



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD) Nos.20854 of 2016 & 22803 of 2015

and

W.M.P.(MD).Nos.14886 to 14888, 9241 of 2016, 18140 of 2017
and M.P.(MD).No.1 of 2015

Lakshmanan

... Petitioner in both petitions

Vs.

1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai.

2.The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.

...Respondents in W.P.(MD).No.20854 of 2016

1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai.

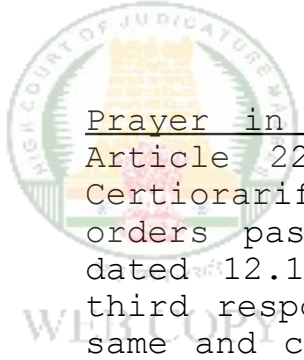
2.The Deputy Inspector General of Police,
Madurai Range, (i/c) Ramanathapuram Range.

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

4.The Enquiry Officer,
Personal Assistant to the Superintendent of Police,
Ramanathapuram,
Ramanathapuram District.

...Respondents in
W.P.(MD).No.22803 of 2015

Prayer in W.P.(MD).No.20854 of 2016 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned orders passed by the first respondent in C.No.40974-(2) NGB II (1)/2016 dated 23.08.2016 in respect of the column 24 alone and quash the same and consequently directing the first respondent to give suitable promotion of Superintendent from the date of the promotion of the petitioner's junior most persons with all attendant benefits with effect from the petitioner's original date of promotion.



Prayer in W.P.(MD).No.22803 of 2015 : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned orders passed by the second respondent in C.No.B1/Appeal-23/2015 dated 12.11.2015 by confirming the impugned order passed by the third respondent in P.R.No.151/2013 dated 07.01.2015 and quash the same and consequently direct the first respondent to give suitable promotion to the petitioner with all attendant benefits.

In Both Writ Petitions

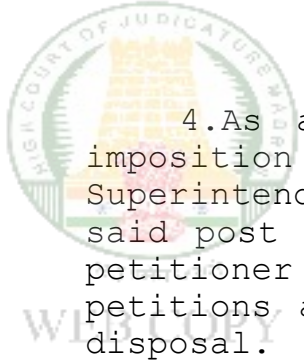
For Petitioner : Mr.K.K.Ramakrishnan
 For Respondents : Mrs.S.Srimathy
 Special Government Pleader

COMMON ORDER

Heard the learned counsel on either side.

2.The petitioner is serving as Assistant in the Police Department. His son Sathish Kumar got married to one Latha. The marriage was celebrated on 12.02.2012. The relationship between the petitioner's son and his daughter-in-law came under strain and the said Latha, left the matrimonial home on 24.03.2012. The said Latha gave a dowry complaint against her husband and in-laws including the petitioner herein. Therefore, the petitioner was suspended from service on 24.12.2012. The suspension order was then revoked on 22.02.2013. However the petitioner faced criminal prosecution in C.C.No.5 of 2013, on the file of the learned Judicial Magistrate No.1, Ramanathapuram and the said criminal prosecution ended in acquittal on 27.11.2013. However, following by the issuance of charge memo dated 05.12.2013, enquiry was conducted. The said Latha was examined as witness in support of the charge. The said Latha deposed against the petitioner. The Enquiry Authority took note of the conduct of the said witness. While the said Latha turned hostile and did not support the prosecution in C.C.No.5 of 2013, she chose to testify against the petitioner in the departmental proceedings. In view of this contradictory conduct on the part of the said witness, the Enquiry Officer chose to hold that the charges framed against the petitioner are not proved. However, Disciplinary Authority differed from the said findings and after giving notice to the petitioner, found the petitioner guilty of the charges and imposed the penalty of stoppage of increment for a period of one year with cumulative effect and this Order was passed on 07.01.2015. Questioning the same, the petitioner filed an appeal before the first respondent. The first respondent by order dated 12.11.2015, confirmed the order passed by the Disciplinary Authority. The said orders are under challenge in the Writ Petition in W.P.(MD).No.22803 of 2015.

3.On account of the imposition of the said punishment, the petitioner's promotion was also affected. This was challenged in W.P.(MD).No.20854 of 2016.



