



W.P.No.13052 of 2014

SIN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.01.2024

PRONOUNCED ON : .07.2024

CORAM:

THE HON'BLE DR JUSTICE D.NAGARJUN

W.P.No.13052 of 2014

and

M.P.No.1 of 2014

A.Bhupathi

...Petitioner

Versus

1. The Secretary to Home Department.
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.
2. The Additional Director General of Prisons,
Chennai-600 008.
3. The Deputy Inspector General of Prisons,
Coimbatore Range, Coimbatore District.
4. The Superintendent of Prisons, Central Prison,
Coimbatore-18.

... Respondents

Prayer: This writ petition is filed under Article 226 of the Constitution of India, with a prayer to issue a writ of Certiorarified Mandamus, calling for the records relating to the punishment dated 16.08.2011 imposed by the 4th respondent in proceeding No.5804/PO4/2011 and consequential rejections and consequential rejection by the 3rd respondent in his proceedings No.4412/MU.Vu/2011 dated 22.11.2011, 2nd respondent in his proceedings No.6512/E/S-1/12 dated 12.07.2012 and by the 1st respondent in his



W.P.No.13052 of 201-

G.O.(D).890 Home (Prison-2) dated 29.10.2013 and consequently to direct the 4th respondent to reinstate the petitioner with all service and monetary benefits including eligible promotion on par with this immediate junior.

For Petitioner : Mr.P.I.Thirumoorthy

For Respondents : Mr.P.Gurunathan

Additional Government Pleader

ORDER

This Writ Petition is filed seeking to issue a Writ of Certiorarified Mandamus, to quash the records relating to the punishment dated 16.08.2011 imposed by the 4th respondent in proceeding No.5804/Po4/2011 and also to quash the consequential rejections by the 3rd respondent in his proceedings No. 4412/ Mu. Vu/2011 dated 22.11.2011 and also further rejections order of the 2nd respondent in his proceedings No.6512/E/S-1/12 dated 12.07.2012 and by the 1st respondent in his G.O.(D) 890 Home (Prison-2) dated 29.10.2013 and consequently to direct the 4th respondent to reinstate the petitioner with all service and monetary benefits including eligible promotion on par with his immediate juniors.

2. The facts in brief as per the affidavit enclosed to this Writ Petition are as under:

The petitioner joined the Prison Service on 23.12.1985 as Craft



Instructor at Central Prison, Coimbatore. His duty timings were from 2.00 p.m to 4.30 p.m. While he was working, he was required to spent an amount of Rs.30,000/- urgently, for the purpose of Lasik Operation to his daughter by name Miss. Shiriya Bhupathi at Vasan Eye Care Hospital on 17.03.2011. As, there was a shortage of Rs.5,000/-, he borrowed said amount of Rs.5,000/- from his friend by name Sivaraj by promising to him to repay the said amount on the next day. Lasik operation was done to his daughter with the money helped by his friend.

3. In order to repay the amount of Rs.5,000/- to his friend he has asked his friend to wait until 01.30 p.m., on 18.03.2011 near Tamil Nadu Hotel located near Central Prison, so that he can pay the said amount of Rs.5,000/- to him. The petitioner has kept the said amount of Rs.5,000/- in his pocket and left the home. The petitioner has reached the Tamil Nadu Hotel located near Central Prison at 02.00 p.m., and waited for his friend till 02.30 p.m. As his friend did not turn up to receive the amount, since he was in hurry to attend the duty, he came to Central Prison with Rs.5,000/- to attend the duty. He was intercepted at the inner gate. At that time the petitioner has voluntarily revealed about possession of Rs.5,000/- and



explained the reasons for keeping the said amount. He handed over the said amount of Rs.5,000/- to Assistant Jailer. But the vigilance police posted there reported the matter to the in-charge Jailer, as if, the Assistant Jailer has seized Rs.5,000/- from the possession of petitioner during checking.

4. On the basis of the complaint, the petitioner was placed under suspension, on the very same day and the charges under 17(b) were framed on 18.04.2011, alleging that he was found in possession of prohibited article of cash of Rs.5,000 in the pant packet while he was checked by the Jail staffs, when he came to attend duty on 18.03.2011. Four persons were cited as witnesses. The statements of witnesses were not furnished to the petitioner for submitting the explanation to the charge memo issued to him. The Additional Superintendent of Prisons, Coimbatore, was appointed as Enquiry Officer. He has conducted enquiry on 02.07.2011. On conclusion of the enquiry the petitioner was served with a show cause notice on 27.07.2011 along with the enquiry report/ proved minutes. Petitioner has submitted a defense statement on 11.08.2011 narrating the facts, however, fourth respondent has passed impugned orders of compulsory retirement of the petitioner on 16.08.2011. The petitioner had preferred appeal, revision and review before third, second and first respondents respectively, however



they were rejected on 22.11.2011, 12.07.2012 and 29.10.2013 respectively.

