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W.P.No.18423 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.08.2023

Pronounced on : 12.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.18423 of 2013

S.Gunasekaran

... Petitioner

Vs.

1.The Superintendent of Police,
Coimbatore District, Coimbatore

2.The Deputy Inspector General of Police,
Coimbatore Range, Coimbatore

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondents 1 & 2 in connection with the impugned orders passed in C.No.31/PR-08/2002 dated 26.05.2005 and C.No.D2/3190/2013 dated 04.05.2013 and quash the same and further direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.



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For Petitioner : Mr.K.Venkataramani,
Senior Counsel
for Mr.M.Muthappan

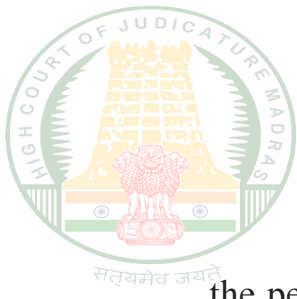
For Respondents : Mr.L.S.M.Hassan Faizal,
Additional Government Pleader

ORDER

This writ petition is directed as against the orders passed by respondents 1 & 2 dated 26.05.2005 & 04.05.2013 respectively, thereby imposed punishment of compulsory retirement on the petitioner.

2. The petitioner was appointed as Grade-II Police Constable in Police Department on 17.05.1976 and he was promoted as Grade-I Police Constable on 09.08.1980. Thereafter, he was promoted to the post of Head Constable on 19.02.1993. While he was serving as Head Constable in Avinashi Police Station, Coimbatore District, on 15.01.2002 when he was on duty, he found that the liquor shops were open and the salesmen were selling liquor.

2.1 The Government of Tamilnadu has declared the said day as holiday and there was total prohibition of selling liquor in force. When



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the petitioner questioned about about the selling of liquor, they admitted the sale of liquor. On their admission, the salesmen were brought to the police station for the purpose of taking appropriate action against them. However, the Superintendent of Police did not accept for registering case and turned the entire case against the petitioner as if he demanded illegal gratification and on their refusal, he brought the salesmen to the police station. On the said charge, the petitioner was suspended from service on 16.02.2002 and he was issued charge memo dated 07.02.2002 consisting of two charges, which read as follows:

“(i) Reprehensible conduct in demanding money from the liquor shop owners and also causing inspection in the liquor shops without any authority on 15.01.2002 and brought 5 persons to Avinashi Police Station without any basis

(ii) Reprehensible conduct in refusing to hand over the general diary of the Avinashi P.S. Dt 23.12.01”

On receipt of the same, the petitioner submitted detail representation. However, without being satisfied with the explanation, an enquiry officer was appointed to conduct domestic enquiry. The petitioner was not satisfied with the enquiry officer since he acted in a biased manner. The



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petitioner requested higher police officials for change of the enquiry officer. However, his request was not considered and the same enquiry officer conducted enquiry.

2.2 On the side of the Presenting Officer, he had examined 13 witnesses. However, no witnesses were allowed to depose in chief examination. Whatever the statement made by them in the preliminary enquiry was recorded by the enquiry officer as their deposition. During the cross examination, the five salesmen had category admitted that they kept the liquor shops open on Thiruvalluvar day i.e. 15.01.2002. However, the enquiry officer found both the charges proved against the petitioner and submitted its minutes to the disciplinary authority on 10.11.2004. The petitioner was served with enquiry officer's report and called him to submit his explanation. On receipt of the same, the petitioner submitted his detailed explanation on the enquiry report. The disciplinary authority passed final order thereby imposed punishment of compulsory retirement from service by an order dated 26.05.2005. Aggrieved by the same, the petitioner preferred appeal before the second



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respondent and the same was also dismissed and confirmed the order passed by the first respondent.

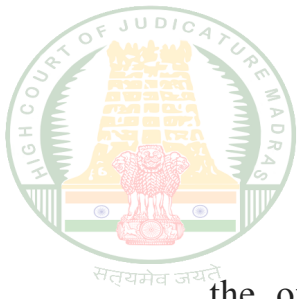
3. Mr.K.Venkataramani, the learned Senior Counsel appearing for the petitioner submitted that the order of punishment itself is non speaking order. The disciplinary authority is duty bound to discuss the points based upon the enquiry officer's report and explanation submitted by the petitioner. As per Rule 3 sub-class (b) of Tamilnadu Police Subordinate Service (Discipline & Appeal) Rules, 1955 (hereinafter called as TNPSS(D&A) Rules), further representation should be considered before rendering a decision. The disciplinary authority did not even meet those grounds raised by the petitioner. Mere proving of charge is not sufficient to hold the delinquent guilty of charges. After enquiry, though the petitioner had raised so many legal issues and factual issues, none of the grounds raised by the petitioner were considered before holding that the charges have been proved against him.



