

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2010

CORAM

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

W.P.No.39987 of 2006

P.Subban

... Petitioner

vs.

1. The Deputy Inspector General
of Police,
Trichy range, Trichy.

2. The Superintendent of Police,
Trichy.

... Respondents

PRAYER: This writ petition came to be numbered under Article 226 of the Constitution of India by way of transfer of Original Application in O.A.No.5717 of 1999 to call for the records connected in P.R.No.54/F1/98 dated 28.07.1999 of the superintendent of police Trichy and quash the same and direct the respondent to reinstate the applicant in service with all consequential service and monitory benefits.

For Petitioner : Mr.G.Elanchezhiyan

For Respondents: Mr.S.Shivashanmugam
Government Advocate

सत्यमेव जयते
O R D E R

The Original Application in O.A.No.5717 of 1999 before the Tamil Nadu Administrative Tribunal is the present writ petition.

2.The petitioner was enlisted as Grade-II Police Constable in Trichy District on 01.08.1969. Later, he was upgraded as Head Constable. While he was serving as Head Constable at Pasupathypalayam Police Station, he was served with a charge memo in P.R.No.1/87 by the Deputy Superintendent of Police, Karur. Four charges were framed in the charge memo and the same are extracted here under:

"i) Reprehensible conduct of absenting for duty point on 08.12.1986 while deputed for Railway line patrol duty.

ii) Reprehensible conduct of assaulting Thiru Raman, Sub-Inspector of police, Pasupathiapalayam Police Station on 08.12.1986 at Pasupathipalayam Police Station in the presence of other Police Constables.

iii) Made false entry in the beat book as if he had attended Railway line patrol duty on 08.12.1986 at 13.30 hrs. while he was sitting at the Police Station in Mufti.

iv) Caused damage to the cycle tyre, tubes of Sub-Inspector, Crime Thiru Raman while it was parked in the station on 09.12.1986 night while it was parked in the station on 09.12.1986 night while he was on sentry duty on 09.12.1986."

3. An enquiry was conducted. The Enquiry Officer held that all the charges were proved. Based on the findings of the Enquiry Officer, the Superintendent of police, Trichy District, awarded a punishment of dismissal from service by an order dated 02.05.1987. The petitioner preferred an appeal against the dismissal order before the Deputy Inspector General of Police, Trichy. The Deputy Inspector General of Police, modified the punishment of dismissal from service into reduction in pay by four stages for four years with cumulative effect, vide his proceedings dated 08.03.1988. The petitioner submitted a mercy petition to the Inspector General of police, Chennai. The Inspector General of Police, rejected his mercy petition on 13.02.1989.

4. Thereafter, the petitioner filed an Original Application in O.A.No.4820 of 1992 against the punishment of reduction in time scale of pay by four stages for four years with cumulative effect. The tribunal passed an order dated 24.06.1996 setting aside the punishment orders and remanded the matter to the second respondent for fresh disposal.

5. After remind, a fresh enquiry was conducted by the Deputy Superintendent of Police, Karur. The Enquiry Officer held that charge Nos.1 and 3 are proved, charge No.2 is partly proved and charge No.4 is not proved. Based on such findings, the second respondent passed an order dated 28.7.1999 imposing the punishment of dismissal from service. The petitioner preferred an appeal dated 12.8.1999 the first respondent.

6.The petitioner filed Original Application in O.A.No.5717 of 1999 (W.P.No.39987 of 2006) praying to quash the order dated 28.07.1999 of the second respondent and for consequential direction to reinstate him in service with all benefits.

7.While admitting the Original Application on 01.10.1999, the Tribunal granted interim stay for the order dated 28.07.1999 pursuant to the interim order, the petitioner was reinstated in service on 11.11.1999. It is submitted that the petitioner continued in service till the age of superannuation on 31.07.2006. In view of the pendency of the writ petition, his terminal benefits are not settled.

8.Heard Mr.G.Elanchezhiyan, learned counsel for the petitioner and Mr.S.Shivashanmugam, learned Government Advocate for the respondents.

9.The learned counsel for the petitioner though initially argued that he attended Railway Line Patrol duty on 8.12.1986, later he submitted that charge No.1 relating to his absence from petrol duty is established. However, it is submitted that the findings of the Enquiry Officer that the charge No.2 is partly proved is not correct. Charge No.2 is relating to the assault of Thiru.Raman, Sub Inspector of police, Pasupathipalayam Police Station. The learned counsel for the petitioner submits that the Enquiry Officer has categorically held that the charge of assault was not established. Further, the Enquiry Officer held that the petitioner was present in the Pasupathipalayam Police Station, without attending Railway Line Patrol duty was established. According to the learned counsel for the petitioner the second charge was not relating to his presence at the police Station. On the other hand, the charge was relating to assault only. In this regard, charge No.2 is extracted here under:

"ii) Reprehensible conduct of assaulting Thiru Raman, Sub-Inspector of police, Pasupathiapalaym Police Station on 08.12.1986 at Pasupathipalayam Police Station in the presence of other Police Constables."

