



W.P.No.7673 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 12.09.2024

ORDER PRONOUNCED ON : 12.11.2024

CORAM

THE HON'BLE MRS. JUSTICE N.MALA

W.P.No.7673 of 2016

1.V.Sivakumar (Deceased)

2. Selvi

(P2- SUBSTITUTED AS LRS. OF DECEASED P1,
AS PER ORDER DATED 03.07.2024 IN
WMP.6340/2022 IN WP.7673/2016)

...Petitioner

Vs.

1.Government of Tamil Nadu,
Represented by Principal Secretary to Government,
Home (Police) Department, Secretariat,
Chennai-600 009.

2. The Director General of Police,
Tamil Nadu,
Chennai-600 004.

3.The Superintendent of Police,
Salem.

...Respondents



W.P.No.7673 of 2016

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating of the orders in (1) G.O.(2D) No.312, Home (Police VI) Department dated 14.09.2015 of the first Respondent, (2) Pro.Rc.No.60147/AP 2(2)/2009 dated 20.12.2010 of the second Respondent and (3) Pro.Na.Ka.No.H3/3840/2003 dated 13.11.2003 of the third Respondent, to quash the same and to issue consequential directions to the Respondents to reinstate the Petitioner in service with all consequential benefits.

For Petitioner : M/s.T.Subhiksha
for Mr.M.Ravi

For Respondents : Mr.P.Kumaresan
Addl. Adv. General
assisted by
Mrs.S.Anitha
Special Govt. Pleader

ORDER

Writ petition is filed for a writ of Certiorarified Mandamus calling for the records relating of the orders of the respondents dated 14.09.2015, 20.12.2010 and 13.11.2003, to quash the same and for a consequential direction to the respondents to reinstate the petitioner in service with all consequential benefits.

2. The petitioner was appointed as Grade-II police constable on 09.12.1988



W.P.No.7673 of 2016

and was serving in Armed Reserve, Salem District. While so, petitioner was placed under suspension from 22.01.2003 as he was arrested in connection with Crime No.1 of 1996 under Section 379 r/w. Section 34 of IPC. Three criminal cases were registered against the petitioner, one in Hasthampatty Police Station in Crime No. 501 of 1996, one in Shevapet Police Station in Crime No.753 of 1996 and one in Crime No. 704 of 1996 in respect of Hasthampatty Police Station. All the three cases ended in conviction and therefore a show cause notice in H3/3840/2003, was issued to the petitioner on 19.09.2003, calling upon him to show cause as to why he should not be dismissed from service for his conviction in the aforesaid cases. The petitioner submitted his explanation on 20.10.2003, and after considering the same, the 3rd respondent dismissed the petitioner from service vide order dated 13.11.2003. As the petitioner was dismissed from service, the departmental action initiated in PR 6/H2/1999 for his unauthorized absence was closed. The petitioner made a representation to the Director General of Police, Chennai in 2009 requesting for his reinstatement in service. The 2nd respondent vide memo dated 20.12.2010 stated that the petitioner's request for reinstatement



W.P.No.7673 of 2016

could not be considered, in view of the pendency of the writ petition in W.P.No.36185 of 2006 before this Court. The petitioner thereafter submitted further representations dated 10.02.2011 and 12.12.2011 to the 2nd respondent to re-consider the issue and reinstate him in service. As the said representations did not invoke any response, the petitioner submitted a further representation on 01.03.2013 to the 1st respondent requesting him to reinstate him in service. As there was no response, the petitioner filed writ petition in W.P.No.12090 of 2013 before this court, seeking for a direction to the 1st respondent to dispose the representation dated 01.03.2013 within a time frame. This court by order dated 22.09.2014 directed the 1st respondent to dispose the petitioner's representation dated 01.03.2013, on merits and in accordance with law within a period of six weeks. As a sequel to the aforesaid order, the 1st respondent by impugned G.O.(2D) No.312, Home (Police VI) Department dated 14.09.2015 rejected the petitioner's representation. Aggrieved by the order passed by the 1st respondent and also orders passed by the 2nd and 3rd respondent's, the petitioner filed the above writ petition to quash the same with consequential direction to the respondents to



W.P.No.7673 of 2016

reinstate the petitioner in service with all consequential benefits.

