

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 06.07.2018
CORAM
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
W.P.No.15975 of 2008
and
M.P.No.1 of 2009

P.Chitra

...Petitioner

Vs.

1. The Director General of Police,
Chennai - 4.
 2. The Deputy Commissioner of Police,
Armed Reserved,
Egmore, Chennai - 8.
- Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records connected with P.R.No.71/4(2)/2007 dated 01.09.2007 of the 2nd respondent and R.C.No.247518/A.P.3(3)/2007 dated 12.05.2008 of the 1st respondent to quash the same and direct the respondents to reinstate the petitioner into service with all consequential benefits.

For Petitioner : Mr.K.Sannjay

For Respondents : Mrs.Thangavadhana Balakrishnan
Additional Government Pleader

O R D E R

This Writ Petition has been filed, to call for the records connected with P.R.No.71/4(2)/2007 dated 01.09.2007 of the 2nd respondent and R.C.No.247518/A.P.3(3)/2007 dated 12.05.2008 of the 1st respondent to quash the same, and to direct the respondents to reinstate the petitioner into service with all consequential benefits.

2. The case of the petitioner is that she joined the Police Department on 27.11.2000 as Grade II Woman PC at Villupuram, Kakuppam T.S, then, she was transferred to Vth Battalion, Avadi, Chennai, in the year 2001. Thereafter, she was further transferred to A.R.Chengai East, in the year 2005 and there, she continued her service till the impugned order of removal of service was passed.

3. The petitioner would contend that when she was working as Grade II Woman PC at 53 Battalian St.Thomas Mount, she was issued with a charge memo under Rule 3(b) of TNPSS (D&A) Rules in P.R.No.71/2007 dated 01.11.2006, but, the same was served to her on 01.03.2007 instructing to submit her explanation for the alleged charges. The charges framed against the petitioner was that she had illicit intimacy with PC 23678, Tamilarasan by knowing that he is the husband of another woman police, namely, Sumathi Sundari and he married her at Subramaniyar Swamy Koil, Kunrathur on 25.01.2006.

4. The petitioner would further contend that before receiving her explanation for the charge memo dated 01.11.2006, the respondent had appointed enquiry officer to conduct enquiry about the said charges and subsequently, enquiry was also conducted by the enquiry officer with regard to the said charges. Thereafter, the enquiry officer had examined the witness behind the back of the petitioner herein and recorded the statement received in the oral enquiry, but, the petitioner was not given an opportunity to cross examine the witness to prove her innocence and to defend herself. However, the petitioner had sent her explanation for the alleged charges on 04.06.2007 and thereafter, the enquiry officer has completed the said enquiry with the findings that the charges have been proved, and his report was also sent to the punishing authority. Thereafter, the Deputy Commissioner of Police, Armed Reserve Police, Egmore, Chennai - 8, the 2nd respondent herein, has issued a memo to the petitioner on 18.07.2007 along with the enquiry report and sought for further explanation to the enquiry report. Subsequently, the 2nd respondent has imposed the punishment of removal from service in P.R.No.71/4(2)/2007 dated 01.09.2007.

5. Aggrieved by the order of the 2nd respondent, the petitioner had preferred an Appeal as well as a mercy petition to the Commissioner of Police, Chennai and to the Director General of Police, Chennai, to set aside the punishment order and to reinstate her in service, but, the 1st respondent has rejected her mercy petition in Rc.No.247518/AP.3(3)/2007 dated 12.05.2008, hence, the petitioner, with no other alternative, has filed this Writ Petition before this Court.

6. Furthermore, the petitioner would contend that she had clearly stated in her explanation that since she was affected by the illegal act of Mr.Tamilarasan, she had married him, and if she did not marry him, then, the society will make a bad comment on the conduct of the petitioner and also the society will separate both of them. Further, in order to protect her life and also to avoid unnecessary talk from the society, she had married the said Tamilarasan, without knowing that he was already

married with Sumathi Sundari.

7. The petitioner would also contend that no witnesses were found in the enquiry report that she is having illegal intimacy with Mr.Tamilarasan and hence, she married him, but, all the witnesses said only that the petitioner had married him on 25.01.2006. Therefore, without any evidence to that effect, the respondent held the charge of the petitioner had illegal intimacy with Mr.Tamilarasan, is proved and based on which, punishment was also imposed on her.

8. The petitioner would further contend that the enquiry officer has held in the enquiry report that the charges proved against the petitioner, is only on the presumption and assumption and there is no direct evidence to prove the same. Further, the petitioner was not given an opportunity to cross examine the prosecution witness and the enquiry officer had not examined any of the prosecution witness in the presence of the petitioner. As such, the enquiry officer had acted with malafide intention and had imposed the punishment on the petitioner.

