



WEB COPY



W.P.No.28976 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17 .03.2025

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

**W.P.No.28976 of 2023 &
W.M.P.No.28548 of 2023**

A.Antony Joachim Jerry

.... Petitioner

Versus

- 1.The State rep. By
Principal Secretary to Government
[Home, Police IV Department]
Fort Saint George
Secretariat, Chennai – 9
2. The Director General of Police,
Chennai – 4
3. The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai – 600 007
4. The Joint Commissioner of Police,
South Zone, Greater Chennai Police,
Chennai – 16
5. The Deputy Commissioner of Police,
Madhavaram, Chennai – 40

....Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the entire records pertains to the order passed by the 4th respondent in R.C.No.124/7184/in T.Ko.They.Ma(1)/2016 in Pr.No.42/Pr.N(1)/2015 dated 19.05.2014, the modification order of the 2nd respondent dated



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09.08.2018 made in RC.No.122636/A.P.3(2)/2018 and the order of 1st respondent dated 05.07.2023 made in G.O.(D) No.761 in connection with in PR.No.42/PRN/(1)/2015 dated 19.05.2016, and to quash the same as illegal and relieve the petitioner from the charges framed against him and further direct the respondents to grant all consequential services and monetary benefits to the petitioner.

For Petitioner : Mr.V.Raghavachari
Senior Advocate for
Mr.R.Ramesh

For Respondents : Mrs.C.Meera Arumugam
Additional Government Pleader

ORDER

The Writ Petition has been filed for an issuance of a Writ of Certiorarified Mandamus to call for the entire records pertaining to the order passed by the 4th respondent in R.C.No.124/7184/in T.Ko.They.Ma(1)/2016 in Pr.No.42/Pr.N(1)/2015 dated 19.05.2014, the modification order of the 2nd respondent dated 09.08.2018 made in Rc.No.122636/A.P.3(2)/2018 and the order of the 1st respondent dated 05.07.2023 made in G.O.(D) No.761 in connection with in PR.No.42/PRN/(1)/2015 dated 19.05.2016, and to quash the same as illegal and relieve the petitioner from the charges framed against him and further direct the respondents to grant all consequential services and monetary benefits to the petitioner.



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2. The brief facts of the case are as follows:-

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(i) The petitioner was recruited as Sub Inspector of Police, Kalaperambur, Thanjavur District on 16.04.1999 and on 28.12.2011, the petitioner have been upgraded as Inspector of Police. On 04.01.2012, the petitioner took charge over as Inspector of Police, Peerkangari Police Station. The petitioner has been dealt with on a charge under Section 3[b] of Tamilnadu Police Subordinate Service [Discipline and Appeal] Rules, 1955 for the following charges:-

(1) Failed to take action on the complaint of Mr.Chandraprakash dated 07.03.2015 indicating that Faisal Basha and other four members, who had locked his godown by just giving receipt to the complaint.

(2) Failed to take action on the complaint of Mr.Chandra Prakash given to Commissioner of police dated 19.03.2015, since the petitioner has not taken any steps as per law, which was forwarded to the petitioner to take appropriate action.

(3) Inspite of instructions given by the Joint Commissioner of Police and First Information report, the petitioner failed to arrest the accused.

(4) Failed to produce both parties before the Deputy Commissioner though FIR was registered on 10.04.2015 in C5, Kothalwalchavadi P.S. Cr.No.197 of 2015 under Section 107 Cr.P.C.,

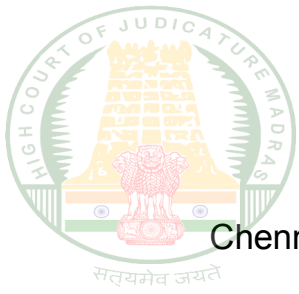


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(5) Failed to arrest accused Faisal Basha, resulted in clash between Faizal Basha and four others and thereafter, resulted in unwanted situation and filing of Cr.No.201 of 2015 under Sections 341,448,457 and 380 of IPC.

(ii) The 5th respondent herein was appointed as enquiry officer and the enquiry officer after enquiry relieved the petitioner on charges (2) (3) and (5) were not proved and charges (1) and (4) were alone proved. The said five charges were based upon a single incidence, but it was split as five charges with an intention to punish the petitioner. The 4th respondent, being delivering authority by order dated 19.05.2016 imposed excessive punishment of postponement of increment for one year, which shall operate to postpone future increment in PR.No.42/N[1]/2015 u/r3[b] dated 19.05.2016. As against the order of punishment, the petitioner has not preferred any appeal and the said punishment was reviewed by the Commissioner of Police and the said punishment was accepted.

(iii) Subsequently, the petitioner preferred Mercy Petition on 07.08.2017 to the Director General of Police, Law and Order, Chennai against the said punishment and the authority has modified the said punishment into that of postponement of increment for one year which shall not operate to postpone his future increment from the date of original orders by the Director General of Police, Law and Order,



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Chennai dated 09.08.2018. Further, the petitioner has submitted an application to the 1st respondent for further consideration in order to set aside the punishment, however, the 1st respondent has rejected the said petition by order dated 05.07.2023 in G.O.[D] No.761, hence this petition.

