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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.57 of 2015

M.Janagarajan

...Appellant/Petitioner

Vs

The Superintendent of Police
Tiruppur District.

...Respondent/Respondent

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed by this Court in W.P.No.18003 of 2014 dated 11.09.2014.

W.P.No.18003 of 2014: Petition filed under Article 226 of the Constitution of India praying to Calling for the records of the respondent in connection with the impugned order passed in DO No.499/2014 in C.No.F1/ 15934/2014 dated 23.6.2014 and quash the same.

For Appellant : Mr.R.Venkatramani
Senior Counsel for
Mr.M.Muthappan

For Respondent : Mr.M.Karthikeyan
Addl.Govt.Pleader

J U D G M E N T

(Judgment of the Court was delivered by
K.K.SASIDHARAN, J.)

The appellant was punished after subjecting him to disciplinary proceedings on account of his act of causing disrepute to the Police Department by involving in a case of dowry harassment. The appellant was subsequently punished by the Trial Court in S.C.No.88 of 2013. The disciplinary authority taking into account the sentence awarded by the Trial Court initiated a fresh proceeding invoking Rule 3(c)(i)(1) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules. The disciplinary authority having found that the appellant was convicted by a Criminal Court for an offence under Section 304(b) of the Indian Penal Code, dismissed him from



service. The said order was unsuccessfully challenged before the Writ Court, resulting in filing this intra court appeal.

2. The learned Senior Counsel for the appellant contended that the appellant was punished for the misconduct by order dated 25 May 2005, The subsequent order of punishment dated 23 June 2014 passed by the respondent would amount to double jeopardy. The learned Senior Counsel contended that the disciplinary authority having punished the appellant for the very same misconduct was not correct in initiating a fresh proceedings in respect of the very same misconduct later.

3. We have also heard the learned Additional Government Pleader on behalf of the respondent.

4. The appellant was issued with a charge memo by the Police Department, on account of his act of harassment and abetment to commit suicide by his wife and the resultant damage to the image of the Police Department. The disciplinary authority after conducting enquiry imposed the punishment of reduction of pay by two stages for a period of two years with cumulative effect. The order has become final.

5. The appellant was convicted by the Sessions Court in S.C.No.88 of 2013 and sentenced to undergo Rigorous imprisonment for five years.

6. The disciplinary authority on receipt of the judgment in S.C.No.88 of 2013 issued a notice dated 8 May 2014 to the appellant to show cause as to why disciplinary proceedings should not be initiated against him for his conviction by the Criminal Court. The notice was issued under Rule 3(c)(i)(1) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules. The disciplinary authority ultimately imposed the punishment of dismissal from service.

7. The core question is as to whether the second proceedings would amount to double jeopardy.

8. The charge memo dated 21 March 2003 was not on the ground of conviction in a criminal case. The charge was on account of his involvement in a criminal case. The appellant caused damage to the reputation of the Police Department. The appellant was given initial punishment based on the charge memo issued to him. The appellant has no case that punishment was awarded after his conviction by judgment dated 5 May 2014 in S.C.No.88 of 2013. The dates and events would make the position clear that before imposing the sentence by the Sessions Court after remand by the High Court, the disciplinary authority imposed the punishment by order dated 25 May 2005.



9. The initiation of proceedings through the show cause notice dated 8 May 2014 was the result of the conviction of the appellant and the consequential sentence. The subsequent charge has nothing to do with the first charge framed against the appellant resulting in imposing the punishment by order dated 25 May 2005.

10. Rule 3(c)(i)(1) of the TNPSS (D & A) Rules gives jurisdiction to the disciplinary authority in case a Police Officer is convicted by a Criminal Court. The proceedings initiated under Rule 3(c)(i)(1) of the TNPSS (D & A) Rules has nothing to do with the disciplinary proceedings initiated against him at an earlier point of time. It was an independent proceeding unrelated to the judgment of conviction of the appellant.

11. We are therefore of the view that the appellant is not correct in his contention that the earlier punishment would operate as a bar for initiating fresh proceedings inspite of the conviction by the Criminal Court.

12. The further question is as to whether the disciplinary authority was correct in imposing the capital punishment of dismissal from service notwithstanding the earlier punishment.

13. It is true that the charge framed on 21 March 2003 has nothing to do with the charge framed subsequently on account of the conviction. However, the fact remains that both the charges were interconnected.

14. After hearing the learned Senior Counsel for the appellant and the learned Additional Government Pleader and on a perusal of the entire materials available on record, we are of the view that interest of justice would be sub-served by modifying the punishment.

15. The order dated 23 June 2014 passed by the respondent is modified . The punishment of dismissal from service is modified into one of compulsory retirement. The appellant is entitled to the benefits taking into account the order directing his compulsory retirement from service.

16. The intra court appeal is allowed in part. No costs.

Sd/-
Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar



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To

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The Superintendent of Police
Tiruppur District.

+1cc to Mr.M.Muthappan, Advocate SR.No.27139

W.A.No.57 of 2015

SKV(CO)
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