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3.1 He further submitted that the appellate authority mechanically dismissed the appeal without any speaking order and it is in violation of Rule 6(3) of TNPSS(D&A) Rules. The appellate authority owes a duty to go into the merits of the charges to find out whether the facts have been established for arriving at a conclusion that the petitioner is guilty of charges. Further, he owes a duty to see whether the prosecution has established the guilt of the delinquent officer and finally, whether punishment imposed is adequate or inadequate. There is absolutely no discussion regarding the quantum of the punishment with reference to the adequacy or inadequacy. In fact, it is the second round of litigation since already the order passed by the appellate authority was set aside and remitted back to the appellate authority for fresh disposal. However, the appellate authority again committed the same mistake and mechanically dismissed the appeal filed by the petitioner without finding out whether the punishment imposed by the disciplinary authority is adequate or inadequate, proportionate or disproportionate to the nature of the delinquency. The petitioner is being the policeman and if he finds any cognizable offence, he is duty bound to take appropriate action as against



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the offender. Therefore it cannot be said that the petitioner has no jurisdiction to approach the salesmen on the allegation that they were selling liquor on a holiday. In support of his contention, he relied upon the following judgments:

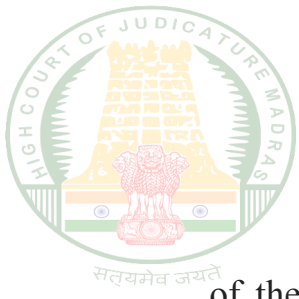
- (i) ***State of Orissa Vs. Dhaniram Luhar*** reported in
(2004) 5 SCC 568
- (ii) ***Cyril Lasrado (dead) By LR's and others Vs. Juliana Maria Lasrado and Another*** reported in ***(2004) 7 SCC 431***
- (iii) ***Vishnu Dev Sharma Vs. State of Uttar Pradesh and Others***
reported in ***(2008) 3 SCC 172***
- (iv) ***Moni Shankar Vs. Union of India and Another***
reported in ***(2008) 3 SCC 484***
- (v) ***Chairman, Disciplinary Authority Rani Lakshmbai Kshetriya Gramin Bank Vs. Jagdish Sharan Varishney and Others*** reported in ***(2009) 4 SCC 240***
- (vi) ***A.R.Kannan Vs. The Principal Secretary, Commissioner of Revenue Administration, Chennai*** rendered in
WP.No.22943 of 2015 by this Court



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4. The respondent filed counter and Mr.L.S.M.Hassan Fizal, the learned Additional Government Pleader submitted that the petitioner had taken an auto bearing registration No.TN 40 2315 on 15.01.2002 at about 20 hours and unauthorisedly raided the liquor shops in Avinashi Town with an intention to receive 'mamool' and brought 5 persons working in various liquor shops to the Avinashi Police Station and obtained signature from them in white sheets. He had, with bad intention, raided the liquor shops even though the shops were closed on 15.01.2002 as it was declared by the Government as 'Thiruvalluvar day'. He had brought the salesmen from those shops to the police station and kept them illegally till 22.35 hours. The owners of the respective liquor shops were already lodged complaint against the petitioner alleging that he was demanding more mamool and if not, they cannot run there liquor shops peacefully. Those complaints were already enquired and the petitioner was warned by the Sub Inspector of Police. Therefore, the petitioner wantonly brought the salesmen and alleged that they were selling liquor on holiday, that too for higher price than normal price on the eve of Thiruvalluvar day. That apart, the petitioner had taken the General Diary



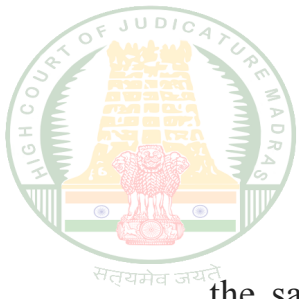
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of the police station which was in the custody of the Sub Inspector of Police. Therefore, the petitioner was suspended from service and he was served with charge memo under rule 3 sub-class (b) of TNPSS(D&A) Rules. He was given opportunity to submit explanation for the charge memo. However, the explanation submitted by the petitioner was not satisfactory and as such enquiry was ordered . Enquiry officer conducted enquiry and held that both the charges against the petitioner were proved. Considering his 29 years of service, the disciplinary authority had taken a lenient view and awarded him punishment of compulsory retirement from service with all retirement benefits.

