

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.4682 of 2011 and
M.P.No.1 of 2011

M.Pawn

... Petitioner

Vs

1.The Deputy Commissioner of Police,
Motor Transport,
(i/c) Armed Reserve,
Chennai.

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

3.The Director General of Police,
Office of the Director General of Police,
Tamil Nadu, Chennai.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records in relating to the impugned order of the 3rd respondent Rc.No.168907/AP.3(3)/2010, dated 06.09.2010 and quash the same and consequently direct the respondents to reinstate the petitioner in his service with continuity of service, back wages and all other attendant benefits.

For Petitioner : Mr.V.Raghavachari (SC) for
Mr.K.Sathishkumar

For Respondents : Mr.T.M.Pappiah,
Special Government Pleader for RR1 -3

O R D E R

Heard Mr.V.Raghavachari, learned senior counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief,

"To issue a writ of Certiorarified Mandamus, to call for the records in relating to the impugned order of the 3rd respondent Rc.No.168907/AP.3(3)/2010, dated

06.09.2010 and quash the same and consequently direct the respondents to reinstate the petitioner in his service with continuity of service, back wages and all other attendant benefits."

3. The case of the petitioner is as follows:-

The petitioner joined the Police Department as Grade II Police Constable in 1993. While working in the Department, he was placed under suspension on 11.12.2008, pending disciplinary action against him. Thereafter, he was issued with the charge memo on 24.12.2008, alleging that he had spread a rumour on 08.12.2008 that a bomb has been planted in Kovai Express to the duty Police Constable at Railway Police Helpline Booth at Chennai Central Railway Station and on that day, he was found to be in an inebriated condition.

4. An enquiry was conducted into the charges, notwithstanding the petitioner's explanation denying the charges. An enquiry report was submitted on conclusion of the enquiry on 19.06.2009, holding the charges proved. Thereafter, the petitioner had offered his explanation to the findings of the Enquiry Officer. However, the first respondent viz., the Disciplinary Authority, without consideration of his explanation, removed the petitioner from service vide order dated 07.09.2009.

5. As against the order passed by the Disciplinary Authority dated 07.09.2009, the petitioner preferred a statutory appeal to the Appellate Authority viz., the second respondent herein. The second respondent vide proceedings dated 12.10.2009, confirmed the penalty imposed on the petitioner, while rejecting the appeal. Thereafter, the petitioner preferred a mercy petition before the third respondent and the same was also rejected by proceedings dated 06.09.2010. This proceedings is put to challenge in the present writ petition.

6. The learned senior counsel for the petitioner would submit that this is a case of no evidence and therefore, the findings of the Enquiry Officer, holding the charges proved are invalid and perverse. He would further submit that even assuming that there was some evidence available in establishing the charges against the petitioner, both the Disciplinary Authority and the Appellate Authority have passed a non-speaking orders which are contrary to the service regulations. The Disciplinary Authority as well as the Appellate Authority and the third respondent have not given any detailed reasons as to why the explanation offered by the petitioner was not acceptable and as to why the severe penalty of removal from service has to be imposed on the petitioner.

7. The learned senior counsel would also submit that even assuming everything against the petitioner, the ultimate

imposition of penalty of removal from service is excessive and extreme disproportionate to the gravity of the misconduct alleged against the petitioner.

8. Upon notice, learned Special Government Pleader appearing for the respondents, entered appearance and filed a detailed counter affidavit. In the counter affidavit, it is submitted that the petitioner being from the Uniformed Service, has to maintain high standard of discipline and having violated the code of discipline, was punished rightly by imposing the penalty of removal from service. Both the charges viz., getting drunk during the duty hours and spreading rumour among the public, is a serious act of misconduct which has been rightly dealt with by the respondents. Such conduct cannot be condoned under any circumstances and the retention of such police personnel in the Department is against the public interest.

9. This Court has considered the rival submissions of the learned counsel and perused the relevant materials and evidence and the pleadings placed on record. The learned senior counsel for the petitioner would draw the attention of this Court to various pieces of evidence, let in in the departmental enquiry, wherein, it was established that no worthwhile evidence was available in proving the charges against the petitioner.

10. According to the learned senior counsel for the petitioner, there is no evidence made available in the departmental enquiry and even some evidence is available, the same is insufficient for establishing the charges framed against the petitioner. That being the case, the question of imposing penalty, that too, removal from service cannot be countenanced both in law and on facts.

11. This Court, of course, cannot re-appreciate the evidence which was let in in the departmental enquiry. However, it cannot completely ignore the contention put forth by the learned counsel for the petitioner that there was no worthy evidence available in the departmental enquiry in proving the charges against the petitioner. At the same time, this Court is also of the view that circumstances would point towards the misconduct alleged against the petitioner. Be that as it may, it has to be seen that whether the Disciplinary Authority as well as the Appellate Authority and the third respondent have applied their mind while imposing the impugned penalty.

12. From the orders passed by these authorities, it could be seen that there is no proper application of mind on the part of the Disciplinary Authority as well as the Appellate Authority who have not dealt with the evidence which were recorded in the enquiry proceedings and also the explanation offered by the petitioner while imposing the penalty and confirming the same.

The Disciplinary Authority has merely incorporated the charges and imposed the penalty without any discussion on the enquiry report as well as the explanation offered by the petitioner.

