

(2010) 11 MAD CK 0215
In the Madras High Court

Case No : Writ Petition No. 38142 of 2005 and W.P.M.P. No. 40777 of 2005

M. Ramasamy

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 02-11-2010

Acts Referred:

Immoral Traffic (Prevention) Act, 1956 — Section 4(2), 8(1)

Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 — Rule 3, 6

Citation : (2010) 11 MAD CK 0215

Hon'ble Judges : M. Sathyanarayanan, J

Bench : Single Bench

Advocate : C. Selvaraj, S.C. for S. Mani, for the Appellant; S. Gopinathan, AGP, for the Respondent

Judgement

M. Sathyanarayanan, J.—The petitioner challenges the order of the first respondent dated 10.08.2005 under which, the order passed by the fourth respondent postponing the increment of the petitioner for one year without cumulative effect as confirmed by the appellate authority viz., third respondent and the dismissal of the Review petition by the second respondent came to be confirmed.

2. The facts leading to the filing of this writ petition are as follows:

The petitioner joined the Tamil Nadu Police Subordinate Service as Sub-Inspector of Police on 2.11.1979 and was promoted as Inspector of Police in the year 1993. While the petitioner was working as the Inspector of Police in Fairlands Police Station, Salem City, he was dealt with a charge under Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules in P.R. No. 80 of 2002 for the following delinquency:

Highly reprehensible conduct in having failed to take action against one brothel house runner S. Menon, residing at C.75, Vanchinathaiyar Street, Swarnapuri for his clandestine activities in running a brothel house with brothel ladies despite

instructions to show improvement in policing in fair-lands P.S. jurisdiction by his superiors during August and September 2002.

3. The Deputy Commissioner of Police (Crime and Traffic), Salem City, was appointed as the Enquiry Officer and on behalf of the department 7 witnesses were examined and 11 Exhibits were filed. On behalf of the petitioner herein, 8 Defence witnesses were examined and no Defence Exhibits were filed. P.W.1 is the owner of the house in which S.Menon of Kerala, was running brothel house. P.W.2 is the Manager of a weekly magazine and he speaks about the activities of S. Menon. P.W.3 is the person incharge of circulation of weekly magazine and he speaks about the activities of S. Menon and P.W.4 also speaks about the activities of S. Menon. P.W.5 is Mr. Kannan, Inspector of Police, Salem Town Police Station (Law & Order) and he would depose that while he was working in that capacity, he was on his way to the office on 1.10.2002 one Sukumaran stopped him near the roundtana and gave a written complaint about the soliciting done by a pimp and a lady. P.W.5 on enquiry came to know that person is one Babu @ Menon and are indulging in commission of offences under P.T.I. Act, Sathyavani. P.W.5 received the complaint and since the matter pertains to the jurisdiction of Fairlands Police Station, he informed the same to the Assistant Commissioner of Police, Intelligence Section, Salem Police. As per the instructions of the said official, he visited the house of Menon and found Menon running brothel house and he effected arrest of Menon and Sathyavani on 4.10.2002, registered a case in Crime No. 395/2002 under the Prevention of Immoral Traffic Act. He also submitted a special report to the Deputy Commissioner of Police (Law & Order).

4. P.W.6 was the Deputy Commissioner of Police (Law & Order) at the relevant point of time and he would depose that the Commissioner of Police, Salem City has issued a memo dated 4.9.2002 to the petitioner stating that he was not doing proper policing in his limits and he did not show improvement in his work within 15 days, action would follow. The said memo was acknowledged by the petitioner on 24.09.2002. The Commissioner of Police, Salem City, has issued a memo dated 19.9.2002 to the petitioner herein to collect information regarding the running of brothel house of Menon and to take action to eradicate the same. The Commissioner of Police, Salem City, on 1.10.2002, instructed P.W.6 to enquire about the inaction on the part of the petitioner and submit a report and after making an enquiry, he has submitted a report along with the statements of the witnesses. Thereafter, the petitioner was suspended from service.

5. The petitioner had examined Defence witnesses and all would depose that they did not know directly that Menon was doing brothel business in his house and that no complaints were made by the persons who are residing in the said locality. The complainant viz., Sukumaran, who lodged the complaint to P.W.5 regarding the running of brothel by Menon was examined as D.W.5 and he would depose that no such occurrence took place and he has not given any such complaint to P.W.5. After completion of the departmental enquiry the petitioner has submitted his explanation dated 07.01.2003 stating that the department has

miserably failed to prove even a single incident.

