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W.P.No.14835 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.14835 of 2017

and

WMP.Nos.16081 & 16082 of 2017

A.Ranganathan

... Petitioner

Vs.

1.The Principal Secretary to Government,
Home (Police 1-A) Department,
Fort St.George,
Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai Police,
Vepery,
Chennai – 600 007.

3.The Director General of Police,
Dr. Radhakrishnan Salai,
Mylapore,
Chennai – 600 004.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in connection with the impugned order passed by him in the G.O. (2D).No.68, Home (Pol.1-A) Department dated 17.03.2017 and quash the same



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and direct the respondents to settle the retirement benefits applicable to the post of Special Sub-Inspector of Police within a reasonable time and grant such other further relief as this Court may deem fit in the circumstances of the case.

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

For Respondents : Mr.R.Kumaravel
Additional Government Pleader

* * * *

ORDER

This Writ Petition is filed to call for the records of the 1st respondent in connection with the impugned order passed by him in the G.O. (2D).No.68, Home (Pol.1-A) Department dated 17.03.2017 and quash the same and direct the respondents to settle the retirement benefits applicable to the post of Special Sub-Inspector of Police within a reasonable time and grant such other further relief as this Court may deem fit in the circumstances of the case.

2.The petitioner was appointed as a Grade II Police Constable on 27.02.1986. On 01.11.1997, the petitioner was upgraded as a Grade I Police Constable and he was upgraded as Head Constable on 22.07.2002. On 16.02.2011 the petitioner was upgraded as Special Sub Inspector of Police.



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Between June 2006 and March 2007, he served as Head Constable attached to Anti-vice squad, Chennai City. Based on the statement of one Prasad @ Kannada Prasad, before the Crime Branch Police on 17.02.2007, that he indulged in flesh trade in Chennai, with the patronage of the petitioner, who received mamool of Rs.1,000/- per month, a charge memo was issued to the petitioner on 31.12.2010, and the petitioner gave a reply to the charge memo. An enquiry was conducted and the Enquiry Officer submitted his report on 25.08.2011, holding that the charges against the petitioner were proved in part. Thereafter, on 22.08.2013, a show cause notice was issued to the petitioner calling for his explanation on the findings of the Enquiry Officer. The petitioner submitted his representation on 03.01.2014 to the said show cause notice. As the proceedings were being delayed and the petitioner's retirement was fast approaching, the petitioner filed the W.P.No.22507 of 2014, praying for the issue of Writ of Certiorarified Mandamus, calling for the records pertaining to the letter of the second respondent herein, passed in Letter No.66714A/Pol.1A/2012-5 dated 22.08.2013, and quash the same and consequently direct the first respondent herein to drop all further action in Letter No.66714A/Pol.1A/2012-5 dated 22.08.2013 against the petitioner with all consequential benefits. This Court vide order dated 14.12.2015 disposed of the



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writ petition, directing the disciplinary authority to pass final orders within a period of eight weeks from the date of receipt of a copy of the order and to communicate the decision taken by him, to the petitioner. During the pendency of the writ petition, the petitioner was allowed to retire from service on attaining the age of superannuation vide the order dated 31.07.2015. Meanwhile, as the respondents did not comply with the above order of this Court in the above Writ Petition, the petitioner filed the contempt petition in Cont.P.No.2803 of 2016. It was only thereafter that the first respondent served the final show cause notice dated 01.02.2017, holding that the charges against the petitioner were proved and it was provisionally concluded to impose penalty of cut in pension of Rs.3,117/- per month. The petitioner submitted his explanation to the show cause notice on 11.02.2017, and thereafter, the 1st respondent passed the final order dated 17.03.2017 confirming the provisional conclusion order dated 01.02.2017. Aggrieved by the impugned order the petitioner filed the above Writ Petition for the aforesaid prayer.

3.The respondents filed a detailed counter denying the contentions of the petitioner and the grounds raised in the writ petition. The respondents narrated the entire history of the case and the disciplinary proceedings conducted by



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them. According to the respondents, the petitioner had consented to the proposed punishment and therefore, the writ petition challenging the impugned order was illogical. The respondents stated that the enquiry officer after analyzing the entire evidence held, that the charges against the petitioner were proved. The respondents stated that the petitioner was entrusted with the primary duty of curtailing and eradicating the menace of prostitution in Chennai City. As an officer of the Special Wing entrusted with the specific task of curtailing and eradicating the menace of prostitution, the petitioner ought to have discharged his duties with utmost sincerity. But the petitioner connived with one Prasad @ Kannada Prasad, a trafficker in flesh trade in Chennai city and indulged in illegal activities by receiving illegal gratification. The petitioner miserably failed to discharge his duties and during the period from July 2006 to 31.10.2006 under his patronage and with his connivance the flesh trade of Prasad @ Kannada Prasad flourished. As the charges against the petitioner were proved, the petitioner was imposed with a punishment of cut in pension by withholding of one third pension. The petitioner earlier gave his consent to the proposed punishment but subsequently filed the writ petition challenging the same. The respondents therefore stated that the writ petition was not maintainable and the same deserved to be dismissed.



