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W.A.No.3612 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.12.2024

Coram:

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
and
THE HON'BLE MR.JUSTICE C.SARAVANAN**

**W.A.No.3612 of 2024
and C.M.P.No.28276 of 2024**

1.The Superintendent of Police,
Coimbatore District,
Coimbatore.

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

...Appellants

Versus

S.Gunasekaran

...Respondent

Prayer:

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 12.09.2023 made in W.P.No.18423 of 2013 and allow this writ appeal.

For Appellants	:	Mr.M.Venkateswaran, State Government Pleader
For Respondent	:	Mr.K.Venkataraman, Senior Counsel for Mr.M.Muthappan



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JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

This intra Court Appeal is directed against the impugned order dated 12.09.2023 passed by the Writ Court in W.P.No.18423 of 2013.

2. By the impugned order, the Writ Court has allowed the above writ petition. The operative portion of the impugned order reads as under:

“13. On verification of original records, this court finds various lacuna pointed out by the petitioner. In the enquiry, the disciplinary authority failed to consider any of the point raised by the petitioner. As stated supra, the charges itself are nothing but escape from the clutches of law framed against the petitioner. In order to satisfy the liquor shop owners, the petitioner was charged for without committing any fault. Further, when the petitioner submitted detailed representation alleging that the enquiry officer acted in a biased manner from the beginning, the said request was rejected by the higher officials. Even then, the same enquiry officer proceeded with the enquiry and acted in a biased manner against the petitioner. It is also seen from the evidence of the Presenting Officer that he recorded the very statement in the preliminary enquiry as their evidence. As per the the guidelines issued by the Government in respect of disciplinary proceedings, if any request is made for the change of enquiry officer, it is advisable that the enquiry officer does not proceed with the oral enquiry.

14. Further, there was no evidence to show that the petitioner had demanded illegal gratification from the liquor shop owners. Even according to the charges, the petitioner had demanded from the liquor shop owners long back. However, there was no complaint immediately after the alleged demand of illegal gratification. When the liquor shop



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owners were caught red handedly for running the shops on holiday i.e. on Thiruvalluvar day and the salesmen who were running the liquor shops were brought to the police station by the petitioner, a new theory of demanding illegal gratification from them was put against the petitioner by the liquor shop owners. Therefore, in order to escape from the illegal opening and sale of liquor, the petitioner was charged with false charges. It is very unfortunate to state that those who opened the shops and sold liquor on a holiday were let off without any case. Whereas the person who did not commit any fault was proceeded with departmental action and major punishment was imposed on him. The petitioner being a Head Constable, has got right to enter liquor shop when it was run on holiday. Further, the punishment imposed on the petitioner is excessive, exorbitant and disproportionate to the nature of the delinquency. The petitioner had put in more than 29 years of service and he was not served with any memo so far and no punishment was imposed against the petitioner. Therefore, the quantum of punishment imposed on the petitioner is excessive and it cannot be sustained.

15. In view of the above, the impugned orders are liable to quashed. Accordingly, the impugned orders dated 26.05.2005 & 04.05.2013 are quashed and this writ petition is allowed. Since the petitioner attained the age of superannuation, the question of reinstatement does not arise. However, the petitioner is entitled for all consequential service and monetary benefits. Therefore, the respondents are directed to settle all consequential service and monetary benefits to the petitioner within a period of twelve weeks from the date of receipt of copy of this order. There shall be no order as to costs."

3. The brief facts of the case are that the respondent/writ petitioner was serving as Head Constable in Avinashi Police Station, Coimbatore District. On 15.01.2002, at around 8.00 p.m, when the respondent/petitioner was on duty, he found that some salesmen had kept the liquor shops open and were selling liquor. The Tamil Nadu Government has declared



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15.01.2002 (Thiruvalluvar Day) as holiday and a prohibition was there for selling liquor on that day. Hence, the respondent/petitioner had brought those salesmen to the Avinashi Police Station, for taking action against them.

4. However, no case was registered against the aforesaid salesmen who had opened the liquor shops on 15.01.2002 (Thiruvalluvar Day) and sold liquor despite the prohibition in force. Instead of registering case against those erring salesmen, the 1st appellant had turned the case against the respondent/writ petitioner as if the respondent/writ petitioner demanded bribe from those salesmen. The respondent/writ petitioner was suspended from service on 16.02.2002 and thereafter, he was issued a Charge Memo dated 07.02.2002 by the 1st appellant. The charges framed against the respondent/writ petitioner are as follows:

“(i) Reprehensible conduct in demanding money from the liquor shop owners and also causing inspection in the liquor shops without any authority on 15.01.2002 and brought 5 persons to Avinashi Police Station without any basis.

(ii) Reprehensible conduct in refusing to hand over the general diary of the Avinashi P.S. Dt 23.12.01.”



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5. Pursuant to the aforesaid Charge Memo, an enquiry was conducted by the Enquiry Officer (Deputy Superintendent of Police, Tiruppur Sub Division).

