



WP(MD)No.22016 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.22016 of 2017
and
WMP(MD)No.18320 of 2017

R.C.Rajan

.. Petitioner

v.

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Public (Law and Order) Department,
Fort St.George,
Chennai – 600 009.
- 2.The Additional Director General of Police cum
Chief of Prison Department,
CMDA Tower II Building,
No.1, Gandhi Irwin Salai,
Egmore,
Chennai – 600 008.
- 3.The Deputy Inspector General of Prisons,
Chennai Range,
CMDA Tower II Building,
No.1, Gandhi Irwin Salai,
Egmore,
Chennai – 600 008.



WP(MD)No.22016 of 2017

4.The Superintendent of Prison,
Puzhal Central Prison – 1 (Conviction),
Puzhal, Chennai – 600 066.

5.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari calling for the records relating to the Memo No.40866/CS.1/2016-3 dated 26.10.2017 issued by the second respondent and quash the same.

For Petitioner : Mr.B.Karunanithi

For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader

ORDER

The petitioner is working as a Grade – I Warder in the prison department. While he was in service at Central Prison, Puzhal, on 25.07.2013, a life convict prisoner, who was in solitary cell block, attempted to commit suicide. The petitioner saved the prisoner and also admitted him in the Prison Hospital. From the Prison Hospital, the prisoner was referred



WP(MD)No.22016 of 2017

to Government General Hospital, Chennai, however, the prisoner was reported brought dead.

2.A charge under Rule 17(a) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules was framed as against this petitioner on 25.07.2013. The disciplinary authority / Superintendent of Prison, Puzhal, by order dated 02.09.2013, held that the petitioner was responsible for the death of the prisoner and awarded a punishment of postponement of increment for six months without cumulative effect. As against the same, the petitioner has preferred an appeal and the appellate authority / Deputy Inspector General of Prison, by order dated 18.06.2014, set aside the punishment imposed by the disciplinary authority dated 02.09.2013. After four years, a *suo-motu* revision was taken by the Additional Director General of Police / second respondent by issuing a show cause notice on 26.10.2017 calling for the explanation of this petitioner that the Government is not satisfied with the manner in which the disciplinary proceedings was conducted and the punishment imposed was set aside. Aggrieved over the same, the petitioner has filed this writ petition.



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3.Learned Counsel for the petitioner submitted that it is the petitioner, who has rescued the prisoner and admitted him in the Prison Hospital. However, he was held responsible for the suicide committed by the prisoner and imposed with the punishment by the disciplinary authority. It was rightly considered by the appellate authority, while setting aside the punishment. While so, after four years, the impugned show cause notice has been issued by the second respondent / Additional Director General of Police.

4.By referring the provision under Rule 36 of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, the learned Counsel submitted that the Government alone is having the powers to review the matter and that the second respondent is not having the powers to review the matter after a period of six months. By referring to the impugned show cause notice, the learned Counsel submitted that the authority has predetermined the issue and preconcluded that the petitioner is liable to be punished. Apart from the petitioner, the Department has not proceeded as against any other



officials, which is very discriminative in nature. Therefore, he prayed for interference.

5.Mr.G.V.Vairam Santhosh, learned Additional Government Pleader for the respondents, by referring to Rule 36(1)(iv) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, submitted that the Authority specified by the State Government can take the review of the order. In this case, based on the directions of the Government in Letter (D) No.962, Home (Prison V) Department, dated 08.10.2016, the *suo-motu* revision is taken by the second respondent / Additional Director General of Police.

6.In fact, the *suo-motu* revision was directed to be taken based on the enquiry report of the learned Judicial Magistrate, Tiruvottiyur, who conducted enquiry on the death of the prisoner, as per Section 176(1) CrPC and offered certain suggestions.

7.This Court considered the rival submissions made on either side and perused the materials placed on record.



