



W.P.No.15835 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

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THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

W.P.No.15835 of 2009

and M.P.No.1 of 2009

Mohammed Nazeer

...Petitioner

vs.

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

2. The Deputy Inspector General of Police
Villupuram Range,
Villupuram.

3. The Deputy Superintendent of Police,
Ulundhur – Sub-Division,
Villupuram District.

4. The Superintendent of Police
Villupuram District,
Villupuram

5. A.Amalraj

(R5 impleaded as per order dated 10.11.2010 in M.P.No.1 of 2010)

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, calling for the



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records on the file of the 4th respondent order dated 09.06.2008 in D.O.701/2008 C.NO.D3/PR78/07 and the consequential order dated 07.07.2008 in C.No.B3/AP13/07 passed by the 2nd respondent and consequential review order dated 02.01.2009 in R.C.No.213818/AP.I(2) 2008 passed by the 1st respondent and quash the same as illegal, arbitrary and against the weight of evidence and direct the respondent to reimburse the increment already due to the petitioner.

For Petitioner : No Appearance

For Respondents : Mr.S.Rajesh

Government Advocate for R1 to R4

: Mr.U.Karunakaran for R5

ORDER

There is no representation for the petitioner for several hearings.

2. Heard Mr.S.Rajesh, learned Government Advocate appearing for the respondents 1 to 4 and Mr.U.Karunakaran, learned counsel for the 5th respondent.

3. The order dated 09.06.2008 in D.O.701/2008 C.No.D3/PR78/07 passed by the 4th respondent and consequential order dated 07.07.2008 in C.No.B3/AP13/07 passed by the 2nd respondent and the review order dated 02.01.2009 passed in R.C.No.213818/AP.I(2) 2008 passed by the



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Deputy Inspector General, Villupuram Range are under challenge.

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4. The facts led to the filing of this writ petition is set out hereunder:-

The petitioner Mohammed Nazeer son of Mohammed Ismail was enlisted directly as Sub-Inspector of Police on 28.09.1987. He completed 20 years service and promoted to the post of Inspector and posted to Dhindivanam Kanjanur Police Station. While, he was working as Inspector of Police at Tiruvennainallur Police Station from 14.08.2006 to 15.12.2006, he was issued charge memo alleging that he failed to not take follow up action relating to G.C.R., cases reported in Tiruvennainallur Police Station. Upon enquiry, order was passed mechanically based upon the enquiry report given by the Deputy Superintendent of Police, Villupuram. The Review Petition preferred before the Deputy Inspector General of Police, Villupuram Range was also dismissed.

5. Mr.S. Rajesh, learned Government Advocate appearing for the respondent 1 to 4 would vehemently argue that charge memo pertains to not taking follow up cases on the file of Thiruvannainallur Police Station in Crime No.59 of 2002 under Section 147, 302 IPC and the petitioner gave false information pertaining to the case in Crime No.169 of 2002 under Section 302 IPC, when the original charge sheet is available in the station.



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He would further contend that after a proper enquiry conducted by the enquiry officer, the orders came to be passed namely postponement of next increment for one year and shall not operate to postponement of future increment. He would further contend that review petition filed by the petitioner before the review authority namely the Deputy Inspector General of Police, Villupuram Range was also dismissed confirming the order of disciplinary authority and he sought for dismissal of the writ petition.

6. Mr.U.Karunakaran, learned counsel for the 5th respondent would specifically argue that based on the report of the enquiry officer namely District Superintendent of Police, Villupuram, an orders was duly passed by the Superintendent of Police of Villupuram.

7. The prime contention of the petitioner is that the order of the 1st respondent dated 02.01.2007 is against the weightage of the evidence and he has simply concurred with the findings of the disciplinary authority.

8. Therefore, the moot point is that, whether the orders in question have been passed in line with the principles of natural justice. In essence, the order must be commensurate with the gravity of the offence. If he is



exclusively harassed or victimized, it is open to judicial review.

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9. On a careful perusal of the findings of the disciplinary authority, it appears that after following the principles of natural justice, the findings were given by drawing minute.

10. As regards the scope of the judicial review, it is relevant to refer to the observations made by the Hon'ble Supreme Court in one of its decisions reported in 1995 (6) SCC 749 (*B.C.Chaturvedi vs. Union of India*), has held as under:-

“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 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 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.

11. In 2020 SCC Online SC 886 (*State of Rajasthan Vs. Heem Singh*), the Honourable Supreme Court summed up the law in the following lines:-

“33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of



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judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy - deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere



when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to reappreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

12. As early as in 1993, the Hon'ble Supreme Court in AIR 1963 SC 1723 (*State of Andhra Pradesh Vs. S.Sree Rama Rao*), a Three Judge Bench of the Honourable Supreme Court has held as under:-

"...The departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition."



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13. The settled law is that, it is the domain of the Appointing Authority/Disciplinary Authority to decide as to the punishment to be imposed on the delinquent provided the punishment is proportionate to the delinquency. If the punishment is disproportionate or shocking the conscience of the Court, the Court should interfere with the same in exercise of powers conferred under Article 226 of the Constitution of India.

14. While awarding the punishment, considering the nature and gravity of the charges, for which the entire service records of the petitioner has to be looked into.

15. In the given circumstances, whether the punishment imposed is proportionate to the delinquency or not.

- i. Neglect of duty in not taking follow up action to get the cases on file in Thiruvannainallur PS Cr.No.59/02 under Section 147, 302 IPC and giving false information in Cr.No.169/02 under Section 302 IPC during the above period.
- ii. In Crime No.169/2002 under Section 174(3) Cr.P.C @ 302 IPC, of Thiruvannainallur Police Station charge sheet was laid on



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29.03.2002. The Superintendent of Police, Villuppuram surprised T.V.Nallur on 06.07.2007 and perused the above CD file during which, you have mentioned that you have rectified the defects and submitted the charge sheet on 12.09.2006. But it is not correct. The original charge sheet is available in the Police Station. Thus you have furnished false information in the above cases.

16. The Inspector being the Station House Officer is solely responsible for filing of charge sheets and he has also to see that the cases are taken on file in time. In the first charge itself, he was charged that he failed to take effective steps in numbering the charge sheet in Crime No.59 of 2002 of T.V.Nallur Police Station. Another charge pertains to the furnishing false information to the effect that though the charge sheet found to be in the CD file, he mentioned to the Superintended of Police, Villuppuram at the time of surprise inspection that the charge sheet in Crime No.169 of 2002 under Section 174(3) Cr.P.C @ 302 IPC was laid on 29.03.2002 and it was copied in the CD file. For those two charges, after enquiry, an order of punishment was awarded – punishment of next increment cut for one year without cumulative effect. Considering the nature of the charges, the petitioner who was officiating the Inspector of



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Police, the punishment awarded can never be considered as disproportionate to the charges.

17. Based on the aforesaid submissions and discussions, the petitioner has failed to make out the case. And consequently, this writ petition stands dismissed. There is no order as to costs. Consequently, connected miscellaneous petition stands closed.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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R.KALAIMATHI, J.

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