



W.P(MD)No.21302 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED: 06.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.21302 of 2018 and
WMP(MD) Nos.19162 of 2018 and 11694 of 2023

P.Murugan

... Petitioner

Vs

1.The Director General of Police,
Chennai.

2.The Inspector General Of Police,
South Zone, Madurai.

3.The Deputy Inspector General of Police,
Dindigul Range, Dindugul.

4.The Superintendent of Police,
Theni District, Theni.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order made in F1/PR-51/2007 u/r 3(b) of TNPSS (D & A) Rules, 1955 dated 14.10.2008 passed by the 4th respondent and quash the same



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and consequently direct the respondents to reinstate the petitioner with all monetary benefits.

For Petitioner : Mr.A.Rajaram,
For Respondents : Mr.K.Balasubramaniam
Special Government Pleader

ORDER

The order of dismissal of service passed by the Superintendent of Police, Theni District, under Section 3(b) of TNPSS (D & A) Rules, 1955, dated 14.10.2008 is under challenge in this writ petition.

2.The petitioner was appointed as Grade II Police Constable on 09.06.1993 and he was promoted as Grade I Police Constable on 09.06.2003. While he was serving in Uthamapalayam Prohibition Enforcement Wing, Theni District, he was placed under suspension on 20.01.2007 for conniving with the bootleggers in Uthamapalayam Prohibition Enforcement Wing Limits in connection with Crime No.13 of 2007, for the offences punishable under



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Sections 4(1) (aaa), 4(1-A) of Tamil Nadu Prohibition Act r/w 4 & 5 of Tamil Nadu Rectified Spirit Rules, 1959, for which, he was dealt with a charge under Rule 3(b) of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 in PR.No.45 of 2007. Thereafter on 23.07.2007, a Mini lorry bearing Registration number TN 51 Y 5225, which was used for illicit transportation of rectified spirit was seized by the police party and it was found that the petitioner has escorted the offending vehicle. Therefore, a case in Crime No.282 of 2007 was registered as against five persons including the petitioner, for the offences punishable under Sections 4(1) (aaa), 4(1-A) of Tamil Nadu Prohibition Act r/w 5 of Tamil Nadu Rectified Spirit Rules, 1959. He was dealt with charges under Rule 3(b) of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 in PR No.51 of 2007 as the presence of the petitioner in the occurrence spot on 23.07.2007 along with the offending vehicle was witnessed by the police party during vehicle check up. The petitioner was arrayed as A5 in Crime No.282 of 2007. Another charge has also been framed as against this petitioner



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that during his suspension period, he has left the headquarters without obtaining prior permission. An oral enquiry was conducted by the Deputy Superintendent of Police, Bodinayakanur Sub Division, Theni and it was found that the charges levelled as against this petitioner were proved, thereby, an order of dismissal from service was passed on 14.10.2008. Challenging the order of dismissal from service, the petitioner has preferred an appeal on 19.11.2008 and the same was rejected by the Deputy Inspector General of Police, Dindigul in his proceedings in C.No.A2/AP-02/2009, dated 23.02.2009. Challenging the order of dismissal, dated 14.10.2008, the petitioner has filed this writ petition.

3.The learned counsel appearing for the petitioner has made his submissions as under:-

- a) The petitioner has not been convicted in Crime No.282 of 2007.



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- b) He was imposed with a major punishment of dismissal from service, even before conclusion of the criminal case, which was registered as against him.
- c) The enquiry contemplated as against this petitioner has not been conducted properly by providing sufficient opportunity to him.
- d) By relying upon the order of this Court in ***R.Bagavathi Chandran Vs the Inspector General of Registration***, reported in ***2018(2) CWC 580***, the learned counsel requests this Court for modification of punishment imposed on the petitioner.

4.The learned Special Government Pleader appearing for the respondents submits that this petitioner, being a police constable has helped the illicit transport of restricted spirit by escorting the offending vehicle, which was noticed by the police party, who are on vehicle check up on 23.07.2007. He was added as an accused in Crime No.282 of 2007, which was registered for the offences



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punishable under Sections 4(1) (aaa), 4(1-A) of Tamil Nadu Prohibition Act r/w 5 of Tamil Nadu Rectified Spirit Rules, 1959. A charge Memo was issued to this petitioner and an enquiry was also conducted by the Deputy Superintendent of Police Bodinaickanur Sub Division, Theni from 01.02.2008 to 29.04.2008; during the enquiry, 11 witnesses were examined and 18 documents were marked on the side of the prosecution; however, no evidence has been adduced on the side of the petitioner; the petitioner has submitted a written explanation to the Enquiry Officer on 08.05.2008; on completion of enquiry, the Enquiry Officer has found that the charges levelled as against this petitioner were proved; based on the enquiry report, the disciplinary authority/ the fourth respondent has called for further explanation from the petitioner by issuing a copy of the enquiry report; the petitioner had also submitted his further representation to the fourth respondent on 24.07.2008; the Disciplinary Authority/ the fourth respondent, after considering all the materials including the explanation submitted by the petitioner on 24.07.2008, has imposed the punishment of



