

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.02.2015

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.22042 of 2007

A.Victor Raja

... Petitioner

. Vs .

The Deputy Inspector General of Police,
Armed Police,
Kilpauk, Chennai - 10.

... Respondent

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent in connection with the impugned order passed by the respondent in C.No.C2/4904/2007 Appeal 5/07 dated 14.03.2007 and quash the same in so far as paragraphs 8 and 9 are concerned by imposing the punishment of postponement of one increment for two years without cumulative effect and further direct the respondent to treat the period of out of employment as duty for all purposes.

For Petitioner : Mr.K.Sellathurai

For Respondent : Mr.K.V.Dhanapalan,
Additional Government Pleader

सत्यमेव जयते
O R D E R

This writ petition has been directed against the impugned order passed by the Deputy Inspector General of Police, Armed Police, Chennai, in and by which, the respondent has imposed punishment of postponement of one increment for two years without cumulative effect, taking note of the findings of the Criminal Court acquitting the petitioner from the criminal charges, granting the benefit of doubt and not honourably. Further, the respondent, in the impugned order came to the conclusion that in view of the order of acquittal passed on the basis of benefit of doubt, he refused to interfere with the proved minute drawn on 3rd and 4th counts. On that basis, the respondent has thought it fit to impose the impugned punishment.

2. Assailing the impugned order passed by the respondent, learned counsel appearing for the petitioner would submit that when the petitioner was serving in the Tamil Nadu Special Police III Battalion, he was implicated in a criminal case filed by one P.Mary Theresa and the same was registered in Crime No.1/2004 on the file of All Women Police Station, Cuddalore. However, after the investigation of the criminal case, a charge sheet was laid before the learned Judicial Magistrate No.III, Cuddalore, in C.C.No.82/2004.

3. The gist of the complaint shows that under the pretext of marrying the complainant viz., P.Mary Theresa, the petitioner had sexual relationship with the complainant, resultantly, she became pregnant. But the petitioner refused to marry her and as a result of which, the petitioner is liable to be punished under Section 417 of IPC. In view of registering of the case against the petitioner, he was initially suspended from service on 03.01.2004 and a charge memo was issued to him under Rule 3(b) of Tamil Nadu Police Subordinate Services [Discipline and Appeal] Rules, 1955. The allegation made against the petitioner is that he was involved in a criminal case, detained in custody for more than 24 hours and has exhibited irreprehensible conduct and also by his conduct he has brought ill reputation to the police force. Immediately on receipt of the charge memo, the petitioner submitted his explanation. However, an Enquiry Officer was appointed to enquire into the correctness of the charges. Finally, on completion of enquiry, the petitioner was found guilty and the proved minute was also submitted by the Disciplinary Authority and the petitioner was dismissed from service on 24.06.2004. Thereafter, the petitioner preferred an appeal before the DIG of Police, Armed Police, Kilpauk, Chennai on 23.07.2004 and the same was also pending without passing any orders. As the appeal was kept pending for a long time, the petitioner has approached this Court by filing a writ petition in W.P.No.6296/2005 challenging the imposition of punishment of dismissal from service. In the meanwhile, the criminal case registered against the petitioner was dismissed by the learned Judicial Magistrate, Cuddalore in C.C.No.82/2004 and the learned Judicial Magistrate was pleased to acquit the petitioner by an order dated 07.12.2005 on the sole ground that the victim girl, in her evidence, has stoutly denied the alleged occurrence. As the petitioner was also acquitted of the charges on merit by the Criminal Court, the appeal was taken up by the Appellate Authority viz., the respondent and finally, the respondent, in the impugned order dated 14.03.2007, taking note of the findings given by the learned Judicial Magistrate, Cuddalore, giving the benefit of acquittal on the basis of benefit of doubt, modified the punishment of removal from service into one of postponement of service of one increment for two years without cumulative effect and the period away from duty was treated as

eligible leave. Contending further it was argued that while reinstating the petitioner into service, wrongly awarded the punishment of postponement of one increment for two years without cumulative effect.

4. Therefore, the crux of the arguments advanced by learned counsel for the petitioner is that when the first and second charges as mentioned above having found not proved, both by the Criminal Court and also by the Appellate Authority, the consequential charges 3 and 4 that he has brought down the reputation of the police department for having committed charges 1 and 2 do not arise. On that basis, learned counsel for the petitioner prayed for interference. Concluding his argument, learned counsel would further submit that as on today, there is no charge made out against the petitioner either by the Criminal Court or by the Appellate Authority, therefore, imposition of impugned punishment of postponement of one increment for two years without cumulative effect is without any basis. Hence, the punishment of postponement of one increment for two years without cumulative effect has no legs to stand, he pleaded.

5. A detailed counter affidavit has been filed by the respondent, wherein, it is stated that the petitioner was issued with a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Services [Discipline and Appeal] Rules, 1955, for the following four charges:-

"i) For having involved in a criminal case in Cr.No.01/2004 under Section 417 IPC and 4 of DP Act of All Women Police Station, Neyveli on a complaint of one P.Mary Therasa, D/o Peter, Krishnakuppam Village and Post, Cuddalore District for having illicit intimacy and had sexual contact and cheated by refusing to marry her.

ii) For having been detained in judicial custody for more than 24 hours for the involvement in criminal case in AWPS, Neyveli.

iii) For gross violation of disciplinary rules and causing irreprehensible, conduct.

iv) For having caused ill reputation to the Police Force."