5. Heard, Mr.K.Venkataramani, the learned Senior Counsel appearing for the petitioner and Mr.L.S.M.Hassan Faizal, the learned Additional Government Pleader appearing for the respondents. Original records were called for and perused by this Court.

6. The petitioner, while was serving as Head Constable at Avinashi Police Station, when he was at night rounds duty in the Avinashi Town on 15.01.2002, he found five liquor shops were open and



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the salesmen were selling liquor. The petitioner, with the help of one auto rickshaw, had brought the salesmen to the police station. However, without registering case as against the salesmen, the petitioner was suspended from service on the ground that he demanded 'mamool' from the liquor shops every month. In pursuant to his suspension, he was served with charge memo. On perusal of the explanation dated 05.09.2004 submitted by the petitioner, revealed that the petitioner completely denied the charge that he demanded illegal gratification from five liquor shops to run the same peacefully. So far, the petitioner was not served with memo and he was not punished with any punishment. Even from the date of his joining as Head Constable in the Avinashi Police Station, he gained enmity of higher police officials for the reason that he had taken action against the liquor shops which were open beyond time and also were run without licence. He made representation to the Superintendent of Police on 02.10.2001 to take appropriate action as against the liquor shops and the liquor bars in order to curtail the illegal sale of liquor. Even till 15.01.2002, he had sent several representations to the higher police

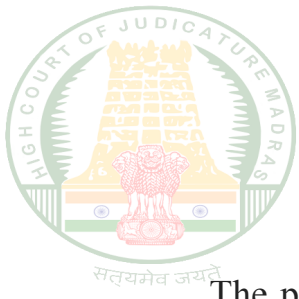


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personnel to take appropriate action. The petitioner being the policeman, is duty bound to take appropriate action against the offenders who committed offence though he was not on particular duty. Witnesses category deposed that they were kept open the liquor shops on 15.01.2002 during the cross examination. Further, all the witnesses are stereotype one and same verbatim of statement made during the preliminary enquiry. Even assuming that the petitioner demanded 'mamool' from the liquor shops every month, there was no necessity for the petitioner to bring them to the police station, that too on 15.01.2002.

7. There was no evidence to show that the petitioner demanded 'mamool' from the liquor shops before 15.01.2002 as alleged by the disciplinary authority. Therefore, it is unfortunate to state that when the policeman who had brought the accused to the police station, with the influence of the liquor shop owners falsely charged the petitioner and he was also suspended from service. Further, even assuming that the salesmen were brought to the police station at about 8.00 p.m. and they were detained till 10.35 p.m., it would not amount to illegal detention.



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The policeman can bring the suspected accused to the police station for enquiry. Further, on the basis of preliminary enquiry conducted by the Inspector of police and Sub Inspector of police and on their report, the petitioner was suspended from service. Their reports were marked by the disciplinary authority and they were not enquired by the enquiry officer. Therefore, there was no basis for charge memo. The charge memo was issued based on the preliminary report submitted by the Inspector of Police and Sub Inspector of Police. The disciplinary authority ought to have examined them in order to prove the charges. Further, the allegation against the petitioner was that the petitioner was not authorised to raid the liquor shops.

8. It is also very unfortunate to state that when the policeman had seen liquor shops kept open on Thiruvalluvar day, he cannot close his eyes and it cannot be said that he has no jurisdiction or he is not an authorised person to take appropriate action against the offenders. In criminal law, anybody can set law in motion. When the third party who had seen the occurrence has locus to lodge compliant, the policeman also



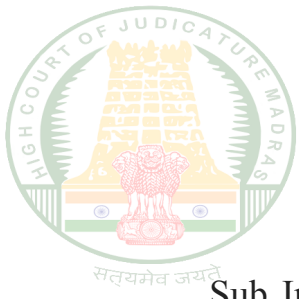
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can be treated as third party to lodge complaint against the offender.

