



WEB COPY

W.P.No. 26225 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

W.P.No. 26225 of 2012

and

M.P.No.1 of 2013

Dominic

... Petitioner

Vs.

1. The Secretary,
Public Department,
Law & order,
Fort St. George,
Chennai -9.
2. The Deputy Director,
Prison Department,
Egmore
Chennai – 8.
3. The Superintendent,
Central Prison,
Vellore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the proceedings No. 12907/PO1/2011 dated 30.03.2012 of the third respondent and to quash the same.

For Petitioner : No appearance

For Respondents : Mr.S.Rajesh
Government Advocate



ORDER

This writ petition is filed seeking for issuance of writ of Certiorari to quash the proceedings No. 12907/PO1/2011 dated 30.03.2012 passed by the third respondent.

2. There is no representation on behalf of the petitioner.

3. Heard Mr.S.Rajesh, learned Government Advocate appearing for the respondents.

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

4.1 The petitioner Dominic got appointed on 29.12.1986 in the Prison Department and he has put up 23 years of service. At relevant point of time, he worked as up Grade Warder at Central Prison-II Puzhal, Chennai. Previously, he worked as up Grade Warder at Central Prison at Vellore. While so, on 05.08.2009 he was granted duty in the Prison Hospital. Normally there should be one second grade warder, one first grade warder and one chief warder to look after the prisoners. Those warders were not deployed and he was asked to have additional charge of the duties of the said posts by the Officials. On the said date, the second grade warder, who



was in charge of the prison Hospital was assigned the duty of taking a prisoner to a Hospital situated outside the prison. Hence, the petitioner was asked by the Authorities to streamline the prisoners who come for treatment in the prison hospital.

4.2 It has been further stated in the affidavit that while the petitioner was streamlining the prisoners, at about 11.30 am, a remand prisoner No. 529 namely Murthy attempted to commit suicide by hanging in a Tamarind tree. The petitioner having heard the loud voice of some persons calling for help, immediately went to the said place and rescued the said person from the tree with the help of four other persons. The said prisoner was taken to the hospital. However, the said prisoner succumbed to the injuries, sustained at the time of his attempt to commit suicide by hanging.

4.3 It is also further stated in the affidavit that on 05.08.2009, the petitioner was asked by the first grade Warder Mohan to be in the prison hospital at the time of examination of out patients, since a naxalite prisoner attacked the chief doctor on 04.08.2009 and that is the reason why he was held up in the hospital for more than 1 ¼ hours. However, on 05.08.2009 the prisoner was allowed to go outside of the cell which paved the way for such



incident. He is no way responsible for the incident. However, the third respondent by charge memo dated 21.10.2009 in proceedings No. 9735/PO.1/2009 has framed charges against the petitioner for dereliction of duty under rule 17(B) of Tamil Nadu Service Rules.

4.4 It appears that after due enquiry, the third respondent by order dated 15.02.2012, awarded punishment of one year increment cut without cumulative effect. Against the said order, the petitioner preferred an appeal before the Deputy Director of Prisons, the second respondent herein and by order dated 07.06.2010, the appellate authority has altered the punishment from one year increment cut to six months increment cut without cumulative effect.

4.5 In the meanwhile, the first respondent has passed a G.O.M.S.No.1117 dated 23.11.2011 stating that the action has to be initiated against the Prison officer who acted in a careless manner and in answer to the issue raised by the Human Rights Commission, the Government has decided to pay a compensation of Rs.1,00,000/- to the family of the deceased prisoner Murthy and ordered to deduct the said amount from the salary of the petitioner.

4.6 It is also stated in the affidavit that by communication dated 30.12.2011, the respondent issued a show cause memo to the



petitioner to the effect that why a sum of Rs.1,00,000/- should not be deducted from the salary of the petitioner. For that, the petitioner gave detailed reply dated 06.02.2012 narrating the entire events and requested the authorities not to deduct the compensation amount from his salary. However, by a letter dated 30.03.2012 the respondent has passed an order stating that a sum of Rs. 2,000/- will be deducted from the salary of the petitioner from April 2012 and accordingly the Government is deducting a sum of Rs. 2000/- from monthly salary of the petitioner.

5. I have carefully gone through the findings of the enquiry officer in extenso. The petitioner was on duty for the first set, second set, A class on the prison hospital. The other Warder namely Warder No. 202 Nageshwaran was deputed to the Government Hospital. These details have not clearly shown in the prison Warders duty roster register dated 05.08.2009, the independent witness Warder examined by the petitioner have spoken about this facts. It appears that on 28.05.2009 one Murthy s/o Periyavan alias Munusamy was admitted into Central Prison, Vellore as remand prisoner in connection with the murder case. He committed suicide by hanging in the Tamarind tree on 05.08.2009. For which the



petitioner was issued charge memo and after detailed enquiry, the punishment of increment cut for six months with cumulative effect was ordered in the appeal. For the same omission, again the petitioner was issued with show cause notice that an amount of Rs.1,00,000/- should be recovered from him for being negligent in duty.

6. Mr.Rajesh, learned Government Advocate appearing for the respondent would strenuously argue that it is bound and duty of the petitioner to look after the prisoners with utmost care and without dereliction of duty. On the relevant date, the deceased prisoner namely the remand prisoner No. 529 has committed suicide with the help of his Lungi in Tamarind tree near prisoner hospital where the petitioner was posted for guard duty. He would further contended that if the petitioner watched the activities of the prisoner and had he taken proper care of the said prisoner, the incident of suicide would not have occurred.

7. Of course, as per the Tamilnadu Prisoner Rules, the petitioner is supposed to work sincerely with devotion to duty. As per Rule 76 (d) and (o) of the Tamil Nadu Prisoner Rules 1983, it is the duty of all the warders to see that no prisoner leaves his own



enclosures or communicates in any way with any prisoners in a different enclosures with any person outside the prison; to see that the care and welfare of the prisoners are ensured.

8. It is well settled Principle of law that no person shall be prosecuted or punished for the same offence more than once. It is pellucid that for the omission said to have been committed by the petitioner, disciplinary proceedings was initiated against the petitioner under Rule No. 76 (d) and (o) of Tamil Nadu Prison Manual Volume -II and as per Rule 20(1) of Tamil Nadu Government Servant Conduct Rules and he was awarded punishment of increment cut for one year without cumulative effect. In the appeal preferred by the petitioner, it was reduced to six months increment cut without cumulative effect.

9. Again for the same omission, order of recovery of Rs.1,00,000/- was passed against the petitioner stating that amount of Rs.1,00,000/- was granted to the family of the deceased who committed suicide in the prison. It is prerogative of the Government to grant relief to the people in certain contingencies. The petitioner has already suffered punishment of increment cut for six months



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without cumulative effect. In such view of the matter, imposing financial burden on the petitioner, ordering to recover a sum of Rs.1,00,000/- is totally unreasonable and not permissible. The impugned order in Proceedings No. 12907/PO1/2011 dated 30.03.2012 stands quashed.

9. With this aforesaid observations, the writ petition stands allowed. No cost. Consequently, connected miscellaneous petition is closed.

31.07.2024

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Index:Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No



To

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