



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.(MD) No.305 of 2014
and
MP(MD)No.1 of 2014

S.Karikalan ... Appellant/Petitioner

vs.

- 1.The Principal Secretary to Government,
Home (Pol.VI) Department,
Chennai.
- 2.The Director General of Police,
Tamil Nadu,
Chennai - 4.
- 3.The Deputy Inspector General of Police,
Ramanathapuram Range,
Ramanathapuram.
- 4.The Superintendent of Police,
Ramanathapuram.

... Respondents

Appeal filed under Clause 15 of the Letter Patent Act against the order passed by the this Court made in W.P.(MD)No.4751 of 2010 dated 15.04.2013.

Prayer in WP(MD). 4751/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Writ of Certiorarified Mandamus to all for the records relating to the proceedings of (1) P.R.No.87/2003 dated 20.10.2007 of the fourth respondent, (2) C.No.B1/appeal. 01/2008 dated 31.01.2008 of the third respondent (3) Proceedings of the second Respondent in Rc.No.047252/AP.1(2)/2008 dated 15.05.2008 (4) G.O.(2D) No.36, Home (Pol.VI) Department dated 28.01.2009 of the first respondent and (5) Letter No.42615/Pol.VI/2009-2 dated 12.10.2009 of the first respondent, quash the same and issue consequential direction to the respondents to reinstate the petitioner in service with all consequential service and Monetary benefits.



For Appellant : Mr.D.Selvam
for Mr.G.Thalaimutharasu
For Respondents : Mr.A.K.Baskarapandian
Special Government Pleader

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JUDGMENT

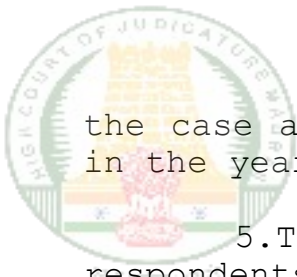
[Judgment of the Court was delivered by M.M.SUNDRESH, J.]

The appellant herein was working as Head Constable. Three charges have been framed against him. Charge Nos.1 and 3 are to the effect that he did not attend the work on two days viz., on 08.07.2003 and 11.07.2003. Charge No.2 is that in a drunken condition, the appellant was intending to commit sexual assault on a minor girl.

2.The appellant was proceeded both departmentally and under the criminal law. The jurisdictional criminal court acquitted the appellant, as the defacto complainant and the eye witnesses turned hostile. In the departmental proceedings, the very same defacto complainant and the other witness who is said to have seen the occurrence, were examined as management witness Nos.10 and 11. From the records it also appears that there was a prior enmity between them. They have deposed that the complaint itself was given on the wrong assumption and apprehension that it was the appellant, who did the act, but it was not found to be. They have stated that they have given the aforesaid complaint by keeping the private enmity between them, on the one hand the appellant or the other. Nonetheless, the enquiry officer found that all the three charges were proved. The disciplinary authority, accepted the findings and imposed punishment of dismissal. It was accordingly concurred by the appellate authority. While doing so, the appellate authority did consider the merit in so far as the charges 1 and 3 are concerned. In so far charge No.2, it was held that acquittal in a criminal case is not a bar for departmental proceedings. Accordingly, the appeal filed was dismissed.

3.The learned Single Judge dismissed the writ petition inter alia holding that it is not for the Court to re-appreciate the materials placed before the disciplinary authority and therefore, the power of review cannot be exercised. Challenging the same, the present writ appeal is before use.

4.The learned counsel appearing for the appellant concentrate on charge No.2. It is submitted that so far as this charge is concerned there is absolutely no evidence and therefore, the disciplinary authority and the appellate authority were wrong in holding it as proved. The learned counsel also drew our attention to the statements given before the enquiry officer by the witnesses 10 and 11 and submitted that taking into consideration of the facts of



the case and in particular, the occurrence is stated to have taken in the year 2003, the relief sought for can be moulded.

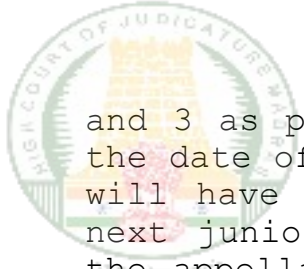
5.The learned Special Government Pleader appearing for the respondents would submit that no interference is required in the order of the learned Single Judge as two statutory authorities found that the charges are proved. Considering the nature of job, in which the appellant is involved, no discretion needs to be exercised.

6.We have considered the submissions made and perused the entire records. We find on two grounds the order of the disciplinary authority as confirmed by the appellate authority requires interference. Firstly, in a departmental proceeding, it is for the department to substantiate the charges. Though what is required is preponderance of probabilities, there has to be basic materials to proceed against the delinquent officer. In the case on hand, both the management witnesses who spoke about the occurrence, deposed otherwise. Apart from the witnesses 10 and 11, there is no other witness to speak about charge No.2. All the other witnesses are official witnesses, who registered information and thereafter investigated the offence. From these witnesses, it is not possible for this Court to come to a conclusion that charge No.2 has been proved. Thus, we are of the view that the conclusion arrived at by the disciplinary authority as confirmed by the appellate authority cannot be sustained in the eye of law.

7.Coming to the other issue, we find that both the disciplinary authority and the appellate authority did not even discuss the evidence available on record, except by accepting the report of the enquiry officer. The Government, in turn, has also accepted it in the same manner. Further more, the disciplinary authority wrongly proceeded by holding that the evidence of witness Nos.10 and 11 also proved the charge. This is totally contrary to the records. Thus, even on the second issue, we are of the view that charge No.2 cannot be sustained against the appellant.

8.Charge Nos.1 and 3 are borne out by records. The fact remains that the appellant did not attend the work. Therefore, it is for him to prove that he did not do so. Therefore, we are inclined to hold that the charges 1 and 3 as proved.

9.Much water has flown under the bridge. The appellant is working from the year 2003 onwards and he was also working for a brief period of 2004 to 2007. Therefore, we are of the view that it would appropriate to mould the relief accordingly. In such view of the matter, the order of the learned Single Judge cannot be sustained and there is no difficulty in moulding the relief, as this Court is concerned with the decision making process. When there is no foundation to sustain the charge, the same cannot be approved by fixing onus on the delinquent officer and we pass this order by applying doctrine of proportionality. Therefore, we are inclined to modify the punishment by taking into consideration of the charges 1



and 3 as proved into one of compulsory retirement with effect from the date of passing this order. Needless to state that the appellant will have to be given all the benefits on par with his immediate next junior including promotional avenue. The monthly benefits to the appellant will have to be quantified by treating him as one of servants till the date of passing of this order. Required payment will have to be made within a period of twelve weeks from the date of receipt of a copy of this order.

10.This writ appeal is allowed in part. No costs. Consequently, MP(MD)No.1 of 2014 is closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar(CS-IV)

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To

- 1.The Principal Secretary to Government,
Home (Pol.VI) Department,
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Ramanathapuram.
- 4.The Superintendent of Police,
Ramanathapuram.

+1cc to Mr.G.Thalaimutharasu, Advocate in SR No.86203

W.A. (MD) No.305 of 2014

NM/PM/SAR 4/15.10.18/4P/6C