6. During the enquiry, on the side of prosecution, 13 witnesses were examined and 17 documents were marked. However, none of the said witnesses were allowed to depose evidence by way of Chief Examination. During the cross-examination of some of the witnesses, the respondent/petitioner was able to establish that 5 prosecution witnesses who were salesmen in the liquor shops had kept the liquor shops open on 15.01.2002 (Thiruvalluvar Day) contrary to the prohibition that was in force. The Enquiry Officer had recorded the statements given by the said 13 witnesses in the preliminary enquiry as their deposition and held that the respondent/writ petitioner was guilty of the charges framed against him.

7. Based on the Minute dated 10.11.2004 submitted by the Enquiry Officer, the 1st appellant vide order in PR 8/J1/2002 dated 26.05.2005 had awarded the punishment of compulsory retirement from service to the



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respondent/writ petitioner w.e.f. 28.05.2005. Aggrieved over the same, the

respondent/writ petitioner preferred an appeal before the 2nd respondent.

However, the 2nd respondent vide order in C.No.D2/AP/23/2013 dated 21.06.2005, rejected the appeal of respondent/writ petitioner.

8. In this background, challenging the order dated 26.05.2005 passed by the 1st appellant and order dated 21.06.2005 passed by the 2nd respondent, the respondent/writ petitioner had filed a writ petition in W.P.No.24103 of 2005 before this Court. This Court vide its order dated 31.01.2013, disposed of the said writ petition by observing as follows:

“10. Accordingly, without interfering with the order of punishment dated 26.05.2005, the order passed by the appellate authority dated 21.06.2005 alone is set aside and the matter is remanded to the second respondent for fresh consideration. The second respondent shall consider the appeal petition afresh in accordance with the procedure contemplated under Rule 6 of the said Rules and pass orders as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this order. No costs.”

9. Subsequently, the 2nd appellant vide order in C.No.D2/3190/2013 dated 04.05.2013, rejected the appeal of respondent/writ petitioner. Ultimately, challenging the order dated 26.05.2005 passed by the 1st



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appellant as well as the order dated 04.05.2013 passed by the 2nd appellant, the respondent/writ petitioner had filed W.P.No.18423 of 2013 before this Court which was allowed by the Writ Court vide impugned order dated 12.09.2023.

10. Heard the learned State Government Pleader for the appellants and learned Senior Counsel appearing for the respondent.

11. We have considered the arguments advanced by the learned counsel on either side and we have perused the materials placed before us.

12. The allegation against the respondent/writ petitioner that the respondent/writ petitioner had demanded bribe from the salesmen of five liquor shops on 15.01.2002 (Thiruvalluvar Day). Therefore, the respondent/writ petitioner was placed under suspension and issued with a Charge Memo dated 07.02.2002 under Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, 1955.



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13. The Tamil Nadu Government had declared 15.01.2002 (Thiruvalluvar Day) as holiday and the liquor shops were not allowed to be opened and/or allowed to vend liquor on the said day. Despite the prohibition in force, some salesmen had kept the liquor shops open and indulged in the activity of selling liquor on 15.01.2002. Hence, the respondent/petitioner had acted swiftly against these salesmen those who kept the liquor shops open against the prohibition that was in force.

14. It is to be noted that the punishment of compulsory retirement from service was imposed on the respondent/writ petitioner only after he had put in more than 25 years of unblemished service in the Police Department. Therefore, punishment of removal from service was unwarranted and unjustified.

15. The liquor shop owners who lodged complaint against the respondent/writ petitioner themselves were perpetrators of offence under the provisions of the Tamil Nadu Prohibition Act, 1937. The Writ Court has examined the materials available on record and held in its findings that the



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Inspector of Police, Avinashi Police Station had registered so many similar cases under the Tamil Nadu Prohibition Act, 1937.

16. It is thus clear that the appellants had acted with malice intention to punish the respondent/writ petitioner for implementing the law. In the absence of any evidence to substantiate that the respondent/writ petitioner had demanded bribe from the owners of the five liquor shops, the charges framed against him are to be held *malafide* and without any basis.

17. In fact, the complaint lodged against the respondent/writ petitioner is that he had demanded bribe from the owners of the five liquor shops. If such complaint was lodged against the respondent/writ petitioner and enquiry was conducted in this regard, the same would have been recorded in the General Diary of Avinashi Police Station. However, there was no such record found.

18. Since there was no evidence to prove that the respondent/writ petitioner had demanded bribe from the owners of five liquor shops, the



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Writ Court had rightly held that the charges framed against the respondent/writ petitioner was false and the punishment imposed on him cannot be sustained. Therefore, we are of the view that there is no error in the impugned order passed by the Writ Court warranting interference.

19. We find no reasons to interfere with the conclusion arrived by the learned Single Judge in the impugned order. Hence, this Writ Appeal is dismissed and order dated 12.09.2023 passed in W.P.No.18423 of 2013 by the learned Single Judge is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.)

(C.S.N., J.)

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Index : Yes/No

Neutral Citation: Yes/No

Speaking Order (or) Non-Speaking Order



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