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dismissal from service. He further submits that simultaneous disciplinary proceedings initiated by the Department for the same set of charges as in the criminal cases is permissible as per G.O (Ms)No. 66, Human Resources Management (N) Department, dated 06.07.2022. The learned Special Government Pleader further submits that the conduct of this petitioner in association with the accused persons in commission of offence cannot be permitted in the police force, which is a Disciplinary force, wherein, each and every officer is expected to be sincere and honest. Therefore, there is no need to interfere with the order impugned in this writ petition.

5.This Court considered the rival submissions made and also produced the materials placed on record.

6.Admittedly, the petitioner is an accused in Crime No. 282 of 2007 for having escorted a vehicle, which was involved in illicit transport of restricted spirit on 23.07.2007. Therefore, an enquiry was contemplated in PR No.51 of 2007 and the major



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punishment of dismissal from service was imposed on the petitioner.

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The main contention of the petitioner is that the fourth respondent has imposed disproportionate punishment without even waiting for the outcome of a case in Crime No. 282 of 2007. The pendency of a criminal case is not a bar for proceeding with the departmental proceedings. The ratio which needs to be considered for the criminal case and the ratio which has to be considered for the Departmental proceedings are entirely different. In the event, if the petitioner got an acquittal in the criminal case, it does not prevent the authority from proceeding with the departmental proceedings and take a decision, depending upon the materials placed before the enquiry officer.

7.Yet another contention raised by the petitioner's counsel is that the enquiry was not conducted in a proper manner, by providing sufficient opportunity to the petitioner. In fact, the enquiry was conducted from 01.02.2008 to 29.04.2008 and the Department has examined 11 witnesses and also marked 18 documents on the



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side of the prosecution. However, the petitioner has neither examined any witnesses nor marked any documents and he has submitted his written explanation on 08.05.2008 to the enquiry officer. It appears that during the enquiry proceedings, the petitioner has sought for certain documents and the same was also furnished to him. The enquiry was conducted by nominating an enquiry officer in the rank of Deputy Superintendent of Police and the enquiry proceedings was conducted for nearly three months and therefore, the contention of this petitioner that he has not been provided with sufficient opportunity is not an acceptable one.

8.As against the punishment imposed on the petitioner, he has invoked an appeal remedy by filing an appeal petition on 19.11.2008. The statutory appeal filed by this petitioner before the Deputy Inspector General of Police was rejected by order dated 23.02.2009. As against this order, the petitioner has not preferred any revision before the appellate authority. In this writ petition, the order passed by the Disciplinary Authority, dated 14.10.2008 alone



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is challenged. Pending this writ petition, the order passed by the Disciplinary Authority is also confirmed by the Appellate Authority.

9. It appears that during the suspension period, the petitioner has indulged in further offence, that too, being a police constable. A person, who was appointed as a police constable is having the responsibility in crime prevention, detection of crime, maintaining law and order and he has to offer assistance regardless of wealth or social standing to the needy people. However, the petitioner, who has been appointed as a Grade II Police Constable in the year 1993 has involved in crime twice. This court has also noticed the manner, in which, the criminal case, which was registered as against this petitioner was dealt with and it was allowed to be closed by the Investigating officer and also by the learned Judicial Magistrate.

10. This court is of the view that the investigation officer has allowed the case to be closed in order to safeguard his erstwhile



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colleague, who is also a constable and an accused in Crime No.282 of 2007. Therefore, it is not sufficient to initiate departmental proceedings as against the offender, who has involved in the criminal case, the Department is also expected to take action as against the investigation officer in Crime No.282 of 2007, who has deliberately allowed the criminal case to be closed.

11.Considering the gravity of offence committed by this petitioner, that too, being a police constable and also considering that there is no violation in the procedures followed by the respondents during the enquiry proceedings, this Court is not inclined to interfere with the order passed by the fourth respondent.

12. Accordingly, this writ petition is dismissed. The Superintendent of Police, Theni is directed to review the case in Crime No.282 of 2007 and call for an explanation from the concerned officers, who are responsible for allowing the case to be closed for want of accused. No costs. Consequently, connected



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Miscellaneous petitions are closed.

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NCC:Yes/No

Index:Yes

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