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4.The learned senior counsel for the petitioner submitted that though several grounds were raised in the writ petition, he would restrict his submissions to two issues only. The learned senior counsel submitted that there was delay and laches in concluding the disciplinary proceedings. The learned senior counsel submitted that there was an inordinate and unexplained delay in each and every stage of the proceedings and therefore the impugned order deserved to be quashed on the short ground of delay and laches. The learned senior counsel further submitted that one more vital aspect which called for consideration of this Court is that the disciplinary authority deviated from the findings of the enquiry officer and so he ought to have give a cogent reasons for disagreement but in the present case the disciplinary authority without giving any reasons for disagreeing with the Enquiry Officer's report deviated from the same. The learned senior counsel therefore submitted that the impugned order could not be sustained and the same deserved to be set aside.

5.The learned Additional Government Pleader on the other hand submitted that the petitioner consented to the provisional conclusion of imposing the punishment of cut in pension at the rate of Rs.3,117/- per month.



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The learned Additional Government Pleader therefore submitted that as the petitioner consented to the impugned order he was estopped from challenging the same and therefore, the writ petition deserved to be dismissed.

6.I have heard the learned senior ecounsel for the petitioner and the learned Additional Government Pleader and I have perused the materials placed on record.

7.As for the first contention of the learned senior counsel relating to delay and laches in initiating and concluding the disciplinary proceedings, it is seen that the charge sheet was issued for the incident that occurred during the period 2005 and 2006. The charge against the petitioner was that he received mamool of Rs.1,000/- from one Prasad @ Kannada Prasad and aided him in his flesh trade. The charge memo was issued on 31.12.2010, under Rule 3(b) of the TNPSS (D&A) Rules. The petitioner gave his reply to the charge memo and participated in the enquiry and the Enquiry Officer's report was made ready as early as on 25.08.2011. It was two years thereafter that on 22.08.2013, the show cause notice was issued to the petitioner calling for his explanation to the



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findings of the Enquiry Officer's report. The petitioner submitted his explanation on 03.01.2014 and thereafter there was no progress. The petitioner filed a Writ Petition in W.P.No.22507 of 2014 and this Court vide order dated 14.12.2015, directed the disciplinary authority to pass final orders, within a period of eight weeks from the date of receipt of a copy of the order. As the respondent did not comply with the aforesaid order, the petitioner filed the Contempt Petition in Cont.P.No.2083 of 2016. It was at the time of hearing of the contempt petition that the first respondent served the copy of the final show cause notice dated 01.02.2017 to the petitioner. The petitioner submitted his explanation on 11.02.2017 and thereafter on 17.03.2017, the impugned order imposing the punishment of cut in pension of Rs.3,117/- per month was passed. The above facts make it explicit that there has been an inordinate delay of seven years in passing the impugned order of punishment from the date of the charge memo. I therefore find justification in the contention of the learned senior counsel that the impugned order deserves to be quashed on the ground of delay and laches.

8.The respondent, in spite of specific plea being taken that the inordinate and unexplained delay in conclusion of disciplinary proceedings vitiated the



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impugned order, chose to vaguely explain the same by blaming the petitioner for approaching this Court by filing W.P.No.22507 of 2014 against the show cause notice to the enquiry officer's report. In my opinion the petitioner cannot be blamed because the said writ petition itself was filed to expedite the disciplinary proceedings and even the writ petition was disposed of within a short span on 14.12.2015. It is pertinent to note here that in W.P.No.22507 of 2014, this Court directed the respondents to pass final orders, within a period of eight weeks, from the date of receipt of a copy of the order, but the respondents for unexplained reasons and that too after the initiation of the contempt proceedings, passed the final orders two years thereafter on 17.03.2017. It is therefore clear that the respondents attempt to shift the blame on the petitioner has no legs to stand. It is also relevant to point out here that there is absolutely no whisper as to why the charge memo was issued after a lapse of four years after the alleged incident that took place in 2006-2007. The record reveals that there was a delay of four years from the date of the incident in issuing the charge memo. The enquiry officer's report was submitted on 25.08.2011 and the explanation to the Enquiry Officer's report dated 25.08.2011 was called for after 2 years, on 22.08.2013. Though this Court in W.P.No.22507 of 2014 directed the respondents to pass orders within 8 weeks, the final orders were