The following passage from the findings of the Enquiry Officer is extracted here under:

"..... the presence of the delinquent H.C.1820 Subban at the Police Station alone is proved and the assault on the P.W.1 S.I.Thiru Raman is not proved and the benefit of doubt also goes to the delinquent H.C.1820. I held that the Count No.2 is only partly proved"

10.Therefore, the Enquiry Officer proceeded as if the presence of petitioner in the police station was also a charge. But

that is not a charge. Hence, the Enquiry Officer is not correct in holding that charge No.2 was partly proved. Once the Enquiry Officer held that the charge of assault was not proved, he should have held that charge No.2 was not proved. Therefore, I am of the considered view that the learned counsel for the petitioner is correct in his submissions that charge No.2 is also not established even as per the findings recorded by the Enquiry Officer.

11.Charge No.3 is related to charge No.1. While the petitioner did not attend patrol duty, he recorded entry in the beat book as if he attended patrol duty. Since he did not attend patrol duty, the entry made in the beat book is certainly false. Therefore, I do not find any infirmity in the findings of the Enquiry Officer as to charge No.3.

12.Charge No.4 was held as not proved by the Enquiry Officer. The punishment order was passed based on the findings of the Enquiry Officer that charge Nos. 1 and 3 were proved, charge No.2 was partly proved and charge No.4 was not proved. Now, besides charge No.4, I have held that charge No.2 was also not proved. Charge No.2 is a serious charge, as the charge was that he assaulted his superior officer. If the charge No.2 is held as not proved, the impugned order of dismissal could not be sustained. In the normal course, I could have remanded the matter to the disciplinary authority to impose proper punishment on the petitioner. But the petitioner obtained interim order of stay and continued in service up to 31.07.2006, the date of his retirement. Taking into account this fact and also the fact that the charge No.2 was not proved, I am of the opinion that imposing the punishment of stoppage of increment for 4 years with cumulative effect would meet the ends of justice. The punishment of dismissal imposed in the impugned order is modified as that of stoppage of increment for four years with cumulative effect. The respondent are directed to effect the punishment and to settle the terminal benefits within a period of 12 weeks from the date of receipt of a copy of this order.

13.The writ petition is disposed of with the above direction . No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

vsm

To

1. The Deputy Inspector General
of Police,
Trichy range, Trichy.

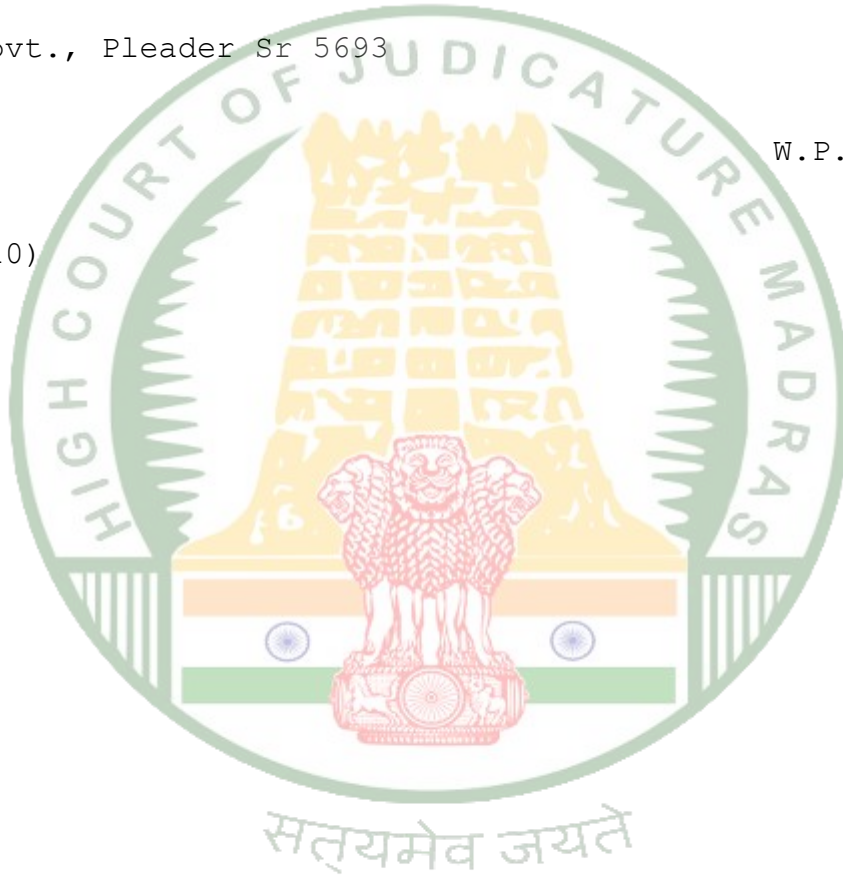
2. The Superintendent of Police,
Trichy.

1 cc to Mr.G.Elanchezhiyan, Advocate, Sr 5251

1 cc to Govt., Pleader Sr 5693

W.P.No.39987 of 2006

CK (CO)
RH (12.2.10)



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