6. Learned Additional Government Pleader would submit that the petitioner was given fair and reasonable opportunity to disprove the charges in the enquiry. However, ultimately he failed to disprove the charges. When the law of evidence does not apply in the domestic enquiry, on the principle of preponderance of probability, the Enquiry Officer found him guilty and based on his report, the Disciplinary Authority imposed the punishment of

removal from service. Aggrieved by the same, the petitioner went on Appeal. In the meanwhile, during the pendency of the appeal, the Criminal Court had set aside the charges and passed the order of acquittal by granting the benefit of doubt. Therefore, the petitioner, at the time of disposal of the appeal, has brought to the notice of the respondent / Appellate Authority that the criminal charges levelled against him have not been found proved, therefore, the same charges cannot be put against the petitioner and on that basis, he prayed for reversal of the removal order. The respondent, after considering the same, passed an order of acquittal on the ground of benefit of doubt, modified the order of removal from service and imposed only a minor punishment of postponement of one increment for two years without cumulative effect. But the distinguishing view taken for imposing the lighter punishment clearly shows that the charges levelled against the petitioner was dropped since he has married the complainant viz., P.Mary Therasa, who has given birth to a child and all are living together. Therefore, the respondent, while taking note of all the grounds to show sufficient indulgence, has modified the order of punishment of removal from service into one of reinstatement into service by simply imposing a lighter punishment of postponement of one increment for two years without cumulative effect, in my view, when the said punishment is not going to affect his pension in any way, the petitioner cannot have any grievance.

7. Accordingly, this Court fully agrees with the submissions made by learned Additional Government Pleader. Besides, taking note of the fact that the petitioner has subsequently married the complainant viz., P.Mary Therasa and also has been living along with the child born to them, the Appellate Authority / respondent has not only shown indulgence but also has given so much of leniency by modifying the order of removal of service into postponement of one increment for two years without cumulative effect and the period away from duty was treated as eligible leave. Further, the fact that the petitioner subsequently married the complainant clearly shows that the complaint was true. However, the Appellate Authority has reinstated the petitioner by recalling the order of removal. Therefore, this Court is unable to find any error or illegality in the impugned order passed by the respondent.

Hence, this writ petition fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

jrl

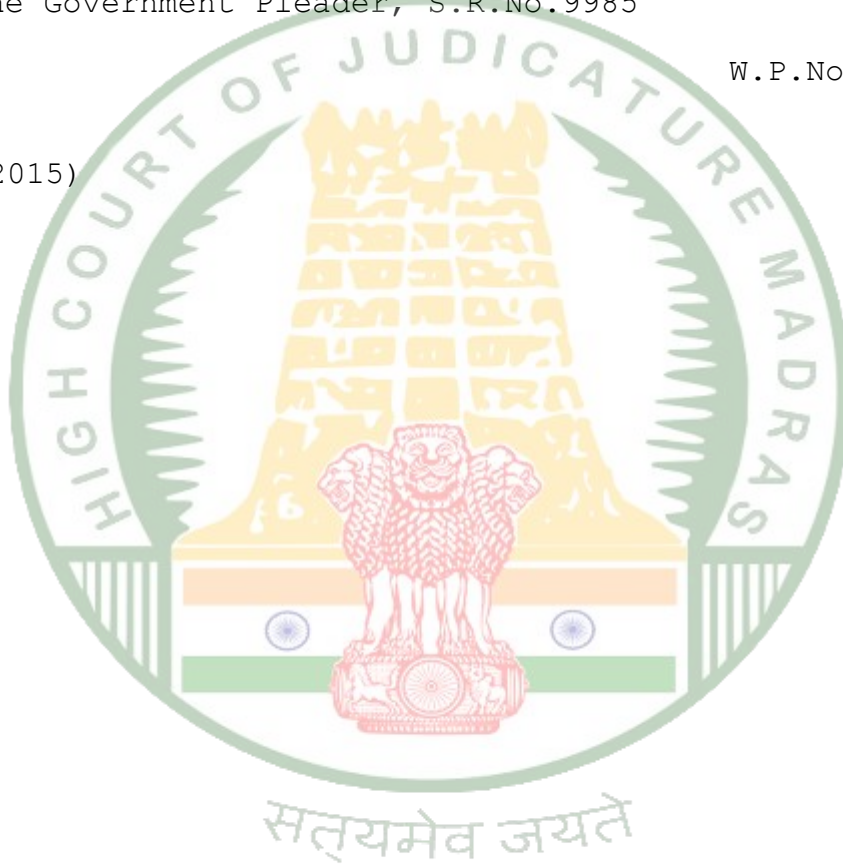
To

The Deputy Inspector General of Police,
Armed Police,
Kilpauk,
Chennai - 10.

+lcc to M/s.K.Sellathurai, Advocate, S.R.No.10102
+lcc to the Government Pleader, S.R.No.9985

W.P.No.22042 of 2007

GP(CO)
CA(04/06/2015)



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