3. The learned senior counsel for the petitioner submitted that the 1st respondent erred while coming to a conclusion that with regard to charge no.1, Mr.Chandraprakash was enquired as P.W.1 and during the cross examination, he openly admitted that he has not submitted any documents to rely the charge and he admitted that there was a civil case pending.

4. The learned senior counsel for the petitioner contends that the 1st respondent failed to note that no sustainable documents were placed either by the prosecution or by P.W1, Mr.Chandraprakash. Further, the 1st respondent failed to note that the Assistant Commissioner has not produced any document to rely the said charge, hence the enquiry officer held this charge as proved with mere assumption and presumption and no evidence was available to sustain this charge. Moreover, it is purely a dispute between landlord and tenant and also a Rent Control proceeding is pending before the competent Rent Control Authority in order to decide the issue. Therefore, the petitioner has



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come up with this petition seeking to set aside the punishment awarded to him.

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5. Per contra, the learned Additional Government Pleader appearing for the respondents has filed a detailed counter and submitted that only after conducting oral enquiry into the allegations, the enquiry officer held that the charge against the petitioner herein in count nos.1 and 4 as proved and count nos.2, 3 and 5 are not proved. The 1st respondent only after considering the points put forth by the petitioner rejected his petition based on merits. Since the 1st respondent found no valid points or justification to interfere with the punishment imposed by 2nd respondent, the petition submitted by the petitioner herein to the Government was rejected as devoid of merits.

6. That apart, the learned Additional Government Pleader appearing for the respondents submits that the enquiry officer has relied on the statement of P.W.1 and the prosecution exhibits filed by him and after that only has held the charge in count no.1 against the petitioner herein as proved. Further, there is no question of surmises and conjectures and the modified punishment imposed by the 2nd respondent has been upheld by the Government. The good work done by the petitioner in several occasions and the number of rewards earned by



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him will be considered during his next promotion stage, now it is proven misconduct of the petitioner, hence he was rightly punished.

7. Also, the learned Additional Government Pleader contends that the complainant / P.W.1 in his statement has stated that on 16.06.2015 based on the complaint of Basha, a case in C.5 Kothawalchavadi Police Station in Crime No.204 of 2015 under Sections 294(b) and 506(i) IPC was registered against P.W.1. The enquiry officer has stated that on verification of the case file, it was noticed that the case in Crime No.204 of 2015 was registered by another investigating officer and not by the petitioner as contended, thereby pleaded that the present writ petition is devoid of merits. In support of her contention, the learned Additional Government Pleader relied on the Judgment of the **Hon'ble Apex Court in Civil Appeal Nos.1763-1764 of 2022 dated 22.03.2022**

8. Heard the learned counsel on either side and perused the documents placed on record carefully.

9. It is to be noted that M/s A.M.Ahamed & Co., [hereinafter referred to as company] represented by its Managing Partner viz., Haji.J.M.Iqbal was carrying out an export house at Mannady, Chennai. The said property belongs to Muthialpet Higher Secondary School and



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the said school directed the company to vacate and deliver its property for expanding its school activities. Hence the company intends to shift their business to M/s Vimal Enterprises, Chennai, hereinafter referred to as 'enterprise' therefore, the company sent a lawyer's notice to the enterprise. Since the enterprise has not vacated the premises the company has preferred R.C.O.P.No.568 of 2012.

10. At this juncture, it is to be noted that by way of proceedings in Va.No.03/C5Inspector/Sa&O/KA.NI/2015 dated 13.04.2015, the petitioner indicated to the Tahsildar cum Executive Magistrate, Chennai that with regard to the disputed site, both the parties have been advised many times to seek a solution before the Court of Law and the two parties frequently come with their persons to lock the property and break the lock and are disturbing the public peace. Therefore, the Administrative Arbitrator is requested to take action against the above two parties.

11. Further, by way of proceedings of the Tahsildar and Executive Magistrate, Purasawalkam, Chennai in Procs. No.B2/7312/2015 dated 06.11.2015, both the parties, [viz., enterprise and company persons] were directed to move the civil court for proper relief.



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12. Considering all the above said facts and circumstances of the case and taking note of the fact that the parties were directed to approach the civil court, since it is a civil dispute between landlord and tenant and RCOP is of the 2012, which is pending before the XV Small Causes Court, Chennai and the fact that the petitioner by way of proceedings in Va.No.03/C5 Inspector / sa & O/ka.ni/2015 dated 13.04.2015, indicated to the Tahsildar cum Executive Magistrate, Chennai that with regard to the disputed site, both the parties have been advised many times to seek a solution before the Court of Law and the parties on both sides frequently come with their persons to lock and break the lock and disturbing the public peace and the Administrative Arbitrator was requested to take action against the above two parties, this Court is of the view that the petitioner has taken action and hence inclined to allow the petition.

In the result, the present Writ Petition is allowed and the order passed by the 1st respondent dated 05.07.2023 made in G.O.(D) No.761 in connection with PR No.42/PRN(1)/2015 dated 19.05.2016 is set aside and the respondents are directed to pass appropriate orders in accordance with law. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking/Non Speaking order



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V.BHAVANI SUBBAROYAN,J

ssd

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