Therefore, it cannot be said that the petitioner was not authorised to take action against the offender. Further, it was not the case of the petitioner that he raided the liquor shops. When the liquor shops were open on a ban day, he questioned about the sale of liquor. Therefore, it would not amount to raiding the liquor shops.

9. In fact, the Inspector of Police Avinashi Police Station also registered so many cases under the Tamilnadu Prohibition Act. He category admitted in his cross examination. Insofar as second charge is concerned, the petitioner completely denied the same. It was not necessary to take away the General Diary which is supposed to be kept in the police station. According to the petitioner, he entered his raid at the night of the said day. When he had brought them to the police station, immediately he entered his raid in the General Diary. If at all any complaint lodged by the liquor shop owners, and if any enquiry was conducted that would have been entered in the General Diary. Therefore, in order to suppress the case of the petitioner, the Inspector of Police and



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Sub Inspector of Police wantonly made such charge as if the petitioner had taken away the General Diary of the police station. Even assuming that the petitioner had taken away the General Diary, it would not help the petitioner in any way. It would not be useful for the petitioner to disprove the first charge. In order to substantiate the first charge, the Inspector of Police and Sub Inspector of Police had taken away the General Diary and charged the petitioner as if he had taken away the General Diary. The Inspector of police also admitted in his cross examination that whenever the police personnel are going out and coming in to the police station, they shall enter their duty in the General Diary. Other witnesses admitted that on 15.01.2002, they had kept open the liquor shops and sold liquor.

10. Further, on perusal of the impugned order of imposing punishment of compulsory retirement dated 26.05.2005, revealed that disciplinary authority failed to consider any of the grounds raised by the petitioner in proper perspective. As per rule 3 sub-class (b) of TNPSS(D&A) Rules, any point raised by way of further representation



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by the delinquent, should be considered before rendering a decision. The grounds raised by the petitioner had not been met by the disciplinary authority and it simply comes to the conclusion that the petitioner had illegal gratification and held that the charges have been proved. It is relevant to extract the provision under rule 3 sub-class (b) of TNPSS(D&A) Rules hereunder:

(ii) After the inquiry or personal hearing referred to in clause (1) has been completed and if the authority competent to impose the penalty specified in that clause, is of the opinion, on the basis of the evidence adduced during the inquiry, any of the penalties specified in rule 2 should be imposed on the person charged, it shall, before making an order imposing such penalty, furnish to him a copy of the report of the inquiry or personal hearing or both, as the case may be, call upon to submit his further representation, if any, within a reasonable time, not exceeding fifteen days, Any representation received on his behalf within the period shall be taken into consideration before making any order imposing the penalty, provided that such representation shall be based on the evidence adduced during the inquiry only. It shall not be necessary to give the person charged



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any opportunity of making representation on the penalty proposed to be imposed.

11. However, the disciplinary authority failed to meet out any of the grounds raised by the petitioner before imposing punishment. Therefore, the disciplinary authority failed to apply its mind before passing the impugned order. The appellate authority i.e. the second respondent mechanically dismissed the appeal filed by the petitioner without even meeting the grounds raised by the petitioner. In fact, this Court in the first round of litigation, set aside the order and remitted the matter back to the appellate authority for fresh consideration. This court specifically directed the appellate authority i.e. the second respondent that it shall consider the appeal petition afresh in accordance with the procedure contemplated under rule 6 of TNPSS(D&A) Rules and pass orders. It is relevant to extract the rule 6 sub-clause (1) and (2) of TNPSS(D&A) Rules hereunder:

6(1) In the case of an appeal against an order imposing any penalty specified in Rule 2, the appellate authority shall consider

(a) Whether the facts on which the order was based have been established;



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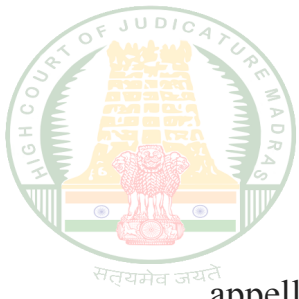
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(b) Whether the facts established afford sufficient ground for taking action, and

(c) Whether the penalty is excessive, adequate or inadequate, and after such consideration shall pass orders as it thinks proper.

(2) Any error or defect in the procedure followed in imposing a penalty may be disregarded by the appellate authority if such authority considers, for reasons to be recorded in writing, that the error of defect was not material and has neither caused injustice to the person concerned nor affected the decision of the case.