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passed on 17.03.2017, after a lapse of two years. In my view, therefore, there is unexplained and inordinate delay of four years in initiating the disciplinary proceedings and seven years in concluding the same and therefore the writ petition deserves to be allowed on this short ground. In this regard, useful reference can be made to the following cases. ***P.V. Mahadevan vs M.D. Tamil Nadu Housing Board*** reported in ***2005 (6) SCC 636***, ***M.V.Bijlani Vs. Union of India*** and others reported in 2006 (5) SCC 88 and the order dated 02.08.2018 made in W.P.No.9004 of 2016 in the case of ***Tulasirangan Vs. The Secretary to Government***.

On the second submission of the learned senior counsel, the factual matrix is first referred to The Enquiry Officer in his report dated 12.01.2011, in relation to the receipt of mamool of Rs.1,000/- per month from Prasad @ Kannada Prasad held as follows:

“The fact that the confessional statement of Prasad @ Kannada Prasad could not be corroborated during the inquiry and that the delinquent official lost the opportunity to cross examine him goes in favour of the delinquent official. Further the conduit for the payment of mamool



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who is the henchman of Kannada Prasad viz., Gangadharran was not produced for inquiry. Therefore, the inquiry Authority is not able to hold this art of the charge that there was payment and receipt of mamool, as proved.”

9. But, the first respondent in the final show cause notice dated 01.02.2017, while calling for explanation from the petitioner against the enquiry officer's report and on the proposed punishment of cut in pension of Rs.3,117/- per month stated as follows:

“3. The Government have examined the case carefully with relevant records. The corruption charges regarding receiving mamool to the tune of Rs.1,000/- per month from Prasad @ Kannada Prasad have been proved in the duly conducted inquiry. Thereby you have failed to maintain absolute integrity in your duty as per rule 22 and 24 of the Tamil Nadu Sub-ordinate Police Officer's Conduct Rules, 1964 r/w rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal)



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Rules, 1955. for the proven corruption charges, the Government have provisionally arrived at the conclusion to impose the penalty of cut-in pension of Rs.3,117/- per month.”

10.A reading of the above show cause notice clearly shows the total non application of mind of the first respondent and lack of proper appreciation of the enquiry officer's report. The Enquiry Officer had in fact held that the part of charge, relating to payment and receipt of mamool was not proved. The first respondent by stating that the corruption charges against the petitioner were proved was in fact deviating from the Enquiry Officer's report and therefore he should have given cogent reasons for such deviation. There is disagreement with the Enquiry Officer's report on the aspect of payment and receipt of mamool, but absolutely no reasons are cited to support the same. Therefore as rightly contended by the learned Senior Counsel in the absence of any reasons for disagreement with the Enquiry Officer's report, the impugned order cannot be sustained.

11.The Hon'ble Supreme Court in the case of **Punjab National Bank**



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And Ors. vs Sh. Kunj Behari Misra, Sh. Shanti Prasad reported in *AIR*

1998 SC 2713 clearly held that it is mandatory for the disciplinary authority to record reasons for deviating from the Enquiry Officer's report. In the present case, I find that the show cause notice dated 01.02.2017, suffers from total non application of mind. Further no reasons are recorded for deviating with the Enquiry Officer's report on a part of the charge. I am therefore of the view that the impugned order cannot be sustained. As the learned Senior Counsel restricted his submissions to the aforesaid two issues, which I have found favour with the petitioner, I have not traversed the other issues.

12. In view of the above discussions the impugned order is quashed. A direction is issued to the respondents to settle the retirement benefits applicable to the post of Special Cell Sub-Inspector of Police to the petitioner, within a period of 12 weeks from the date of receipt of a copy of this order.

13. This Writ Petition is allowed with the aforesaid direction. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions stand closed.

28.10.2024



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Index : Yes / No

Internet : Yes / No

Speaking order/Non-speaking order
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To

1.The Principal Secretary to Government,
Home (Police 1-A) Department,
Fort St.George,
Chennai – 600 009.

2.The Commissioner of Police,
Greater Chennai Police,
Vepery,
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3.The Director General of Police,
Dr. Radhakrishnan Salai,
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N.MALA, J.
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