Aggrieved by the same, the petitioner has preferred this Writ Petition.

5. The learned counsel for the petitioner has submitted that the principles of natural justice have not been followed. The evidence placed before the enquiry officer was not properly appreciated and that the enquiry officer has failed to consider that Rs.5,000/- was brought by the petitioner in order to repay the borrowed amount to his friend. The disciplinary authority has failed to appreciate the fact that the petitioner is not aware of the fact that money is a prohibited item inside the jail premises. It is also further submitted that the alleged misconduct will attract only charges under 17(a) and that framing of charges under 17(b) is unwarranted. It is further submitted that the documents have not been furnished to the petitioner during the course of enquiry and that the punishment of compulsory retirement is too harsh when compared to the misconduct allegedly committed by the petitioner and that mere possession of the money does not amount to proving of the guilt and therefore sought for grant of relief as sought for.



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6. The respondents has filed counter affidavit stating that all subordinate officers are checked in the prison main gate for the preventions of contraband articles inside the prison. The contraband articles such as valuables, money, cellphone are to be handed over to the Gate keeper for safe custody and shall take them back while leaving the duty. Locker facility is also available outside the prison premises. Concerned rules prescribes the exhaustive list of articles which are prohibited inside the prison.

7. It is also further mentioned in the counter affidavit that the petitioner while attending the duty on 18.03.2011, checked by the Gate Keeper and found that he was in possession of five numbers of one thousand Rupee notes concealed between the belt and pant in his waist and that said amount was recovered from the petitioner at the time of checking by the Gate Keeper, possession of the said amount is in violation of Rule 298 (h) of the Tamil Nadu Prison Rules, 1983, thereby the petitioner was suspended on 18.03.2011.

8. It is further mentioned in the counter affidavit that the petitioner



has not filed hospital bills, discharge summary of his daughter and that petitioner's friend to whom he was supposed to pay the dues was also not examined. The petitioner has not voluntarily disclosed the possession of Rs.5,000/- at the time of entering the Central Prison. During the course of enquiry, the petitioner was allowed to peruse the prosecution side exhibits on 02.07.2011 and that the petitioner has admitted in writing that enquiry conducted satisfactorily.

9. The petitioner has filed rejoinder to the counter affidavit denying the contentions raised in the counter affidavit.

10. Heard both sides and perused the records.

11. One of the contentions raised by the petitioner is that enquiry was not conducted by following the principles of natural justice. This Court has meticulously gone through the records pertaining to the enquiry right from the charge memo until passing of the final orders. On a perusal of the minutes, it is clear that the enquiry officer has conducted full-fledged enquiry by examining witnesses, exhibiting the documents and has given opportunity to the petitioner to cross examine the witnesses. Therefore, it is



clear that enquiry officer has conducted the enquiry by following due process. The petitioner has though alleged that he was not given the documents, there is no further clarity on this aspect.

12. Further, the petitioner has in fact admitted bringing of Rs.5,000/- to the Jail premises. According to the petitioner, he himself taken out Rs.5,000/- at at the time of inspection and has given the money to the person who has been inspecting. According to the respondents money was found in the possession of the petitioner during inspection by inspecting staff. Leaving this controversy aside, the fact of the matter is that the petitioner was found in possession of five number of thousand rupees notes in his front side pocket of the pant. It is version of the petitioner that the said amount was brought for discharging loan to his friend who has lend him Rs.5,000/- as a hand loan for eye surgery to his daughter. However, the petitioner has not produced any material to show that eye operation was done to his daughter. In order to prove that he has brought the money for returning it to his friend the petitioner should have examined his friend to depose that he has lend advance amount of Rs.5,000/- and he was expecting to take the money back on that day when the petitioner was



caught by the prison authorities.

