

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
28.03.2018	04.06.2018

WEB COPY

CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.2017 of 2018
and
W.M.P. (MD) No.2240 of 2018

P.Karuppasamy

... Petitioner

vs.

1.The Director General of Police
Mylapore, Chennai- 600 004

2.The Deputy Inspector General of Police
Dindigul Range, Dindigul

3.The Superintendent of Police
Dindigul District, Dindigul

... Respondents

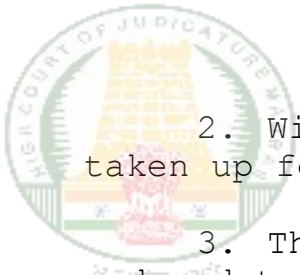
PRAYER : Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the first respondent in Rc.No.159488/AP2(3)/2015 dated 21.12.2016 and the orders passed by the second respondent in C.No.AP-18/A2/2014 dated 15.05.2014 and the order passed by the third respondent in his proceedings C.No.F1/PR.No.26/2013 dated 20.02.2014 imposing penalty of stoppage of increments for a period of three years with cumulative effects, quash the same as illegal and arbitrary and consequently direct the respondents to grant promotion and pay monetary and attendant benefits.

For Petitioner : Mr.K.Govindarajan
for Mr.Senguttuarasan

For Respondents : Mr.M.Jeyakumar
Additional Government Pleader

O R D E R

<https://hcservices.ecpi.gov.in/hcservices/> Please read the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.



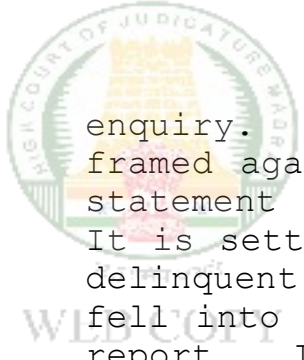
2. With the consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

3. The petitioner was employed as Police Constable. By an order dated 04.12.2012 he was placed under suspension. This was because the petitioner was implicated in Crime No.7 of 2012, on the file of the All Women Police Station, Aundipatti, for the offences under Sections 366(A), 342 and 376 I.P.C. The petitioner was arrested and remanded to custody on the same date. He was issued with a charge memo dated 12.05.2013. The crux of the charge memo is that the petitioner had induced a minor girl by name Nandhini to be with him and he had physical relationship with her which led to his implication in the said criminal case. The allegation made against the petitioner is that by his conduct the petitioner had brought disrepute to the police force. The petitioner denied the said allegation by submitting an explanation dated 05.10.2013. However, the Enquiry Officer held that the charge framed against the petitioner stood proved. A Copy of the enquiry report dated 15.10.2013 was furnished to the petitioner calling upon him to make his further representation. After considering the petitioner's representation, the third respondent passed an order dated 20.02.2014 imposing the punishment of postponement of his next increment for three years with cumulative effect. The same was challenged by the petitioner by filing an appeal before the second respondent. The second respondent also confirmed the said punishment by an order dated 15.05.2014. The petitioner preferred a review petition before the first respondent, who rejected the same by order dated 21.12.2016. The same is under challenge in this writ petition.

4. The learned counsel for the petitioner wanted this Court to set aside the orders impugned in this writ petition in view of the grounds raised in the writ petition.

5. Per Contra, the learned Additional Government Pleader appearing for the respondents called upon this Court to sustain the impugned orders.

6. It is relevant to mention at the very outset that the petitioner, though charged with serious offences under Sections 366(A), 342 and 376 I.P.C., was acquitted by Judgment dated 29.04.2015, in S.C.No.49 of 2014, on the file of the Fast Track Mahila Court, Theni. The alleged victim Nandhini was examined as P.W.1 before the Criminal Court. Her parents were also examined. But, none of them supported the case of the prosecution. It is true that the Judgment of acquittal will not stand in the way of the employer taking disciplinary action against the employee. But, in the interest of justice, this Court went through the said Judgment to see what was the stand taken by the victim. The petitioner in the departmental proceedings during the regular



enquiry. The Enquiry Officer nevertheless held that the charge framed against the petitioner stood proved by taking note of the statement given by the witnesses during the preliminary enquiry. It is settled law that the statements recorded behind back of the delinquent cannot be relied upon. Therefore, the Enquiry Officer fell into a serious error by relying upon the preliminary enquiry report. In fact, the purpose of the preliminary enquiry report was only to see if there is a *prima facie* case to initiate regular enquiry against the delinquent. It does not serve any other purpose. The Enquiry Officer ought to have seen whether any legally acceptable material was adduced before her. In the present case, none of the witnesses supported the charge framed against the delinquent during the enquiry. Therefore, the Enquiry Officer ought to have held that the charge framed against the petitioner is not proved. If the victim or her parents supported the charge framed against the petitioner in the regular enquiry, their turning hostile in the criminal prosecution can be ignored. But, in this case, in both the departmental enquiry as well as the criminal trial, the witnesses did not depose against the delinquent herein. Therefore, this Court comes to the conclusion that the findings of the Enquiry Officer are perverse.

7. An enquiry report is a mere material for consideration of the Disciplinary Authority. The Disciplinary Authority ought to apply his mind independently. In this case, the Disciplinary Authority has mechanically accepted the findings of the Enquiry Officer. The Disciplinary Authority did not even choose to see if there is any factual basis for the findings of the Enquiry Officer. It is also seen that the orders passed by the Disciplinary Authority, Appellate Authority as well as the Reviewing Authority are rather stereotyped and mechanical. The delinquent has raised arguable points in his petitions before them. But they have not been considered or dealt with. That is why this Court chose to consider the enquiry report independently. Since this Court has come to the conclusion that there is no legally acceptable material against the petitioner, the Authorities were clearly wrong in forming the conclusion that the charge framed against the petitioner stood proved. Merely because a person was arrested on a serious charge and had to face prosecution, he on that score does not bring disrepute to the organization. There are cases of falsely implication. In such cases, the accused should be seen as a victim. To charge the petitioner with having brought disrepute to the organization is only to add insult to injury. This Court can take judicial notice of the fact that when kids suffer some injury, some mothers would give a blow first. The case on hand is similar. The petitioner was falsely accused of a serious offence. He was prosecuted. But, the Department, which is like the mother to the petitioner, has not even considered the possibility of slapping him with the charge memo alleging that he brought disrepute to the organization. In this view of the



matter, this Court has no hesitation to quash the orders impugned in this writ petition.

8. The learned counsel for the writ petitioner submits that the petitioner has been deprived of his monetary as well as service benefits on account of the impugned disciplinary action. Since the same has been quashed, the petitioner will be conferred with all the consequential monetary and other benefits.

9. In the result, the writ petition stands allowed. No Costs. Consequently connected miscellaneous petition is closed.

Sd/

Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar

To:

1.The Director General of Police,
Mylapore, Chennai- 600 004.

2.The Deputy Inspector General of Police,
Dindigul Range, Dindigul.

3.The Superintendent of Police,
Dindigul District, Dindigul.

+1cc to Mr.P.SENGUTTUARASAN, Advocate, SR.No.66662

W.P.(MD) No.2017 of 2018
and

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AAV/KRK

KK/SKN RSK/SAR-4/11.06.2018/4P-5C