6. The Enquiry Officer after taking into consideration oral and documentary evidences, has given a finding that the petitioner herein has not taken any steps to curtail antisocial activities within his limits and also not shown any improvement in his police work.

7. The fourth respondent on taking into consideration the said report, has accepted the same and awarded punishment of postponing of increment for one year without cumulative effect which shall not operate to postpone his future increment. The appeal filed by the petitioner to the third respondent was also rejected on 11.10.2003 and the Review filed by him before the third respondent was rejected on 10.4.2004 and his representation submitted to the Government was rejected on 10.8.2005.

8. Mr. C. Selvaraju, learned senior counsel appearing for the petitioner would contend that the findings recorded by the Enquiry Officer were based on no evidence and in fact one Sukumaran who is said to have lodged the complaint with P.W.5 regarding the running of brothel house by Menon, had turned hostile and the said fact has not been properly appreciated by the Enquiry Officer. It is further submitted that the fourth respondent without any independent application of mind, has merely accepted the enquiry report and imposed the punishment. The Appellate and Reviewing Authorities as well as the Government, without considering the points urged by the petitioner, had merely confirmed the order of punishment.

9. Learned senior counsel appearing for the petitioner would further submit that the enquiry officer took upon the task of the presenting officer also cross-examined the witnesses and the same would exhibit element of bias. It is further submitted by the learned senior counsel appearing for the petitioner that the appellate authority while disposing of the appeal, has not chosen to follow Rule No. 6 of Tamil Nadu Police (Disciplinary and Appeal) Rules and hence prayed for the quashment of the impugned order and conferment of all benefits to the petitioner.

10. Learned senior counsel appearing for the petitioner in support of his submissions, has placed reliance upon the following judgments:

(i) State of Uttaranchal and Another Vs. Sunil Kumar Singh Negi,

(ii) State of Uttaranchal and Others Vs. Kharak Singh, .

(iii) (2008) 5 MLJ 350 (DB) Subramanian v. Government of Tamil Nadu and Ors.

(iv) G. Vallikumari Vs. Andhra Education Society and Others, .

11. In State of Uttaranchal and Another Vs. Sunil Kumar Singh Negi, , the writ petition filed by a daily wageer was dismissed by a cryptic order and the Hon'ble Supreme Court of India after taking into consideration the judgment reported in Raj Kishore Jha Vs. State of Bihar and Others, . wherein it laid down a

proposition that reason is the heartbeat of every conclusion and without the same, it becomes lifeless, has set aside the said order.

12. In *State of Uttaranchal and Others Vs. Kharak Singh*, the Divisional Forest Officer acting as Enquiry Officer himself inspected the area, put certain questions to the delinquent and after securing answers and submitted a report of enquiry and neither was any presenting officer nor any prosecution witness examined. The Hon''ble Supreme Court of India after taking into consideration various factors, found that the enquiry officer in the said case acted as investigator, prosecutor and judge and the procedure adopted by him, is opposed to principles of natural justice.

13. In *G. Vallikumari Vs. Andhra Education Society and Others*, , the order of removal from service passed against the appellant was challenged unsuccessfully before the High Court and hence he filed an appeal before the Hon''ble Supreme Court of India. The Hon''ble Supreme Court of India found that the order of punishment passed against the appellant is vitiated due to violation of the statutory rules and principles of natural justice and taking into consideration of the fact that she was removed from service more than 13 years ago, though not fit to adopt that course and instead set aside the punishment of removal from service and substituted the same with penalty of stoppage of three increments without cumulative effect and also payment of 20% of back wages during the intervening period.

14. The learned senior counsel appearing for the petitioner would submit that though the currency of punishment is over, the petitioner is not yet given promotion and in this regard, placed reliance upon a judgment of a Division Bench of this Court reported in (2008) 5 MLJ 350 *Subramanian v. Government of Tamil Nadu and Ors.*, wherein it has been held that the punishment of stoppage of increment for two years without cumulative effect can be construed only as a minor punishment and on that pretext, the employee could not be denied further promotion if he is otherwise eligible to get promotion.

15. Per contra, the learned Additional Government Pleader has drawn the attention of this Court to the counter affidavit filed on behalf of the respondents and would submit that in spite of memos issued to the petitioner to improve his police work, he has not done so and by his act, antisocial activities increased within the police limits and hence he was proceeded departmentally.

16. In so far as the procedure adopted by the Enquiry Officer regarding the examination of witnesses, the learned Additional Government Pleader would submit that the petitioner has not raised any objection and in fact fully participated in the enquiry proceedings and he was given full opportunity to cross-examine the departmental witnesses and he also produced defence witnesses and hence, it is not open to the petitioner to make such a complaint at this distant point of time. It is further submitted by the learned Additional Government Pleader that all the authorities viz., respondents 3, 2 and 1 after

due application of mind to the materials available on record and after taking into consideration of the materials available on record and after independent application of mind, had concurred with the decision taken by the disciplinary authority and hence no interference is warranted.