WEB COPY

3. The respondents filed detailed counter in support of the impugned orders.

The respondents primarily relied on Order 66(2) of the Police Standing Orders, which states that a police officer sentenced to fine only or released under Probation of Offenders Act, 1958 was not required to be necessarily dismissed or removed or compulsorily retired, but however, the Competent Authority was bound to decide whether he deserved dismissal or removal or compulsory retirement or any other lesser punishment. The respondent's further stated that there were nine cases registered against the petitioner and he was not honorably acquitted in those cases. It is also stated that even in the Crime Nos'.501/96, 704/96 and 753/96, the subject of the present proceedings, the petitioner was released on probation under the Probation of Offenders Act, 1958. The 3rd respondent therefore while deciding on the punishment to be imposed on the petitioner took into account the entire circumstances of the case and concluded that the petitioner deserved the highest punishment of dismissal from service. The



W.P.No.7673 of 2016

respondents submitted that though the petitioner was released on probation in Crime No's.501/1996, 704/1996 and 753/1996, the 3rd respondent took a stern view on the petitioner's involvement in various cases and delinquencies committed by him and rightly dismissed him from service by invoking Rule 3(c) of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 and as per Article 311 of Constitution of India. The respondents therefore submitted that the writ petition was devoid of merits and same deserved to be dismissed.

4. Learned counsel for the petitioner submitted that the respondents failed to note that the petitioner was released under Section 4 of Probation of Offenders Act, 1958 on 30.07.2003 and thereafter he was not involved in any criminal cases and he also maintained good conduct all through. Learned counsel further submitted that the termination of the petitioner's services was neither justified nor valid, especially when no disciplinary proceedings were initiated against him. Learned counsel relied on the judgment of this court in the case of *J.Anandaraj vs District Collector Virudhunagar* reported in 2007 (1) MLJ 445 in support his case.



W.P.No.7673 of 2016

5. The learned Additional Advocate General appearing for the respondents on the other hand submitted that in pursuance of the conviction of the petitioner in Crime No's.501/1996, 704/1996 and 753/1996, a show cause notice was issued on 19.09.2003 to the petitioner, as per the provisions of Order 66(5) of the Police Standing Orders. The petitioner submitted his explanation stating that as he was released under Section 4 of Probation of Offenders Act, 1958, he did not suffer any disqualification and therefore the action against him deserved to be dropped. The learned Additional Advocate General submitted that as per the aforesaid order, the 3rd respondent had considered the entire facts and circumstances of the case as also explanation of the petitioner and decided that the petitioner deserved to be dismissed from service. The learned Additional Advocate General further submitted that the petitioner's release under the Probation of Offenders Act, 1958 was not acquittal from criminal case and therefore as per the aforesaid order, the 3rd respondent was competent to decide on the nature of punishment to be imposed on the petitioner. The learned Additional Advocate General further submitted that the judgment relied on by the learned counsel for the petitioner reported in



W.P.No.7673 of 2016

2007(1) MLJ 445 did not apply to the facts of the present case. The learned

Additional Advocate General appearing for the respondents relied on the judgment of this court in W.P.No.1811 of 2006 decided on 28.06.2010 in support of his contention and prayed for dismissal of the writ petition.

6. I have heard both the learned counsels and perused the records.

7. The only point that was agitated before me was that the termination order was unjustified, because no disciplinary or criminal proceedings were initiated against the petitioner, after the petitioner was released under the Probation of Offenders Act, 1958 on 30.07.2003.

8. The facts are not disputed. The petitioner was convicted for the offences under Section 379 r/w. Section 34 of IPC in Crime No's. 501 of 1996, 704 of 1996 & 753 of 1996. The petitioner was further released under Section 4 of the Probation of Offenders Act, 1958. The 3rd respondent issued a show cause notice



W.P.No.7673 of 2016

to the petitioner to explain as to why he should not be dismissed from service for his involvement in Crime No's.501 of 1996, 704 of 1996 & 753 of 1996. The petitioner submitted his explanation and thereafter the respondents after due consideration of the entire facts of the case and also the explanation of the petitioner passed the impugned order dated 13.11.2003, dismissing the petitioner from service.

