

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
W.P.No.6268/2012

S.Bharani

..Petitioner

Vs.

1.The Director General of Police,
Tamil Nadu,
Chennai-4.

2.The Commissioner of Police,
Chennai Police,
Egmore,
Chennai-8.

3.The Joint Commissioner of Police,
North Zone,
Chennai-8.

4.The Deputy Commissioner of Police,
Pulianthope District,
Otteri, Chennai-12.

..Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records on the file of First respondent in proceedings Rc.No.22563/AP.3 (3)2010 dated 23.03.2011, proceedings of the Second respondent in Rc.No.Appeal.24/PR.N(2)/2010 N.Z.O.Order No.642/2010 dated 20.09.2010, Proceedings of the Third respondent in Rc.No.Appeal.22/PR.N(2)/2010 N.Z.O.Order No.538/2010 dated 04.08.2010, proceedings of the Fourth respondent in PR.No.82/PR N(2)/2008 u/r 3(b) dated 23.06.2010 and quash the same and direct the respondents to reinstate and award all consequential benefits.

For Petitioner : Mr.M.Soundara Rajan

For Respondents : Mr.K.Dhananjayan
Special Government Pleader

ORDER

By consent, the writ petition is taken up for final disposal.

2 The petitioner who was employed as a Police Constable in the services of the Tamil Nadu Police, was removed from service by the Disciplinary Authority and it was also confirmed by the Appellate Authority and the mercy petition filed before the 1st respondent was also came to be dismissed and therefore, challenging the legality of the said orders, the petitioner came forward to file the present writ petition.

3 The petitioner, in the affidavit filed in support of this writ petition, would aver among other things, he was enlisted as Police Constable on 13.03.1995 at Tiruvannamalai District and would claim that he had earned ten rewards and also maintained clean defaulter sheet and in the year 2007, he was transferred to Armed Reserve and subsequently, he was transferred to Sembium Police Station and at this juncture, he was issued with a charge memo in PR.No.201/2008 by the 4th respondent alleging that he took one Tmt.Velankanni along with her two children to her friend's house at Tiruvannamalai without informing her husband on 03.06.2008 and returned with her on 07.06.2008 and again took her alone to Tiruvannamalai on 09.06.2008 without her husband's knowledge and stayed with her as husband and wife till 13.06.2008 and thereby, committed grave misconduct and brought disrepute to the Police Department. The petitioner, in response to the charge memo, submitted his written statement of defence denying the allegations and would state that the husband of Tmt.Velankanni, was his friend and used to visit his residence and thereby, he got acquaintance with his wife, viz., Tmt.Velankanni and she made a complaint against her husband stating that on account of addiction to alcohol, he used to ill-treat her and wants to go out of the matrimonial home and taking pity on her only, he took her to her friend's house along with her two children and later on, returned and therefore, the allegation that without informing the husband of Velankanni, he took her to her friend's house along with her two children and stayed as husband and wife, is per se false and prays for exoneration.

4 The Disciplinary Authority, not satisfied with the explanation offered by the petitioner, appointed an Enquiry Officer and during the course of enquiry on behalf of the Department, six witnesses were examined, which included the husband of Velankanni as P.W.2 and Tmt.Velankanni as P.W.3. The

Enquiry Officer concluded that despite the fact that the petitioner is the friend of the husband of Velankanni, he did not advise him properly to mend his wife and in stead, he took Velankanni along with her two children to Tiruvannamalai, without informing her husband and stayed there for some time, which lead to the only inference that they had illicit relationship and lived as husband and wife and the said act of the petitioner has brought disrepute to the Police force, in which the petitioner is a part and therefore, the charges framed against the petitioner have been proved.

5 The petitioner was furnished with the copy of the Enquiry Report and his further explanation was also called and in his further explanation, the petitioner and once again reiterated his earliest version. The Disciplinary Authority, viz., the 4th respondent has taken into consideration the explanation offered by the petitioner and held that the charge of removal from service would be apt and correct punishment and accordingly, imposed the same vide order dated 23.06.2010. The petitioner, aggrieved by the same, filed an appeal before the 2nd respondent and it was forwarded to the 3rd respondent and taking into the relevant facts has concurred with the order of removal passed by the Appointing Authority and accordingly, rejected the appeal vide order dated 04.08.2010. The petitioner aggrieved by the rejection of the appeal, submitted a Mercy Petition before the 1st respondent, who vide order dated 23.03.2011, has rejected the same and challenging the legality of the said, the petitioner has filed the present writ petition.

6 Mr.M.S.Soundara Rajan, learned counsel for the petitioner would submit that the contents of the charge Memo are per se unsustainable and so also the conclusion reached by the Enquiry Officer for the reason that mere acquaintance of a male with a married woman cannot lead to inference that they are having illegal relationship and lived as husband and wife and without even an iota of evidence, the Enquiry Officer has reached the said conclusion and the said findings are based upon 'no evidence' and also perverse. It is the further submission of the learned counsel for the petitioner that the Disciplinary Authority, without properly adverting to the explanation offered by the petitioner to the Enquiry Officer's Report and concurred with the views of the Enquiry Officer and imposed the punishment of removal from service and the Appellate Authority as well as the 1st respondent, without properly appreciating the relevant facts, had also passed cryptic orders and in any event, the order of removal from service is disproportionate to the alleged delinquency on the part of the petitioner and prays for interference.