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8.The petitioner, a Grade – I Warder, was held responsible for the suicide committed by the prisoner. He was imposed with a punishment of postponement of increment for a period of six months without cumulative effect and it was set aside by the appellate authority. By the impugned notice, the Additional Director General of Police has taken *suo-motu* revision of the disciplinary proceedings, which has been contemplated as against this petitioner.

9.The revisional powers are dealt with under Rule 36 of the Tamil Nadu Civil Service (Discipline and Appeal) Rules and the same is extracted as under:-

“36. REVISION

(1) Notwithstanding anything contained in these rules -

(i) the State Government; or

(ii) the head of the department directly under the State Government, in the case of a Government servant serving in a department or office under the control of such head of the department, or departments; or



(iii) the appellate authority, other than the State Government, within six months of the date of the order proposed to be revised; or

(iv) any other authority specified in this behalf by the State Government by a general or special order, and within such time as may be prescribed in such general or special order; may at any time, either on their or its own motion or otherwise call for the records of any inquiry and after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary and revise any order made under these rules, may -

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as they or it may deem fit;

Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government Servant concerned has been given a reasonable opportunity of making his representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (iv), (v),*



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(vi), (vii) and (viii) of rule 8 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under sub-rule (b) of rule 17 has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in the said sub-rule (b) of rule 17 which shall be subject to the provisions of sub-rule (c) thereof, and except after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary:

Provided further that no power of revision shall be exercised by the head of the department, unless --

- (i) the authority which made the order in appeal, or*
- (ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.*

(2) No proceeding for revision shall be commenced --

- (a) Where no appeal has been preferred, before the expiry of the period of limitation for an appeal, or*
- (b) Where an appeal has been preferred, before the disposal of such appeal.*
- (c) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules."*



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10. The letter dated 08.10.2016 of the Principal Secretary to the Government addressed to the second respondent was also produced before this Court. It appears that by taking cognizance of the report of the Judicial Magistrate, Tiruvottiyur, who conducted enquiry u/s.176(1) CrPC, the second respondent was authorized for reviewing the punishment under Rule 36. The relevant paragraph from the letter of the Government is extracted as under:-

“5. The Government have decided to accept the findings of the Judicial Magistrate, Thiruvottiyur that the Life Convict Prisoner No. 2301, Velayudham, S/o. Raji died due to hanging on 25.07.2013 and direct the Additional Director General of Police / Inspector General of Prisons to initiate departmental action against the Warder, Jailor and Assistant Jailor and communicate the suggestions of the Judicial Magistrate, Tiruvottiyur to the Additional Director General of Police / Inspector General of Prisons for strict adherence. Accordingly in future in case of emergency, proper medical treatment should be given to the Prisoners and the Prisoners should be sent to nearby hospitals with doctors for treatment. Further action may be initiated for appointment of sufficient doctors in the Prison Hospitals for giving treatment to the Prisoners. The duty authorities should maintain constant surveillance



over the prisoners to prevent them for committing suicide and action also may be taken to post minimum of 2 warders in a block.”

11.In view of this Government Letter and the Rule 36(1)(iv) referred above, this Court is not inclined to accept the contention of the petitioner that the second respondent is not having the power to review the punishment order after a period of four months.

12.The second contention of the petitioner is that the second respondent has predetermined and preconcluded the issue. This Court is not inclined to accept the same, inasmuch as the enquiry has already been completed. The impugned notice is in the form of a second show cause notice, based on the available materials. It is only to provide an opportunity to the petitioner as to why the views of the Government should not be implemented. It cannot be termed that as a predetermination.

13.In the result, this writ petition is dismissed with a direction to the second respondent to consider the case of the petitioner independently and



WP(MD)No.22016 of 2017

take a decision in accordance with law. In the letter dated 08.10.2016, the Government has recommended for taking action as against the Warder, Jailor and the Assistant Jailor. Therefore, the second respondent is expected to comply the same, in its *stricto senso*.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No **19.11.2024**
NCC : Yes / No
Internet : Yes
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To

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Fort St.George,
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