



WEB COPY



W.P.No.28614 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.28614 of 2011

Ravichandran

...Petitioner

Vs

1.The Deputy Inspector General of Police,
Vellore Range, Vellore.

2.The Director General of Police,
Chennai – 4.

3.The Superintendent of Police,
Krishnagiri District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents in connection with the impugned order passed them in C.No.B2/PR7/2005 dated 18.10.05, RC.No.1742431/APII(2)/2007 dated 29.10.07 and C.No.B2/61/3538/2011 dated 24.03.2011 respectively and quash the same.

For Petitioner : Mr.K.Venkatramani, Senior Counsel
for Mr.M.Muthappan

For Respondents : M/s.Tamil Selvi, AGP

ORDER



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The Writ Petition is filed calling for the records of the respondents in connection with the impugned order passed in C.No.B2/PR7/2005 dated 18.10.05, RC.No.1742431/APII(2)/2007 dated 29.10.2007 and C.No.B2/61/3538/2011 dated 24.03.2011 respectively and quash the same.

2.The case of the petitioner is that petitioner served as Grade I PC attached to Ancetti PS from 19.06.1999. On 23.06.2000, at about 18.00 hours , Head Constable 184 Theerthagiri and Grade I PC 1105 Rahim Khan of Ansetti PS along with the petitioner were marked for night duty. They have been issued beat duty in order to perform duty at Ramarkoil from 19.00 hrs to 12.00 hrs. It is alleged that petitioner has not performed his duty as per the duty assigned to him. A preliminary enquiry was conducted by Deputy Superintendent of Police, Hosur on 03.07.2010. Based on his report, a charge memo under Rule 3(b) of TNPSS (D&A) Rules in PR.No.48/2000, dated 19.12.2003 was issued against the petitioner after a lapse of three years. A criminal case was also registered against the petitioner and two others in Crime No.251 of 2000 dated 23.06.2000 for a delinquency of committing rape on the complainant namely Nagu@Nagamani. A criminal case in SC.No.192/2001 ended in acquittal on the file of Assistant Sessions Judge, Hosur. During the course of enquiry, the witnesses had been examined. But the material witnesses turned hostile. The



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Enquiry Officer found that the charges against the petitioner were proved, on the basis of the statement recorded by the Deputy Superintendent of Police during the preliminary enquiry. The Disciplinary Authority had also relied on the enquiry report and found that charges against the petitioner were proved and imposed punishment of “reduction of pay by one stage for one year and the period of punishment shall not operate to postpone his future increment” in C.No.B2/PR.7/2005 dated 18.10.2005. The Mercy Petition filed by the petitioner to the Director General of Police was not properly considered as per proceedings in R.C.No.1742431/APII(2)/2007 dated 29.10.2007 and by the Superintendent of Police in C.No.B2/61/3538/2011, dated 24.03.2001. Therefore, this Writ Petition is filed.

2.1.It is the submission of the learned counsel for the petitioner that, the Enquiry Officer's findings on charge No.1 shows that material witnesses had turned hostile. However, the Enquiry Officer proceeded to record the findings on the basis of the statement given before the Deputy Superintendent of Police during the preliminary enquiry. He presumed that witnesses may have won over by the delinquent. He also presumed that the statements given before the Deputy Superintendent of Police are true. His report clearly shows that the Enquiry Officer relied on the statement recorded during the course of the preliminary



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enquiry to record the finding of guilty against Charge No.1. The Disciplinary Authority had also relied on the statement of Deputy Superintendent of Police, concurred with the findings of the Enquiry Officer and imposed punishment as aforesaid.

2.2.Learned counsel for the petitioner submits that the findings reached by the Enquiry Officer and the Disciplinary Authority, on the basis of the statements given by the witnesses during the preliminary enquiry is against the law. The statements recorded during the course of preliminary enquiry cannot be used for recording of a finding of guilty. In support of his submission, he produced judgment of the Hon'ble Supreme Court in the case of ***Nirmala J.Jhala Vs. State of Gujarat and another*** reported in [2013 4 SCC 301] and judgement in ***P.Siddeshwaran Vs. The Secretary to Government & ors*** in W.A.No.2620 of 2018.

3.In reply, learned counsel for the respondents submitted that the allegation against the petitioner are very serious in nature. Petitioner had not performed duty expected from a police man during the night duty turn. That was established by production of oral and documentary evidence during the course of enquiry. The Enquiry Officer relying on the evidence, found that Charge No.1



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against the petitioner was proved and 2nd charge was not proved. There is no material available to discredit the report of the Enquiry Officer. The Disciplinary Authority also concurred with the findings of the Enquiry Officer, on the basis of the evidence produced before the Enquiry Officer. There is nothing to challenge the report of the Enquiry Officer and the final order passed by the Disciplinary Authority, as confirmed by the other authorities. That apart, she submitted that petitioner was also involved in criminal case of committing rape against a woman.