9. The petitioner thereafter took several steps for setting aside the impugned order and for reinstatement, which were not fruitful. The petitioner finally on 01.03.2013 gave a representation to the Government to consider his case and to reinstate him in service. As the said representation was not considered, the petitioner filed W.P.No.12090 of 2013 and this court vide order dated 22.09.2014 directed the 1st respondent to pass orders on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of the order. Thereafter, the 1st respondent passed the impugned order dated 14.09.2015, against which the present writ petition is filed.



10. The only contention raised by the learned counsel for the petitioner is that the petitioner was released on probation under the Probation of Offenders Act, 1958, and so without conducting disciplinary proceedings against the petitioner, the order of termination could not be passed. The learned counsel relied on the judgment of this court reported in 2007 (1) MLJ 445 in support of her contention. No doubt, this court in the case of *J.Anandaraj -vs- District Collector, Virudhunagar* reported in 2007 (1) MLJ 445 held that the termination order could not be sustained in the absence of disciplinary proceedings, when the delinquent employee was released on probation under the Probation of Offenders Act, 1958, moreso, when Section 12 of the Probation of Offenders Act states that release on probation does not bar a person from getting Government appointment. But in the said judgment Order 66(2) of the Police Standing Orders was not considered and it reads as follows:

“PSO 66. Punishment after conviction:

(2) A Police officer sentenced to fine only or released under Probation of Offenders Act need not necessarily be dismissed or removed or compulsorily retired. The authority competent to pass



W.P.No.7673 of 2016

WEB COPY

an order of dismissal shall decide whether he deserves dismissal, or removal, or compulsory retirement or any other lesser punishment and act accordingly.”

11. It is relevant to note here that under the Tamil Nadu Police Subordinate (Discipline & Appeal) Rules, 1955 in Rule 2 Clause (C)(i)(1), the requirements of sub rule (b) were dispensed with when it was proposed to impose a penalty referred to in Clause (i) of Rule 2. The said rule reads as follows:

“(c)(i)(1) The requirements of sub rule (b) shall not apply where it is proposed to impose on a member of the service any such penalty as is referred to in clause (i) of that sub rule on the basis of facts which have led to his conviction in a criminal court (whether or not he has been sentenced at once by such court to any punishment), but he shall be given a reasonable opportunity of making any representation.”

12. From a reading of the above clause, it is clear that when there is conviction by a criminal court, the requirement of sub rule (b) relating to detailed enquiry shall be dispensed with. The logic behind the said rule is not far to seek.

Normally, the conviction by a criminal court is based on full fledged and fair trial



W.P.No.7673 of 2016

and therefore to avoid unnecessary waste of time and expense and fruitless duplication of the same proceedings all over again, the departmental enquiry is dispensed with. Therefore, the contention of the learned counsel for the petitioner that in the absence of disciplinary proceedings, the termination order could not be sustained has no merit.

13. As rightly contended by the respondents, under Order 66 (2) of the Police Standing Orders the competent authority is vested with the jurisdiction to decide whether the delinquent employee deserved punishment of dismissal or removal or compulsory retirement or any other lesser punishment. In the present case, from the impugned order of the 2nd respondent, it is clear that 2nd respondent has considered the entire gamut of the case and on consideration of the relevant facts, the explanation of the petitioner and the past conduct of the petitioner decided that the petitioner's services deserved to be terminated. In my view, there is no infirmity in the impugned orders passed by the respondents. Further, the petitioner belongs to the uniformed force, ergo there is nothing wrong in the



W.P.No.7673 of 2016

respondents expecting the highest standards of conduct, discipline and integrity.

The petitioner in the present case was convicted for the offence of theft which is very much unbecoming of a person of the uniform force. I therefore find that the impugned order does not call for any interference and hence the same is confirmed.

Writ petition has no merit and same is dismissed. However, there shall be no order as to costs.

12.11.2024

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

dsn



WEB COPY



W.P.No.7673 of 2016

N.MALA,J

dsn

To

1.The Principal Secretary to Government,
Home (Police) Department, Secretariat,
Chennai-600 009.

2. The Director General of Police,
Tamil Nadu,
Chennai-600 004.

3.The Superintendent of Police,
Salem.

PRE-DELIVERY ORDER IN
W.P.No.7673 of 2016

ORDER DELIVERED ON
12.11.2024