17. This Court has carefully considered the submissions made by the learned senior counsel appearing for the petitioner and the learned Additional Government Pleader and also perused the typed set of documents and considered the decisions cited on behalf of the petitioner.

18. A perusal of the enquiry report would disclose that the enquiry officer had put certain questions to the witnesses to elicit answers. The enquiry officer is a fact finding body and in order to clarify his doubts, has put certain questions to the witnesses. In fact, the petitioner did not raise any objections at the earliest point of time during the course of enquiry. The petitioner was given full opportunity to defend himself and he has examined defence witnesses to sustain his defence. Since the petitioner did not raise any objection with regard to the procedure adopted by the enquiry officer during the course of enquiry, it is not open to him to complain about the same. The petitioner did not raise any objection either before the appellate authority or before the Review authority or before the Government with regard to the procedure adopted by the enquiry officer. Therefore, the said ground of attack lacks merit.

19. It is also the submission of the learned senior counsel appearing for the petitioner that the petitioner was incharge of Police Station as Station House Officer between 14.6.2002 and 5.10.2002 which is considered to be very short period. Even though the charge framed against the petitioner as an off suit of the brothel house run by one Menon within his police limits, and in this regard, investigation of the case was conducted by none other than P.W.5 who after investigation filed charge sheet against Menon and Sathyavani u/s 4(2)(c) and 8(1)(b) of the Prevention of Immoral Traffic Act, charge sheet was taken on file in STC. No. 5450 of 2002 by the Court of Judicial Magistrate No. V, Salem. In the course of trial, P.Ws. 1 to 3 including the defacto complainant viz., Sukumaran, were turned hostile and except the testimonies of police witnesses, no evidence was available against the accused. Therefore, the said Court vide order dated 29.5.2003, had acquitted Menon and Sathyavani. Though the said order is subsequent to the enquiry report dated 15.3.2003, it is having some relevance to this case. According to P.W.5, Sukumaran gave a complaint with regard to the soliciting and running of brothel and hence he registered a case and on instructions of Assistant Commissioner (Intelligence Section), done investigation and filed the final report. Ultimately, the case ended in acquittal as the material witnesses turned hostile and it is not made clear as to whether the State had made any appeal against the said order of acquittal. It is also not made known as to the action taken against the witnesses who were turned hostile. Therefore, it cannot be said that the petitioner was solely responsible for thriving of antisocial activities within his police limits. However, at the same time, this Court

adds that as the Station House Officer of Fairlands Police Station, it is also his duty to prevent the commission of the offence and he has failed in his duty to some extent.

20. The petitioner was the Station House Officer of the Fairlands Police Station for a very short period between 14.06.2002 and 05.10.2002 and within that period, it may be difficult for him to come into grips with the local problems.

21. The submission made by the learned senior counsel appearing for the petitioner that the appellate authority has not properly disposed of the appeal in terms of Rule 6 of the Police Subordinate Service (Disciplinary and Appeal) Rules, also lacks merit for the reason that in paragraph No. 5 of the order, the appellate authority has taken into consideration the factual aspect and also found that no new points have been raised in the appeal petition and consequently dismissed the appeal petition.

22. This Court after taking into consideration of the fact that the petitioner acted as the Station House Officer for very short period and that the investigation conducted by P.W.5 which culminated into charge sheet in STC No. 5450 of 2002 on the file of the Court of Judicial Magistrate No. V, Salem, has ended in acquittal as the material witnesses had turned hostile and also the fact that the defacto complainant who was examined as P.W.1 in the said case and also examined as D.W.5 in the departmental enquiry, did not support the case and also the fact that even though the petitioner has undergone the currency of punishment, was not given promotion, is of the considered view that the punishment is shockingly disproportionate to the delinquency on his part and he is to be imposed with a lesser punishment than the punishment awarded to him.

23. In the result, the writ petition is partly allowed and the findings recorded by the 4th respondent, as confirmed by the respondents 3, 2, 1 regarding the delinquency, is confirmed. In so far as the award of punishment is concerned, the case is again remanded to the fourth respondent to consider the case of the petitioner for the purpose of imposition of lesser punishment. The fourth respondent is directed to carry out the said exercise as expeditiously as possible and within three months from the date of receipt of copy of this order. In the circumstances, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.