

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2015

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.20031 of 2014
and M.P.No.2 of 2014

S.Devarajan

.. Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Police (Home) Department,
Fort St.George, Chennai-9.

2.The Additional Director
General of Police,
Law and Order, Chennai-5.

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

... Respondents

(First respondent deleted as
per the order dated 28.10.2015
made in M.P.No.1 of 2015)

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the third respondent's order made in No.D1/PR11/2010 dated 27.7.2013 as confirmed by the second respondent in Rc.No.167282/Con.3(1)/2008 dated 16.2.2014, to quash the same and consequently direct the respondents to extend all benefits both service and monetary including backwages thereto.

For Petitioner : Mr.L.Chandrakumar

For Respondents: Mr.V.Subbiah,
Special Government Pleader

O R D E R

The petitioner, while working as Sub-Inspector of Police, at Velode Police Station, Erode District was visited with disciplinary proceedings in the form of charges framed under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules in PR.No.49/2008 and it is relevant to extract the contents of the charge memo:

(i) Reprehensible conduct and unbecoming of a responsible police officer in taking a lady by name Mahalakshmi from the resident of the lady at Vellode that too in a Government Motor Cycle in uniform after midnight of 12/13.5.2005, around 02.30 A.M. in the name of enquiry even without the assistance of woman constable of Police Station, which act is contra to the guidelines given by the superiors of this department and also by the apex court. The police officer did not bring the victim to Police Station whereas he took her to some other private place where there is a Temple near the Police Station with bad intention. This act of Police Officer is highly reprehensible and also misconduct.

(ii) Highly reprehensible conduct in severely assaulting Shanmugavel of Mugasi Anumanpalli on 11.5.2005 about 07.30 PM on receipt of telephonic complaint from Subramaniam, Ravi and Shanmugam of the same village and on 12/13.5.2005 around 02.30 AM while taking Mahalakshmi to the Police Station at odd hours in the name of enquiry he was questioned and restrained by the victim's husband Shanmugavel and her father Balakrishnan without minding the objection raised by them he assaulted both the victim's husband and her father is a grave disciplinary act by the Police Officer that too in uniform.

(iii) Highly reprehensible and indisciplinary conduct on the part of the police officer in not attending RDO enquiry and absconding from the scene when it was proposed to conduct an enquiry from 18.05.2005 to 31.05.2005, by the RDO, Erode in accordance with PSO 151 regarding the misconduct of the police officer in a public place on 12/13.05.2005 at 0230 hours.

2. The Deputy Superintendent of Police, Sathyamangalam Sub-Division, Erode District has conducted an enquiry and submitted the Enquiry Report holding that all the three charges are proved. The Disciplinary Authority, namely the Deputy Inspector General of Police, Law and Order, Chennai/third respondent has passed final orders on 14.05.2011 awarding the punishment of reduction in the time scale of pay by three stages for three years and reduction shall operate his future increments. The petitioner, aggrieved by the said order, filed an appeal before the second respondent/Appellate Authority on 22.07.2011 requesting to set aside the order of punishment and pending disposal of the appeal, the petitioner filed W.P.No.9888/2013 praying for issuance of a Writ of Mandamus directing the second respondent to consider and pass

orders on the appeal petitions dated 22.07.2011 and 27.09.2011 and this Court, vide order dated 15.04.2013, has directed the second respondent to consider the appeal petitions filed by the petitioner dated 22.07.2011 and 27.09.2011 on merits and pass appropriate orders within a stipulated time frame. Consequently, the first respondent, vide proceedings dated 08.07.2013 has set aside the order of punishment passed by the Disciplinary Authority and remanded the matter to the Disciplinary Authority to pass appropriate orders afresh and accordingly, the third respondent/Disciplinary Authority, vide order dated 27.07.2013 has modified the order of punishment to one of postponement of increment for three years with cumulative effect. The petitioner, aggrieved by the said order of punishment, once again filed an appeal before the second respondent, who vide order dated 16.02.2014 has confirmed the order of punishment passed by the Disciplinary Authority and challenging the legality of the same, the petitioner came forward to file this writ petition.

3. Mr.L.Chandrakumar, learned counsel appearing for the petitioner has drawn the attention of this Court to Rule 6(1) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules 1955 and would contend that admittedly the Appellate Authority/second respondent has failed to apply its mind and merely passed a cryptic order, by confirming the order of punishment passed by the Disciplinary Authority and hence, on this sole ground the impugned order warrants interference and prays for appropriate orders.

4. Per contra, Mr.V.Subbiah, learned Special Government Pleader appearing for the respondents would submit that considering the nature of delinquency, the petitioner was fortunate to escape with lesser degree of punishment and once the Appellate Authority confirms the order passed by the Disciplinary Authority, he need not give any separate reasons and hence prays for dismissal of this writ petition.

5. This Court has carefully considered the rival submissions and also perused the materials placed before it.

6. In terms of Rule 6(1) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules 1955, the Appellate Authority is duty bound to consider the grounds urged in the appeal petitions positively and pass orders, for the reason that the order of punishment passed by the Disciplinary Authority has visited the petitioner with adverse civil consequences. However, the perusal of the impugned order would disclose that the second respondent/Appellate Authority, without application of mind, has merely confirmed the order of punishment passed by the Disciplinary Authority/third respondent and in the considered opinion of

the Court, it is not the proper mode of disposal of the appeal petitions.

7. In the result, this Writ Petition is partly allowed, setting aside the order passed by the Appellate Authority/second respondent dated 16.02.2014 in Rc.No.167282/Con.3(1)/2008 and the matter is once again remanded to the second respondent, who shall take into consideration Rule 6(1) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules 1955 and pass orders within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jvm

To

1.The Additional Director General of Police,
Law and Order, Chennai-5.

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

+1cc to M/s. L. Chandrakumar, Advocate, S.R.No.58357

+1cc to the Government Pleader, S.R.No.58618

RSK(CO)

EU(6/11/2015)

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