7 Per contra, Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents would contend that the petitioner went with a married woman along with her two children repeatedly and it is also an admitted fact that the petitioner is also the friend of the husband of Tmt.Velankanni and if the behaviour of the husband of Velankanni, was not proper on account of his addiction to alcohol, then the petitioner should have taken efforts to give proper advise to him and in stead, he took his wife along with her two children without informing him and stayed at Tiruvannamalai for a considerable period of time and the Enquiry Officer, taking into consideration all the relevant facts and circumstances, has rightly concluded that the charges framed against the petitioner have been proved and the Disciplinary Authority, viz., the 4th respondent, on a thorough consideration of the entire facts and materials, has rightly reached the conclusion to remove the petitioner from service and it was also confirmed by the Appellate Authority as well as by the 1st respondent, by dismissing the Mercy Petition. In sum and substance, it is the submission of the learned Special Government Pleader that since the findings reached by the Authorities are concurrent in nature, it cannot said that it is not based upon 'no evidence' and in any event, this Court may not, in exercise of its jurisdiction under Article 226 of the Constitution of India, interfere with the findings and quantum of punishment imposed by the Disciplinary Authority as confirmed by the respondents 1 and 3 and prays for dismissal of the writ petition.

8 This Court has carefully considered the rival submissions and also perused the materials placed before it in the form of typed set of documents.

9 The Enquiry Officer in his Enquiry Report, has extracted the testimonies of the witnesses and the crucial witnesses are Tmt.Velankanni, wife of Mariadoss and Mr.Mariadoss and she would depose that the petitioner used to come to her house to meet her husband and on account of the said fact, they developed acquaintance and her husband under the influence of the alcohol, used to ill-treat her and she made a complaint in that regard to the petitioner and also asked him to take her to some other place and on account her request only, the petitioner took her along with her two children to Tiruvannamalai for two days and thereafter, they returned to their native and she was summoned by Thiru.Vi.Ka Nagar Police Station and her statement was also recorded to that effect. The husband of Tmt.Velankanni, viz., Mariadoss, was examined as P.W.2 and he would state that in the police station he was informed about the elopement and after her return, he does not want to precipitate the matter and therefore, left the matter as it is.

10 The Disciplinary Authority has held that admittedly, the petitioner is the friend of the husband of Velankanni and if his behaviour is not proper, he would have given proper advise and in sted of doing so, he took his wife along with her two children to Tiruvannamalai which lead to the inference that they had eloped and lived as husband and wife. In the considered opinion of the Court, the said finding reached by the Disciplinary Authority with regard to elopement and illegal relationship, is per se unsustainable for the reason that it is the testimony of P.W.3-Velankanni, that they had acquaintance only and since her husband started ill-treating her under the influence of alcohol, she only requested him to take her to Tiruvannamalai and accordingly, she was taken along with her two children. Mere acquaintance would not lead to the inference about elopement and illegal relationship. However, the fact remains that the petitioner being the friend of Mariadoss, husband of Velankanni, ought to have given him some advise between him and his wife, viz., Velankanni, but he has failed to do so. It is also to be noted at this juncture that the petitioner without informing her husband, took Velankanni and two children to Tiruvannamalai and stayed there for some time and thereby, made Mariadoss to run from pillar to post to trace his wife and children, which would have definitely resulted in mental agony and grave hardship to the husband of Velankanni and therefore, insofar as the finding rendered by the Enquiry Officer in that regard, this Court is of the view that he said findings are correct and proper.

11 This Court has also taken into consideration the proportionality of the punishment imposed against the petitioner. The petitioner was removed from service by the Disciplinary Authority and on appeal, it was confirmed by the 3rd respondent and his Mercy Petition was also rejected. A perusal of the orders passed by the Appellate Authority would disclose that the said order does not did not contain any reasons and appears to be cryptic and so also the order, dismissing the Mercy Petition by the 1st respondent. In the light of the fact that Velankanni went on her own volition along with her two children with the petitioner coupled with the above facts and circumstances stated by this Court, this Court is of the considered view that the imposition of punishment of removal from service is highly disproportionate to the delinquency on the part of the petitioner and is also of the considered view that imposition of any one of the minor penalties will meet the ends of justice. It is also brought to the knowledge of this Court that the petitioner is out of service for nearly seven years and that is also one of the factors while considering the proportionality of the punishment.

12 In the result, the writ petition is partly allowed and the impugned orders passed by the respondents 4, 3 and 1 dated 04.08.2010 ; 20.09.2010 and 23.03.2011 respectively, are hereby set aside and the matter is remanded back to the 4th respondent who shall take into consideration the observations made in this writ petition by this Court, shall impose minor penalty upon the petitioner within a period of six weeks from the date of receipt of a copy of this order and depending upon the said penalty, the respondents 1 to 4 are directed to confer all consequential service benefits to the petitioner within a further period of eight weeks thereafter and communicate the decision taken, to the petitioner. No costs.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Director General of Police,
Tamil Nadu,
Chennai-4.

2.The Commissioner of Police,
Chennai Police,
Egmore,
Chennai-8.

3.The Joint Commissioner of Police,
North Zone,
Chennai-8.

4.The Deputy Commissioner of Police,
Pulianthope District,
Otteri, Chennai-12.

+1cc to M/S.M.S.Soundara Rajan, Advocate, S.R.No.42520

+1cc to the Government Pleader, Advocate S.R.No. 42524

WP.No.6268/2012

RSI (CO)
CU(04/07/2017)