12. Therefore the appellate authority is not only required to pass a speaking order but the rule mandates the duty upon the appellate authority and the manner in which appeal petition should be considered. Hence, the appellate authority is bound to record reasons by taking note of the matters stipulated in sub-clauses (a) to (c) of sub-rule (1) of rule 6 of the said Rules. However, once again the appellate authority committed the same mistake and dismissed the appeal without recording any reasons by taking note of the grounds raised by the petitioner. The learned Senior Counsel vehemently contended that both the disciplinary as well as

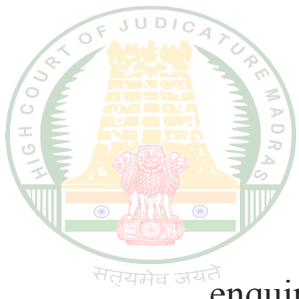


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appellate authorities are duty bound to consider the findings of the enquiry officer whether the same are supported by material evidence or whether the enquiry officer had followed the established procedure in the conduct of the proceedings. It is also incumbent upon the disciplinary authority to consider every infirmity that has been pointed out by the delinquent and must pass a reasoned order. The appellate authority also has to consider all the defects pointed out by the delinquent while considering the appeal.

13. On verification of original records, this court finds various lacuna pointed out by the petitioner. In the enquiry, the disciplinary authority failed to consider any of the point raised by the petitioner. As stated supra, the charges itself are nothing but escape from the clutches of law framed against the petitioner. In order to satisfy the liquor shop owners, the petitioner was charged for without committing any fault. Further, when the petitioner submitted detailed representation alleging that the enquiry officer acted in a biased manner from the beginning, the said request was rejected by the higher officials. Even then, the same



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enquiry officer proceeded with the enquiry and acted in a biased manner against the petitioner. It is also seen from the evidence of the Presenting Officer that he recorded the very statement in the preliminary enquiry as their evidence. As per the the guidelines issued by the Government in respect of disciplinary proceedings, if any request is made for the change of enquiry officer, it is advisable that the enquiry officer does not proceed with the oral enquiry.

14. Further, there was no evidence to show that the petitioner had demanded illegal gratification from the liquor shop owners. Even according to the charges, the petitioner had demanded from the liquor shop owners long back. However, there was no complaint immediately after the alleged demand of illegal gratification. When the liquor shop owners were caught red handedly for running the shops on holiday i.e. on Thiruvalluvar day and the salesmen who were running the liquor shops were brought to the police station by the petitioner, a new theory of demanding illegal gratification from them was put against the petitioner by the liquor shop owners. Therefore, in order to escape from the illegal



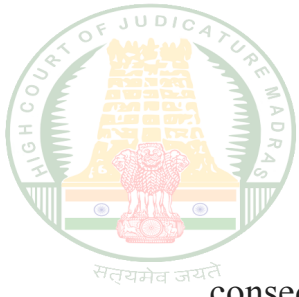
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opening and sale of liquor, the petitioner was charged with false charges.

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It is very unfortunate to state that those who opened the shops and sold liquor on a holiday were let off without any case. Whereas the person who did not commit any fault was proceeded with departmental action and major punishment was imposed on him. The petitioner being a Head Constable, has got right to enter liquor shop when it was run on holiday. Further, the punishment imposed on the petitioner is excessive, exorbitant and disproportionate to the nature of the delinquency. The petitioner had put in more than 29 years of service and he was not served with any memo so far and no punishment was imposed against the petitioner. Therefore, the quantum of punishment imposed on the petitioner is excessive and it cannot be sustained.

15. In view of the above, the impugned orders are liable to quashed. Accordingly, the impugned orders dated 26.05.2005 & 04.05.2013 are quashed and this writ petition is allowed. Since the petitioner attained the age of superannuation, the question of reinstatement does not arise. However, the petitioner is entitled for all



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consequential service and monetary benefits. Therefore, the respondents are directed to settle all consequential service and monetary benefits to the petitioner within a period of twelve weeks from the date of receipt of copy of this order. There shall be no order as to costs.

12.09.2023

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G.K.ILANTHIRAIYAN, J.

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To

- 1.The Superintendent of Police,
Coimbatore District, Coimbatore
- 2.The Deputy Inspector General of Police,
Coimbatore Range, Coimbatore
- 3.The Government Advocate
High Court, Madras.

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