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WP.No.1558 of 2023

In the High Court of Judicature at Madras

Dated : 01.10.2024

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.1558 of 2023
& WMP.No.1651 of 2023

A.Vijayasekaran, Grade I
Police Constable, Marine
Police Station,
Nagapattinam formerly
Velankanni Police Station,
Nagapattinam District.

...Petitioner

Vs

- 1.The Superintendent of Police,
Nagapattinam District.
 - 2.The Deputy Inspector General of
Police, Thanjavur Range Office,
Thanjavur District.
 - 3.The Director General of Police,
Tamil Nadu, Chennai-4.
 - 4.The Secretary to Government
(Home) Police 4 Department,
Fort St.George, Chennai-9.
- ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the 1st respondent in connection with impugned order passed by him in K1 PR No.5/2016 dated 19.6.2020, confirmed by the 2nd respondent in Na.Ka.No.B2/APPEAL 67/2020 dated 15.10.2020, modified by the



WP.No.1558 of 2023

3rd respondent in Rc.No.1067192/AP.1(1)/2021 dated 15.7.2021 and confirmed by the 4th respondent in G.O.(D) No.1179 Home (Police-VI) Department dated 26.8.2022 and quash the same.

For Petitioner : Mr.K.Venkatramani, SC for
Mr.M.Muthappan
For Respondents : Mr.M.Bindran, AGP

ORDER

This writ petition has been filed challenging the proceedings of the first respondent dated 19.6.2020 as confirmed by the second respondent in the order dated 15.10.2020, subsequently modified by the third respondent through proceedings dated 15.7.2021 and confirmed by the fourth respondent vide G.O.(D) No.1179 dated 26.8.2022.

2. Heard the learned Senior Counsel appearing on behalf of the petitioner and the learned Additional Government Pleader appearing for the respondents.

3. When the matter came up for hearing on 24.9.2024, this Court, on hearing both sides, passed the following order :

*"Heard the learned counsel for the petitioner and
the learned Additional Government Pleader appearing*



WEB COPY



WP.No.1558 of 2023

for the respondents.

2. Disciplinary proceedings were initiated against the petitioner by issuing a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline & Appeal) Rules, 1955. Originally, an Enquiry Officer was appointed to conduct oral inquiry against the petitioner. In the meantime, a criminal case was registered against the petitioner and it was investigated in Crime No.17 of 2016 on the file of the Inspector of Police, Town Police Station, Nagapattinam. Subsequently, the said criminal case was referred as a "mistake of fact" in R.C.S.No.48 of 2018 dated 12.7.2018.

3. In so far as the said inquiry conducted by the Enquiry Officer is concerned, it was found that the charges have not been proved and a report to that effect was submitted on 13.8.2018.

4. The grievance of the petitioner is that the first respondent issued an order dated 24.11.2018 appointing another Enquiry Officer to conduct a fresh oral inquiry. Pursuant to that, the second Enquiry Officer submitted a report, based on which, by order dated 19.6.2020, a punishment of postponement of increment for two years with cumulative effect was imposed against the petitioner by the first respondent. The statutory appeal filed by the petitioner against the said order dated 19.6.2020 was dismissed by the second respondent on 15.10.2020. Aggrieved by the said order 15.10.2020, the petitioner preferred a review petition before the third respondent, who, by order dated 15.7.2021, modified the punishment imposed into one of postponement of increment for one year without cumulative effect.

5. The main ground that was urged by the



WEB COPY



WP.No.1558 of 2023

learned Senior Counsel appearing on behalf of the petitioner is that the Disciplinary Authority cannot appoint a second Enquiry Officer when the first Enquiry Officer had already submitted a report to the effect that the charges levelled against the petitioner were not proved. According to him, at best, if the Disciplinary Authority disagrees with the report by the Enquiry Officer, he has to assign reasons for disagreeing with the same and seek for an explanation from the petitioner and ought to have proceeded further and such a procedure has not been followed in this case and hence, the very report of the second Enquiry Officer is unsustainable in law.

6. The next ground that was urged by the learned Senior Counsel appearing on behalf of the petitioner is that even in the second inquiry, only three witnesses were examined and out of them, the first witness was the woman, who had sent a letter that she was not willing to attend the inquiry and tender her evidence; the second witness was the trustee, who did not support the case of the prosecution; the third witness was the Inspector of Police, who registered the criminal case; and the fourth witness was the Enquiry Officer, who conducted the preliminary inquiry. He further submitted that even with the available statements recorded by the Enquiry Officer, who conducted the second inquiry, the charges have not been proved.

7. The learned Additional Government Pleader seeks for some time to file a counter in this case.

8. Post on 01.10.2024 under the caption 'part heard cases'."



WP.No.1558 of 2023

4. Pursuant to the said order dated 24.9.2024, today, a counter has been filed by the first respondent for himself and on behalf of other respondents also wherein he took a stand that a de novo inquiry was ordered by the first respondent after receiving the earlier inquiry report dated 13.8.2018, that in the de novo inquiry, the subsequent Enquiry Officer found that the charges were proved against the petitioner and that in view of the same, an appropriate punishment was imposed against the petitioner. The first respondent relied upon the second inquiry report in order to come to a conclusion that the punishment imposed against the petitioner is justified and that there are no grounds to interfere with the impugned orders. He ultimately sought for dismissal of this writ petition.