13. Even if the contention of the petitioner is accepted that he brought Rs.5,000/- for the purpose of returning the same to his friend, and that if his friend was not available, locker facility is available outside the jail premises and in case, if the petitioner could not refund Rs.5,000/-, to his friend he should have deposited the same in the locker, so that he can take it back while leaving the office, but no such thing was done. Therefore, on analysing the entire material on record, it is clear that the petitioner was found in possession of Rs.5,000/-. It is the contention of the petitioner that he was not aware of the rules that money is a prohibited item. However since the petitioner was working for the last 20 years, prior to the incident it cannot be believed that he does not know the rules that money is a prohibited item.

14. The other aspect raised by the petitioner is that the punishment of retiring him compulsorily is highly disproportionate. According to Tamil Nadu Prison Manual, alcohols, spirits, poison, betel leaves, fruits, sweets, clothes, gold, silver, copper and any other metal, money, jewellery etc are prohibited inside the jail premises. It was brought to the notice of this Court



that the witnesses who have deposed against the petitioner have stated during the enquiry that certain gold items like rings and electronic watches etc are being permitted inside the jail premises. If at all wearing the electronic wrist watch inside the jail premises is prohibited, action should have been taken against those employees who are wearing the electronic watches inside the jail premises. Similarly it is matter of common practice that most the people wear gold ring as a matter of custom or sentiment and attend the offices including the jail premises. Therefore, bringing the gold ornament is though prohibited it appears that there is a practice of permitting the employees to have gold items on their person. In fact the women employee traditionally wear mangala suthram and gold bangles etc as a matter of tradition and perhaps they are also permitted inside the jail premises. If at all bringing the gold jewellery and silver items are prohibited, every employee must deposit the prohibited items while entering the jail premises and take them back while leaving the office, but it is not being practised. It is submitted that the department is not insisting for removal of mangala suthram, toe rings etc of the married women may be because the intention of bringing them is not to help any of the prisoners inside in the prison.



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15. Insofar as the petitioner is concerned, the disciplinary authority has failed to appreciate the reason as to why the petitioner has brought the said amount inside the jail premises. It is not alleged in the charges or anywhere that the petitioner has brought the said amount of Rs.5,000/- in order to give the said money clandestinely to any one of the prisoners. Nothing is attributed negatively for bringing Rs.5,000/- by the petitioner. Therefore, even according to the respondent also there is no ill-intention on the part of the petitioner in bringing Rs.5,000/- to the jail premises. There is no allegation that he brought Rs.5,000/- for illegal purposes to be committed inside the jail premises. Therefore, when other employees who were allowed to wear gold jewellery for religious purposes were untouched, the respondents have initiated enquiry against the petitioner for holding Rs.5,000/- and punished him severely. It does not mean that the petitioner who has committed misconduct shall be exonerated. But while imposing punishment some lenient view should have been taken, by the disciplinary authority.

16. Considering the discussions made above, this Court is of the firm



opinion that for bringing of Rs.5,000/- to the jail premises without any ill intention, imposing of punishment of compulsory retirement is highly disproportionate. It is settled legal proposition that while dealing with petition under Article 226 of Constitution of India, this Court cannot normally interfere with the quantum of punishment. However, when this Court is of the opinion that punishment imposed is disproportionate, matter requires to be remitted back to the disciplinary authority with appropriate directions.

17. Accordingly, this Writ Petition is disposed of, setting aside only the punishment of compulsory retirement imposed on the petitioner by the 4th respondent in proceeding No.5804/Po4/2011 dated 16.08.2011 and the matter is remanded back to the disciplinary authority with direction to accept the fresh representation from the petitioner and taking into consideration of the fresh representation and the submissions of the petitioner in this case, to impose appropriate punishment proportionate to the misconduct committed by the petitioner, except compulsory retirement and dismissal from service, by following the due process, as expeditiously as possible and not later than three months from the date of receipt of copy



W.P.No.13052 of 2017

of the order. No Costs. Consequently, connected Miscellaneous Petition is closed.

08.07.2024

Index : Yes/No

Speaking/Non-speaking Order

Neutral Citation Case: Yes/No

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To:

1. The Secretary to Home Department
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.
2. The Additional Director General of Prisons,
Chennai-600 008.
3. The Deputy Inspector General of Prisons,
Coimbatore Range, Coimbatore District.
4. The Superintendent of Prisons, Central Prison,
Coimbatore-18.

DR D.NAGARJUN.J.

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W.P.No.13052 of 2014

Pre-Delivery Order
W.P.No.13052 of 2014

08.07.2024