



WP(MD)No.1540 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.1540 of 2022

T.Selvakumar

... Petitioner

Vs.

1.The Director General of Police and
Chief of Prisons and Correctional Services
6. Whannels Road,
Egmore, Chennai – 600 008.

2.The Deputy Inspector General of Prisons,
Madurai Region, A.A.Road, Arasaradi,
Madurai – 625 016.

3.The Superintendent of Prisons,
Central Prison, Arasaradi,
Madurai – 625 016.

4.S.Jayaraman

... 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 relating to the order No.8481/Ki.Si.1/2018-2 dated 11.12.2018 passed by the 3rd respondent, Order No. 270/Mu.U./2019 dated 23.04.2019 passed by the 2nd respondent and the order No. 23600/E.W.1/2019 dated 13.09.2021 passed by the 1st respondent and quash the same and consequently reinstate the petitioner into service and grant all the service and monetary benefits with effect from 15.05.2018 within a time limit to be fixed by this Court.



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WP(MD)No.1540 of 2022

For Petitioner : Mr.B.Karunanithi
For R1 – R3 : Mr.J.John Rajadurai
Government Advocate

ORDER

The petitioner was appointed as Grade II Warder through TNUSRB and he joined in service on 09.06.2006. He was promoted as Grade I Warder in the same year. On transfer from the Central Prison, Vellore, he joined duty at the District Prison, Dindigul on 13.10.2017. On 15.05.2018, the petitioner reported for day duty at 8.50 a.m. The 3rd respondent along with the personnel of OCT of Madurai Central Prison made surprise check of prisoners and prison premises at 6.30 p.m on 15.05.2018 and seized certain prohibited materials. He was not enquired in respect of the seizure of those prohibited materials. Thereafter, vide order dated 15.05.2018 he was placed under suspension from 15.05.2018 alleging that he has supplied contraband articles to the prisoners. Following which, the 3rd respondent issued a charge memo dated 30.05.2018 alleging that 12 numbers of different prohibited materials were seized from the prisoners block/belonging. It was alleged that the petitioner had supplied prohibited materials to the prisoners and had violated Rule 76(1), 76(N), 128, 276 and 298 of Tamil Nadu Prison



WP(MD)No.1540 of 2022

Manual Vol.II and Rule 20(1) of Government Servants Conduct Rules and it is an offence under Rule-54(1) of Tamil Nadu Prison Act, 1994. The petitioner sent a letter dated 22.06.2018 requesting the copies of 10 documents referred in annexure-III of the said charge memo and also inward and outward register. However, the said documents were not given to the petitioner. Despite the same, the petitioner has given an elaborate explanation denying the charges on 21.07.2018. A domestic enquiry was conducted on 20.08.2018 and out of 10 witnesses cited in the charge memo, 6 witnesses were enquired out of which 5 were departmental witnesses and one was a prisoner witness. After conclusion of enquiry, enquiry report dated 24.11.2018 was served on the petitioner on 01.12.2018 and minutes of the enquiry report concluded that all the charges stood proved. So, the petitioner submitted an elaborate explanation further on 03.12.2018. Finding it not satisfactory, the 3rd respondent rejected the petitioner's explanation and imposed major punishment of dismissal from service by order No. 8481/Ki.Si.12018-2 dated 11/12/2018.

2. The petitioner filed an appeal on 19.12.2018 to the 2nd respondent. The 2nd respondent modified the punishment as one of compulsory retirement vide order dated 23.04.2019. The petitioner further made an appeal/mercy petition dated 27.06.2019 to consider his case before the 1st respondent, who had rejected



WP(MD)No.1540 of 2022

the said mercy petition and has confirmed the modification order passed by the 2nd respondent. Challenging the same, this Writ Petition is filed.

3. The learned counsel for the petitioner submitted that the 3rd respondent along with the personnel of OCT of Madurai Central Prison made surprise check of prisoners and prison premises at 6.30 p.m on 15.05.2018 when the petitioner has left the duty for the day. The petitioner actually reported day duty on the said day at 8.50 a.m and completed his duty by 6 p.m. It was only in his absence the alleged prohibited materials came to be seized by the inspection parties. The petitioner was in no way connected with the materials which was seized in the prison and from the prisoners. He has been falsely implicated in the charge memo. None of the documents sought for by the petitioner to participate in the departmental enquiry were not furnished to the petitioner, despite non-furnishing of the required documents, the petitioner submitted his explanation on 21.07.2018, which was not accepted by the respondents. Even in the domestic enquiry conducted on 20.08.2018, none of the five departmental witnesses, who were examined, have spoken about the petitioner's involvement in the alleged incident. That apart, all the departmental witnesses admitted that the petitioner was not on duty at that particular time when the inspection was conducted. That apart, of the 4 prisoners from whom statements have been obtained by the department only one



was examined as witness and that particular witness refrained from stating anything adverse as to the role of the petitioner in the supply of prohibited materials to the prisoner. Despite the same, enquiry was completed to the adversity of the petitioner and further explanation submitted by the petitioner was negated and a major punishment of removal from service came to be imposed on the petitioner.