13. The Appellate Authority has also mechanically confirmed the penalty without due and proper examination of the evidence and the explanation offered by the petitioner. It is needless to mention that both the Disciplinary Authority as well as the Appellate Authority are conferred with the quasi judicial power to pass orders in disciplinary matters and due care has to be adopted by the authorities while imposing the penalty on the subordinate, particularly, the penalty of removal from service. In this case, such due application is completely absent and it appears from the orders passed by the Disciplinary Authority as well as the Appellate Authority that there was a determination on their part, to impose severe penalty on the petitioner, regardless of the materials available against the petitioner.

14. Be that as it may, even assuming that there was some evidence available for establishing the charge though not in its entirety against the petitioner, however, imposition of extreme penalty of removal from service for alleged lapses on the part of the petitioner is certainly disproportionate to the alleged misconduct and the same cannot be countenanced in law at all. As pointed out by the learned senior counsel for the petitioner, there are serious lacunae in the evidence let in in the departmental enquiry and therefore, the imposition of penalty itself is questionable. However, as concluded earlier, there is some piece of evidence available for deviant behaviour of the petitioner on the said date when the incident said to have happened and for which, the penalty of removal from service cannot be a proper punishment, as the same is rather too excessive and disproportionate which cannot be sustained in law.

15. Although this Court is conscious of the fact that normally it is not for this Court to substitute its view with the views of the administrators in imposing the penalty, however, this Court's power cannot be abridged or curtailed when the situation warrants for interference in the quantum of penalty imposed on the employee. In this case, the imposition of penalty of removal from service does not stand the test of principle of proportionality as the same is shockingly disproportionate, warranting interference from this Court.

16. The petitioner was placed under suspension as early as on 11.12.2008 and removed from service on 07.09.2009. He has been out of employment for more than eight years and that itself is according to the Court, is a sufficient penalty for charges held to be proved against him. This Court, however, has taken into consideration the welfare of the employee and his family as

well as the interest of the police administration. At the same time, this Court has to adopt a justice oriented approach in dealing with such situation with humane perspective. The punishment of removal from service is an extreme punishment which spell doom not only on the employee but also on the family members.

17. By taking into consideration the over all circumstances of the case, this Court is of the considered view that the punishment imposed on the petitioner by the first respondent and as confirmed by the second and third respondents are to be set aside.

18. In the above circumstances, the impugned order of the 3rd respondent in Rc.No.168907/AP.3(3)/2010, dated 06.09.2010 is set aside. The petitioner is directed to be reinstated in service with 50% of the back wages for the period of his non-employment. This Court is of the view that cut of 50% of the back wages for the period from the date of dismissal and till the reinstatement would be a sufficient penalty for the misconduct committed by the petitioner. The respondents are directed to pass orders on the above light, within a period of eight weeks from the date of receipt of a copy of this order.

19. With the above direction, the writ petition is allowed to the extent as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

gsk

To

1.The Deputy Commissioner of Police,
Motor Transport,
(i/c) Armed Reserve,
Chennai.

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

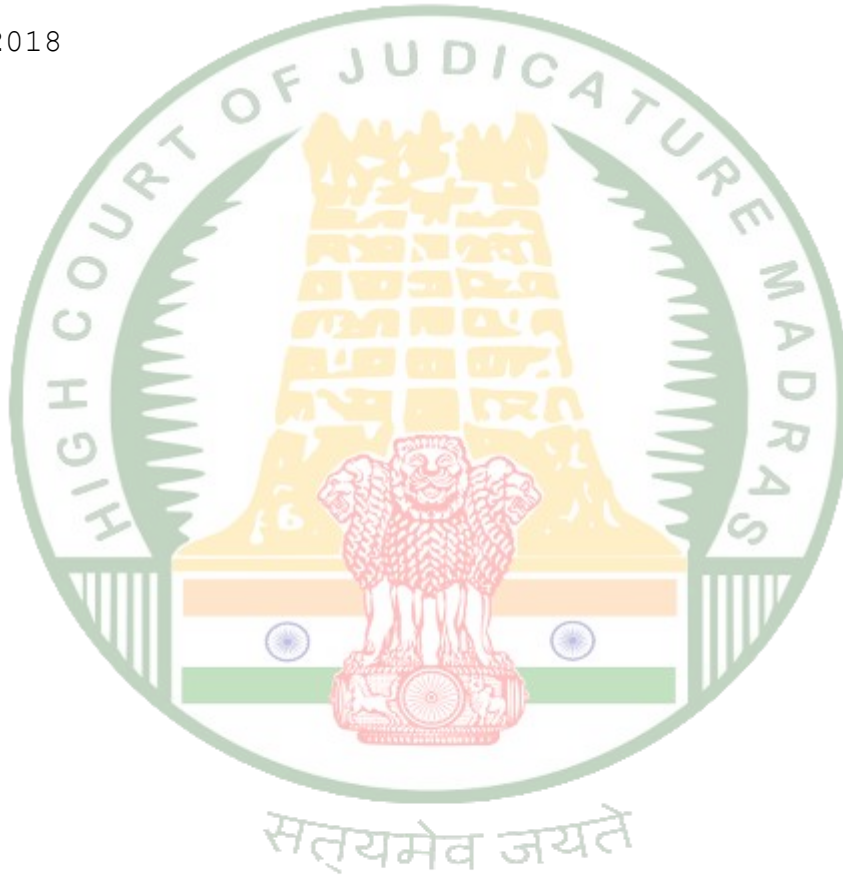
3.The Director General of Police,
Office of the Director General of Police,
Tamil Nadu,
Chennai.

+ 1 cc to Mr.K.Sathishkumar Advocate,SR.6937

+ 1 cc to The Govt.Pleader, SR.8416

W.P.No.4682 of 2011

NRK (CO)
NR 16/02/2018



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