5. The learned Senior Counsel appearing on behalf of the petitioner relied upon the following judgments :

*"(i) a judgment of the Supreme Court in the case of **K.R.Deb Vs. Collector of Central Excise, Shillong [reported in 1971 (2) SCC 102];***

*(ii) a judgment of the Supreme Court in the case of **Nirmala J.Jhala Vs. State of Gujarat [reported in 2013 (4) SCC 301];***

*(iii) a judgment of the Supreme Court in the case of **Vijay Shankar Pandey Vs. Union of***



WEB COPY



WP.No.1558 of 2023

India [reported in 2014 (10) SCC 589]; and
(iv) a judgment of the Division Bench of
this Court in the case of **P.Siddeswaran Vs.**
Secretary to Government of Tamil Nadu
[W.A.No.2629 of 2018]."

6. Per contra, the learned Additional Government Pleader appearing for the respondents relied upon the judgment of the Apex Court in the case of **State of Karnataka Vs. Umesh [Civil Appeal Nos.1763 & 1764 of 2022 dated 22.3.2022]** in order to substantiate his submission that the scope of review of an order passed by the Disciplinary Authority is very limited and that the facts of the present case do not warrant such interference. He further submitted that having participated in the inquiry, the petitioner cannot turn around and now question the very inquiry conducted and the findings rendered by the subsequent Enquiry Officer.

7. This Court has carefully considered the submissions of the learned counsel on either and perused the materials available on record and more particularly the impugned orders.

8. Disciplinary proceedings were initiated against the petitioner through the proceedings dated 05.4.2016, pursuant to which, an Enquiry Officer was nominated. The Enquiry Officer conducted the



WP.No.1558 of 2023

inquiry and came to the conclusion that the charges levelled against the petitioner were not proved. However, the first respondent had chosen to completely throw away the first inquiry report and proceeded to appoint a fresh Enquiry Officer to conduct a de novo inquiry.

9. The first issue that arises for consideration is as to whether the procedure that was adopted by the first respondent is sustainable in law.

10. It is now too well settled that where an Enquiry Officer is appointed and a report is submitted, if the Disciplinary Authority is not agreeable to the findings of the Enquiry Officer, he can always give his reasons and seek for an explanation from the delinquent employee. The other option that is left to the Disciplinary Authority is to pass an order and point out the deficiencies in the inquiry report and thereafter, he can always order for a further inquiry and get a fresh report. The Disciplinary Authority cannot completely abandon the inquiry that was already undertaken and appoint a fresh Enquiry Officer to conduct a de novo inquiry. The procedure adopted by the first respondent cannot be sustained.



WP.No.1558 of 2023

11. Useful reference can be made to the judgment of the Apex Court in the case of **K.R.Deb.** Reference can also be made to the decision of the Apex Court in the case of **Vijay Shankar Pandey.**

12. The next issue is with regard to the fresh report that was submitted by the subsequent Enquiry Officer after conducting a de novo inquiry. Even in the said order dated 24.9.2024, this Court finds that in the second inquiry, four witnesses were examined. The woman, who was said to have been orally abused, was not willing to participate in the inquiry. Out of the three witnesses, the first witness, who was the trustee, did not support the case of the prosecution. The second witness was the Inspector of Police, who registered the criminal case against the petitioner and the third witness was the Enquiry Officer, who conducted the preliminary inquiry.

13. On going through the second inquiry report that was submitted, it is seen that the subsequent Enquiry Officer placed heavy reliance upon the findings in the preliminary inquiry report. Apart from that, there is no evidence available for the subsequent Enquiry Officer to render a finding on the charges.



WP.No.1558 of 2023

14. In view of the above, the second issue that arises for consideration is as to whether the subsequent Enquiry Officer can render findings purely based on the findings of the preliminary inquiry. In the judgment of the Apex Court in **Nirmala J.Jhala**, it has been held that the preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and to prima facie know as to whether the alleged misconduct has been committed and that the same cannot be taken as the basis for rendering a finding in a regular inquiry that is conducted by the subsequent Enquiry Officer.

15. The judgment of the Apex Court in **Nirmala J.Jhala** was relied upon by the Division Bench of this Court in the case of **P. Siddeswaran**. The Division Bench, after relying upon the judgment of the Apex Court in **Nirmala J.Jhala**, held that the preliminary inquiry conducted cannot be the basis for finding out the guilt of the delinquent employee in the disciplinary proceedings. This judgment will squarely apply to the facts of this case.

16. In the instant case, the second Enquiry Officer did not have any material except the findings in the preliminary inquiry report and however, they were made as the basis for submitting a fresh report



WP.No.1558 of 2023

holding that the charges were proved. Hence, the report submitted by the subsequent Enquiry Officer is unsustainable. In the light of the above findings, the punishment that is imposed against the petitioner based on the findings rendered by the subsequent Enquiry Officer cannot be sustained.

17. The judgment relied upon by the learned Additional Government Pleader dealt with the power of review upon a disciplinary proceedings. There is absolutely no quarrel on the proposition that was relied upon by the learned Additional Government Pleader. This Court, while exercising its jurisdiction under Article 226 of The Constitution of India, is more concerned about the procedure that was adopted while imposing a punishment against the delinquent employee. In the instant case, this Court finds that the very appointment of the subsequent Enquiry Officer is opposed to law. That apart, the report of the subsequent Enquiry Officer is also unsustainable since it was purely based on the preliminary inquiry report. As a result, the punishment that is imposed against the petitioner as confirmed and modified and again confirmed by the respondents cannot be sustained.

18. For the foregoing reasons, all the impugned proceedings of the respondents are quashed. Accordingly, the writ petition stands



WP.No.1558 of 2023

allowed. No costs. Consequently, the connected WMP is closed.

WEB COPY

RS

01.10.2024



WP.No.1558 of 2023

Index : Yes (or) No

Neutral Citation : Yes (or) No

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WEB COPY



WP.No.1558 of 2023

N.ANAND VENKATESH,J

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WP.No.1558 of 2023&
WMP.No.1651 of 2023

01.10.2024