4. It is further submitted by the learned counsel for the petitioner that without any evidence, the respondents ought not to have imposed the major punishment of removal from service. That apart, atleast the respondents 2 and 3 should have appreciated the petitioner's innocence, but, the punishment imposed was only modified to compulsory retirement and on that basis, he prayed for allowing this Writ Petition.

5. Per contra, the 1st respondent has filed a counter affidavit. The learned Government Advocate Mr. John Rajadurai submitted that the petitioner was continuously in the conduct of supplying prohibited materials into the prison for several times and his absence at the time of inspection would not absolve him from the charges framed as against him by the Department. A person, with such a conduct if permitted to be continued in the Department, wherein high level of



WP(MD)No.1540 of 2022

discipline and integrity is expected, would bring disharmony to the Department.

The enquiry was conducted in a proper way. He would further submit that yet another person by name Rajasekar, the Assistant Jailer, who was also issued with charge memo in respect of the same incident, was also imposed with similar punishment. He was inflicted with the same punishment and sent out from the department under compulsory retirement. In view of the same, considering the fact that the charges levelled against the petitioner was fully proved in disciplinary proceedings and considering the fact that major punishment of dismissal from service has been modified on humanitarian ground by the 2nd respondent which was duly confirmed by the 1st respondent, he prayed for dismissal of this Writ Petition.

6. I have given my anxious consideration to submissions made by the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents and carefully perused the materials available on record.

7. On the contention of the learned Government Advocate that the petitioner was continuously in the conduct of supplying the prohibited materials into the prison, the learned counsel for the petitioner placed before me the proceedings of the Superintendent of Poonamalli Prison and the proceedings of



Cuddalore Central Prison. A perusal of which would reveal that the petitioner had received award twice for proper up-keeping of prison and seizure of prohibited materials in the prison. Hence, the submission of the learned Government Advocate that the petitioner had been continuously in the conduct of supplying the prohibited materials into the prison loses its significance.

8. That apart, a careful perusal of the proceedings of the domestic enquiry would reveal that in the Charge memo, totally there are 10 witnesses and their statements are recorded. Out of 10 witnesses, 6 witnesses are official witnesses and 4 witnesses are prisoners.

9. In so far as 6 official witnesses are concerned, only 5 official witnesses were examined and they have not mentioned the name of the petitioner. None of the Official witnesses came forward explaining the constructive participation of the petitioner in the supply of prohibited materials in the prison.

10. In so far as 4 prisoner witnesses are concerned, only one prisoner was examined and other three prisoners were not examined. During the examination, that one prisoner witness has also not mentioned the name of the petitioner and mentioned another one Rajasekar, Assistant Jailer and one



WP(MD)No.1540 of 2022

Sivaganesan, Grade I Warder. It is pertinent to note that two other prisoners witnesses, who were not examined, have mentioned the name of the petitioner in their statements, however, at the time of domestic enquiry they refrained from mentioning the participation of the petitioner in the supply of prohibited materials.

11. Despite the statements of the various witnesses examined are not against the petitioner, enquiry report was concluded as against the petitioner alleging him guilty of the charges framed as against him.

12. The Hon'ble Supreme Court in the case of **Moni Shankar Vs. Union of India and Another** reported in **2008(3) SCC 484** has dealt with the case of disciplinary proceedings. The relevant portion of the said judgment applicable to the facts and circumstances of this case is extracted as follows:

“17. The departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have



WEB COPY



WP(MD)No.1540 of 2022

been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality”.

13. Fully fortified by the observation of the Hon'ble Apex Court in the judgment cited supra, I find it necessary to exercise the power of judicial review and mention that the respondents have proceeded as against the petitioner in the absence of relevant evidence as deposed by the various witnesses examined on behalf of the Department in the departmental enquiry. In the absence of any positive mentioning of the petitioner's role in supply of prohibited materials to the prisoners and on the prison premises, the Department has proceeded to inflict the major punishment. Though the 2nd respondent in appeal had reduced the same to the compulsory retirement, this Court is of the view that the same is shockingly disproportionate in the absence of constructive evidence as against the petitioner.



WP(MD)No.1540 of 2022

14. In view of the same, I am inclined to quash the impugned orders passed against the petitioner and remand back the same to the 2nd respondent for proper appreciation and pass appropriate orders commensurating to the gravity of the role of the petitioner in the alleged charges.

15. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

13.03.2024

Index : Yes/No

Internet : Yes/No

CM

To,

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WP(MD)No.1540 of 2022

L.VICTORIA GOWRI, J.

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