4. In reply to his submission, learned counsel for the petitioner submitted that though a criminal case was registered against the petitioner in Crime No.251 of 2000, the criminal case ended in acquittal. The criminal charge is not connected with the present Writ Petition.

5. Considered the rival submissions and perused the records.

6. The perusal of the records and submissions of the learned counsel for the parties, show that, petitioner was charged as follows.

“1) Unbecoming conduct a Gr.I.Pc. in having made



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false entries in his note book as if he went on night beat duty in beat No118/2000 along with Gr.I.Pc.1105 Rahimkhanm of Anchetti PS and visited Ramarkoil, Vannathipatty, Marianam and returned to Anchetti PS at 06.30 hrs on 24.06.2000 when physically present at Anchetti between 2130 hrs and 0030 hrs on 23/24.6.2000.

II) Unbecoming conduct of a Police Officer in calling one Nagu @ Nagamani, W/o.Venkattesan of Anchetti in the false pretext of Inspector's enquiry at 2130 Hrs on 23.06.2000 contravening to provisions u/s 160 (1) Cr.PC and standing instructions.”

6.1.It is not in dispute that departmental enquiry was conducted and petitioner participated in the enquiry. It appears that the eye witnesses who have been examined for proving the charges against the petitioner, had not supported the case of the department. It is necessary to extract the relevant portion of the findings of the Enquiry Officer for better appreciation.

“The points to be clarified is 1) whether he was sent on beat duty ? 2) if so actually went on night beat duty to the villages? 3) If so, whether he had received the signature of the villagers in beat ticket those who had signed in the SS Book of Anchetty PS or not? 4) Whether the signature in the beat ticket tallies with that of the signature in exhibits and



chief recorded during the oral enquiry? From the deposition of HC 184 Tr. Theerthagiri and exhibit P8 it is quite evident that the delinquent was marched on beat duty along with PC 1105 to Ramarkoil 19.00 hours to 21.00 hours, Vannathiaptty 22.00 hours to 24.00 hours, Marialam 01.00 hours to 03.00 hours and Anchetty 04.00 hours to 06.30 hours. Though the witnesses V.P.Mathu, Veerappa and A.S.Ramu deposed as hostile witnesses to the effect that the delinquent had visited their villages on the night of 23.06.2000, witness Veerappa deposed that the delinquent alone visited the village Marialam. So there is contradiction in his deposition. It is presumed that the witnesses might have been won over by the delinquent for the reasons best known to them. It is presumed that the statement given before the DSP, Hosur is true and the second may be a alter thought. So also the signature in beat ticket column 7 of page 4 does not tally with the prosecution exhibits Ex.P5, ExP6, Ex.P7, which are the statement of above witnesses and their present chief and cross-recorded by me. Hence it is evident that the delinquent had not received the signature of WS. W6, W7 in the beat ticket. From the above facts it is inferred that the delinquent had not gone on beat duty along with PC 1105 on 23.06.2000 night and made false entries in his notebook. Hence I hold the charge in count number 1 is proved beyond all reasonable doubts.”

6.2.From the findings recorded by the Enquiry Officer, it is seen that



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material witnesses V.P.Mathu, Veerappa and A.S.Ramu, who have been examined to prove that petitioner had not visited the village to perform night duty, had not supported the case of the department and turned hostile. Therefore, the Enquiry Officer presumed that witnesses might have been won over by the delinquent and statement given before the Deputy Superintendent of Police is true. When the witnesses who have been examined to prove that petitioner had not visited the village, had not supported the case of the department, the findings recorded by the enquiry officer relying on the statements by these witnesses before the Deputy Superintendent of Police, Hosur is not legal.

6.3.In the case of *Nirmala J.Jhala Vs. State of Gujarat and another* reported in [2013 4 SCC 301], it is observed as follows,

“42.A Constitution Bench of this Court in Amlendu Ghosh v. District Traffic Superintendent, North-Eastern Railway, Katiyar, AIR 1960 SC 992, held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.



43. Similarly in *Chiman Lal Shah v. Union of India*, AIR 1964 SC 1854, a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held ex-parte, for it is merely for the satisfaction of the government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the government as to whether a regular inquiry must be held. The Court further held as under:

“12.There must, therefore, be no confusion between the two inquiries and it is only when the Government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishment indicated in [Article 311](#) that the government servant is entitled to the protection of that Article, nor prior to that.”

44. In *Naryan Dattatraya Ramteerathakhar v. State of Maharashtra & Ors.*, AIR 1997 SC 2148, this Court dealt with the issue and held as under:

“.....a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the



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delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice or not, remains of no consequence.

45. In view of above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.”

6.4. This judgment amply made it clear that evidence recorded in preliminary enquiry cannot be used in regular enquiry. The reason is that, the delinquent had not participated in the preliminary enquiry and he had no opportunity to cross examine the persons examined during the preliminary enquiry. On these reasons, it was held that using the evidence recorded during preliminary enquiry is violation of the principle of natural justice.

