



W.P.(MD)No.2811 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.08.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

W.P.(MD)No.2811 of 2017
and
W.M.P.(MD)No.2309 of 2017

A.Subbiah Pandian

... Petitioner

/Vs./

1.The Director General Of Police,
Kamarajar Salai, Mylapore,
Chennai- 600 004.

2.The Additional Director General of Police (L&O),
Kamarajar Salai, Mylapore,
Chennai- 600 004.

3.The Deputy Inspector General Of Police,
Tirunelveli Range, Tirunelveli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in R.Dis.No. 55900/AP 2(1)/2013 dated 13.11.2014 passed by the 2nd respondent and the impugned order in



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R.C.No.180130/AP.2(1)/2015 dated 17.12.2016 issued by the 1st respondent and quash the same and consequently direct the 1st respondent to revise and regularize the service seniority and give notional promotion with monetary benefits equal to the Rank of Inspector of Police to the petitioner on the basis of “C” list passed by the first respondent in RC.No.222454/NGBI(1)/2015 dated 12.02.2016.

For Petitioner : Mr.A.Rajaram

For Respondents : Mr.S.Kameswaran

Government Advocate

ORDER

The petitioner has challenged the impugned order passed by the second respondent dated 13.11.2014 and the impugned order passed by the first respondent dated 17.12.2016. In the impugned orders, the punishment of censure has been imposed against the petitioner.

2. In the disciplinary proceedings initiated against the petitioner, pertaining to the charge memo framed against him that he had received bribe of Rs.1,000/- from a loadman, the enquiry officer appointed in the



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disciplinary proceedings had held that the charge framed against the petitioner is not proved. However, the second respondent under the impugned order dated 13.07.2014 did not agree with the report of the enquiry officer and had imposed the punishment of censure against the petitioner, which has been confirmed by the first respondent in order dated 17.12.2016. The petitioner has also retired from service subsequent to passing of the impugned orders and he has got his retirement benefits and continues to receive pension.

3. The only grievance of the petitioner in this writ petition is that the imposition of punishment of censure under the impugned orders is passed contrary to the findings of the enquiry report, wherein it has been categorically held that the charge framed against the petitioner has not been proved. The petitioner also contended that without granting an opportunity, the second respondent as well as the first respondent has imposed the punishment of censure in their orders, which are challenged in this writ petition.



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4. A counter affidavit has been filed by the respondents and they would categorically contend that being a case of bribe, the punishment imposed on the petitioner under the impugned orders namely “censure” is just punishment. According to them, only due to the fact that the prosecution witnesses became hostile, the charge framed against the petitioner has been held to be not proved by the enquiry officer. The petitioner being a Sub-Inspector of Police, is a responsible officer in the police department and he should be a role model for his juniors to follow. They have also stated that the disciplinary proceeding is not a criminal trial and only based on preponderance of probability, the impugned punishment order has been passed. Therefore, punishment imposed on the petitioner under the impugned orders, namely, “censure” is a just punishment, as charge framed against the petitioner involves receipt of bribe by the petitioner from a loadman.

5. Heard the learned counsel on either side.

6. Admittedly, the enquiry officer appointed by the respondents in the disciplinary proceedings initiated against the petitioner in his report



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has held that the charge framed against the petitioner has not been proved. Even though the prosecution witnesses in the disciplinary proceedings have turned hostile and have supported the case of the petitioner, there is no evidence available on record to prove that the petitioner had received bribe from the loadman, the availability of Rs.1,000/- cash in hand of the petitioner cannot prove that the said cash was received by him as bribe from the loadman. The said cash may also belong to him and it could have been earned in a legal way.

7. Only after giving due consideration to the materials available on record, the enquiry officer appointed in the disciplinary proceedings has held that the charge framed against the petitioner has not been proved. However, without affording any opportunity to the petitioner and without assigning proper reasons with conclusive evidence, the first and second respondents under the impugned orders have reversed the findings of the enquiry officer and have imposed a punishment of censure on the petitioner. The petitioner has also been allowed to retire from service and he has also received all the retirement benefits and he continues to receive pension as well.



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8. When there is absolutely no evidence on record to prove that the petitioner had received bribe of Rs.1,000/- from a loadman as per the charge memo issued to him, the question of imposing the punishment of censure on the petitioner under the impugned orders does not arise and the said orders have been passed by total non application of mind without granting an opportunity to the petitioner to rebut the same.

9. For the foregoing reasons, the impugned orders passed by the first and second respondents have to be necessarily set aside by this Court. Accordingly, the impugned orders dated 13.11.2014 passed by the second respondent and the impugned order dated 17.12.2016 passed by the first respondent are hereby set aside and the writ petition is allowed.

10. The learned counsel appearing for the petitioner, on instructions would submit that even though the petitioner has succeeded in this writ petition, the petitioner undertakes that he shall not claim any monetary benefits or any other additional reliefs from the respondents, even though the same has been prayed for in this writ petition. The said



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undertaking is recorded by this Court and it is made clear that the petitioner shall not claim any monetary benefits, pursuant to the order passed by this Court today. Other retirement benefits and the pensionary benefits, which the petitioner has been receiving till date shall be continued to be paid by the respondents. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
NCC : Yes / No
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ABDUL QUDDHOSE, J.

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Order made in
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