9. Moreover, the petitioner would contend that since she was affected by the illegal act of Mr.Tamilarasan and lost her life, she had taken the stand that she should marry him, and after the marriage only, she came to know that the said Tamilarasan already married one Tmt.Sumathi Sundari. Further, the petitioner would state that the said incident has happened unfortunately and without any intention, but, for which, the respondent had imposed the punishment of removal from service on her and therefore, she has filed this Writ Petition.

10. The learned counsel for the respondent, namely, the Deputy Commissioner of Police, denying all the allegations made in the Writ Petition, has filed a counter, wherein, it has been stated that the petitioner was dealt with a charge under Rule 13 (b) of Tamilnadu Police Subordinate Service (Discipline and Appeal) Rules, for the following delinquency:

"Having illicit intimacy with PC 23678 Tr.Tamilarasan by knowing that he is the husband of one Tmt.Sumathi Sundari and married him at Arulmigu Subramaniya Swamy Thirukoil, Kunrathur on 25.01.2006 and has violated the Tamilnadu Subordinate Police Conduct Rules 1964."

11. The respondent would further contend that even though the petitioner has received the Charge memo dated 01.11.2006, she has not submitted any explanation for the said charges within the stipulated time of 15 days and hence, the enquiry officer was nominated. Further, after completion of the oral enquiry, the charges were held proved and the petitioner was

instructed to submit her explanation to the same. Even though she was given further chance to prove her case, she had not submitted the explanation. Hence, the petitioner was awarded the punishment of Removal from service in P.R.No.71/4(2)/2007 dated 01.09.2007.

12. Furthermore, the respondent would contend that the petitioner had submitted a mercy petition on 13.09.2007 to the Director General of Police, the 1st respondent herein, to cancel the punishment imposed on her, but, the 1st respondent, after carefully going through the said petition, had rejected the same in Rc.No.247518/AP.3(3)/2007 dated 12.05.2008.

13. The respondent would also contend that the statement of PW1, namely, Sumathi Sundhari, clearly shows that the petitioner had illegal intimacy with Tr.Tamilarasan, knowing that he is the husband of Sumathi Sundhari and moreover, the petitioner has stayed in the house, where the said Tamilarasan and Sumathi Sundhari both stayed together, without any valid reason. Therefore, the act of the petitioner is under violation of Rule 23 of Tamilnadu Subordinate Police Conduct Rules, 1964.

14. The respondent would further contend that the petitioner, in her explanation dated 04.06.2007, has stated that when she had visited the house of Tr.Tamilarasan to see her friend Tmt.Sumathi Sundhari, who was sick, the said Sumathi had gone to her native place, hence, the petitioner had stayed in that house along with Tr.Tamilarasan for three days, and at that time, the said Tamilarasan had raped her without her permission. In this connection, the respondent would contend that if her friend Sumathi Sundari was not there, the petitioner must have returned back. But, she had stayed in that house with an intention to stay with Tr.Tamilarasan. Therefore, in the petitioner's explanation itself, it was unambiguously proved that she had illegal intimacy with Tr.Tamilarasan and hence, the enquiry officer held the charge proved and based on which, punishment of Removal from service was imposed on the petitioner.

15. On perusal of the records, it could be seen that the petitioner has gone to see her friend Sumathi Sundhari, who was sick, but, the said Sumathi Sundari was not available in the house and she had gone to her native place. Despite the same, the petitioner had stayed in that house for three days with the intention to stay with Tr.Tamilarasan, and had sexual intercourse with him, knowing fully well that he is the husband of her friend Sumathi Sundhari. The said act of the petitioner cannot be accepted.

16. Since in the charge memorandum, which is enclosed at page 1 of typed set filed by the petitioner, it is clearly

stated that enquiry will be conducted under Section 3(b) of Tamilnadu Police Subordinate Service (Discipline and Appeal) Rules, the petitioner's contention that the charge sheet issued without any Section being mentioned and wherein, it was simply stated that the petitioner has violated the conduct Rules, cannot be accepted.

17. It could be seen from the records that even though the petitioner has cross examined PW1, namely, Sumathi Sundhari, she has not brought any evidence to support her case and has not produced any documents or records to prove her case.

18. In view of the above stated facts and circumstances of the case, it is clear that the petitioner herein, namely, P.Chitra, was having illegal intimacy with one Tamilarasan, who is the husband of her friend namely, Sumathi Sundhari, and married him on 25.01.2006. The petitioner, being a Government servant and working in the uniformed and disciplined force, the delinquency committed by her is a serious one and against the Conduct Rules. Therefore, the petitioner's contention cannot be accepted and her prayer cannot be entertained.

19. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

raja

To

1. The Director General of Police,
Chennai - 4.
2. The Deputy Commissioner of Police,
Armed Reserved,
Egmore, Chennai - 8.

W.P.No.15975 of 2008
and
M.P.No.1 of 2009

CA(CO)

rrs 12/12/2018