6.5. The same view was taken in the case of ***P.Siddeshwaran Vs. The Secretary to Government & ors*** in W.A.No.2620 of 2018., wherein this Court observed as follows,

“10. A perusal of the documents produced before the



enquiry officer and the evidence that is placed before the enquiry officer do not indicate any guilt against the appellant. However, the enquiry officer has chosen to rely upon the report of the magistrate filed under Section 176 of Cr.P.C to conclude that the accused person died because of the injury inflicted by the appellant. The said report has also been placed before us. We find that the Magistrate after having recommended disciplinary action against the appellant and the Sub-Inspector has recommended further investigation since there was a conflict between the two scan reports of the deceased person.

11. However, the Government has accepted the recommendation of the enquiry officer viz., Magistrate and ordered disciplinary action against the appellant. While the report of the Magistrate pursuant to the enquiry under Section 176 of Cr.P.C can form the basis for launching of disciplinary proceedings, it cannot be considered as a proof of delinquency. Delinquency must be established by independent evidence during the enquiry. Principles of Natural Justice will have to be complied with during the enquiry. The scope of enquiry under Section 176 Cr.P.C is totally different from the disciplinary enquiry for no opportunity is given, to the delinquent, by the Magistrate in proceedings under Section 176 Cr.P.C, to cross-examine the witnesses.

12. It is for this reason, the Hon'ble Supreme Court had in Nirmala J.Jhala Vs. State of Gujarat and another reported



in (2013) 4 SCC 301 held that such preliminary enquiry report cannot be made a basis for entering a finding of guilt in the disciplinary proceedings. The Hon'ble Supreme Court considered the said question and had this to say in paragraph No.42 of the said judgment.

'42. A Constitution Bench of this Court in Amalendu Ghosh V. North Eastern Railway [AIR 1960 SC 992], held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.'

13. Again at paragraph No51, the Hon'ble Supreme Court had observed as follows:-

'51. There is nothing on record to show that either the preliminary enquiry report or the statements recorded therein, particularly, by the complainant – accused or Shri C.B.Gajjar, Advocate, had been exhibited in regular inquiry, in the absence of information in the charge-sheet that such report/ statements



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would be relied upon against the appellant, it was not permissible for the enquiry officer or the High Court to rely upon the same. Natural Justice is an inbuilt and inseparable ingredient of fairness and reasonableness. Strict adherence to the principle is required, whenever civil consequences follow up, as a result of the order passed. Natural Justice is a universal justice. In certain factual circumstances even non-observance of the rule will itself result in prejudice. Thus, this principle is of supreme importance. (Vide S.L.Kapoor v.Jagmohan [(1980) 4 SCC 379], D.K.Yadav v. J.M.A. Industries Ltd., [(1993) 3 SCC 259] and Mohd. Yunus Khan v. State of U.P [(2010) 10 SCC 539]).'

14. In Union of India and others Vs. Mohd. Ibrahim reported in (2004) 10 SCC 87, a three Judge Bench of the Hon'ble Supreme Court had held that disciplinary proceedings and order of dismissal were vitiated as findings have been based on the consideration of the statement of the persons examined during the preliminary enquiry.

15. The above judgments of the Hon'ble Supreme Court have been followed by this Court in K.Ramalingam Vs. The Superintendent of Police dated 20.04.2009 in WP.No.39098 of 2006 by the Hon'ble Mr.Justice Paul Vasanthakumar [as he then was], wherein it was held that it



would not be open to the enquiry officer to rely upon the findings in the preliminary report. The same position was reiterated by the Hon'ble Mr.Justice M.Sathyanarayan in C.Murugan Vs. Director General of Police dated 14.12.2016 in W.P.No.5724 of 2016.

16. Therefore, the law is well settled to the effect that the observation or finding made in the preliminary enquiry conducted under Section 176 Cr.P.C cannot be a basis for finding of guilt in the disciplinary enquiry. Independent evidence has to be placed before the enquiry officer in support of the claim.

6.6.These judgments made it clear that, the statements recorded during the course of preliminary enquiry cannot be used for the purpose of recording guilty of the delinquent. However, as discussed above, both the Enquiry Officer and the Disciplinary Authority relied on the statements given by the witnesses, during preliminary enquiry, before the Deputy Superintendent of Police, Hosur, recorded the findings that petitioner was guilty and imposed punishment of “reduction of pay by one stage for one year and the period of punishment shall not operate to postpone his future increment”. This is a not legal and liable to be set aside and accordingly, set aside.



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7.In the result, the impugned order passed in C.No.B2/PR7/2005 dated

18.10.05, RC.No.1742431/APII(2)/2007, dated 29.10.07 and C.No.B2/61/3538/2011 dated 24.03.2011 is quashed. Accordingly, this Writ Petition is allowed. No costs.

12.03.2024

Index:Yes/No

Speaking order/Non-speaking order
gd

G.CHANDRASEKHARAN, J.

gd

To

1.The Deputy Inspector General of Police,
Vellore Range, Vellore.

2.The Director General of Police,
Chennai – 4.

3.The Superintendent of Police,
Krishnagiri District.

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