ought to have handed over the phone to the concerned Police Station. Having failed to do so, the contention of the petitioner that he inadvertently taken the phone is not acceptable. Moreover, the communication dated 17.05.2013 of the Superintendent of Police, Trichy states that the petitioner is habitual offender and has stated one more offence apart from the offence narrated in this writ



W.P.(MD).No.10022 of 2017

petition. Apart from that, the co-worker are fearing to work along with the petitioner ought to be taken into account. As far as the punishment is concerned, the respondents have not imposed the punishment of removal from service as stated in the affidavit, but has imposed only compulsory retirement by taking the service rendered by the petitioner from 2002 to 2013. Hence, the punishment is not disproportionate. For these reasons, this Court is not inclined to entertain this writ petition.

11. For the above reasons, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.01.2023

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

gbg

To

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



W.P.(MD).No.10022 of 2017

2.The Deputy Inspector General of Police,
Railways,
Chennai-4.

3.The Superintendent of Police,
Railways,
Trichy.

S.SRIMATHY, J.

gbg

W.P.(MD).No.10022 of 2017



WEB COPY



W.P.(MD).No.10022 of 2017

23.01.2023