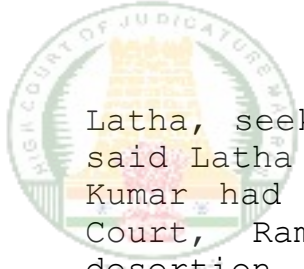
4.As a result of the aforesaid Disciplinary proceedings and imposition of punishment, the petitioner's promotion to the post of Superintendent got stalled. Therefore, seeking promotion to the said post from the date when his immediate junior was placed, the petitioner herein had filed W.P.(MD).No.20854 of 2016. Since the petitions are interconnected, they are taken up together for final disposal.

5.The learned counsel for the petitioner contended that the orders impugned in W.P.(MD).No.22803 of 2015, deserve to be set aside, by taking note of not only the materials that are available before the authorities concerned, but also the subsequent proceedings namely, the order dated 12.08.2016 made in H.M.O.P.NO.96 of 2014, on the file of Sub court, Ramanathapuram.

6.Per contra, Mrs.Srimathy, learned Special Government Pleader, appearing for the respondents wanted this Court to sustain the impugned order of punishment passed on the petitioner.

7.This Court is entitled to take into account the subsequent developments that have taken place in this case. The petitioner's son Sathish Kumar, was given in marriage to the said Latha. The said Latha triggered criminal prosecution against her husband and in-laws including the petitioner. It is seen from the material on record that the said Latha turned hostile in the Criminal Court. As a result of turning hostile, the accused including the petitioner were found not guilty in the criminal case. The said Latha's statement is enclosed at page 9 of the typed-set of papers. The said Latha had categorically held that she had given a dowry complaint and she made a categorical statement before the Court of law that the accused did not make any dowry demand. When the Public Prosecutor cross-examined the said Latha, she stood her ground. But during the domestic / departmental enquiry, the said Latha however testified that the petitioner made dowry demand and also harassed her. The Enquiry Officer rightly exonerated the petitioner of the charges in view of the contradictory stand taken by the said Latha. That is why, he proceeded to hold that the charges are not proved. The Disciplinary Authority was absolutely not justified in taking a different view in the matter. The Disciplinary Authority, on surmise, inferred that the said Latha would have been pressurised into turning hostile. The Disciplinary Authority as well as the Appellate Authority were not justified in drawing such an inference.

8.It is clear that subsequent development that have taken place in this case is that the said Sathish Kumar and Latha filed mutual consent divorce petition under Section 13(B) of the Hindu Marriage Act and filed H.M.O.P.No.38 of 2014, on the file of Sub Court, Ramanathapuram. As per the statutory requirement, the parties will have to jointly present the petition and appear again after a period of six months. In this case after jointly filing the said mutual consent divorce petition the said Latha had withdrawn her consent. Similarly, M.C.No.8 of 2013, was filed by the said



Latha, seeking maintenance was also subsequently closed. Since the said Latha wriggled out of her consent, the petitioner's son sathish Kumar had to file H.M.O.P.No.96 of 2014, on the file of the Sub Court, Ramanathapuram, on the grounds of cruelty as well as desertion. Interestingly, the said Latha did not even engage a counsel, but appeared in person before the Sub Court, Ramanathapuram. She did not enter the witness box. That is why, no evidence was adduced on her side and hence the Trial Court granted decree of divorce on 12.08.2016 in H.M.O.P.No.96 of 2014.

9.The learned counsel appearing for the petitioner had filed an affidavit before this Court, stating that the said Latha got re-married nine days later i.e., on 21.08.2016. If the decree dated 12.08.2016 made in H.M.O.P.NO.96 of 2014 is taken into consideration, it is clear as day light that the said Latha wanted to arm-twist the petitioner. It appears that she had certain demands. Since the demands were not met, she chose to falsely depose against the petitioner in the departmental enquiry. This Court has no hesitation in coming to the conclusion that the Disciplinary Authority was not justified in taking a different view from what was arrived at by the Enquiry Officer. The judgment of the criminal Court has actually not been taken into account by the authorities concerned. A mere observation is made that the witness could have been pressurised into turning hostile.

10.The orders impugned in W.P.(MD).No.22803 of 2015 stand quashed. W.P.(MD).No.22803 of 2015 stands allowed accordingly. Since the petitioner's promotion was affected only on account of the aforesaid disciplinary proceedings as a natural corollary, W.P.(MD).No.20854 of 2016 deserves to be allowed.

11.The first respondent is directed to issue appropriate orders in favour of the petitioner granting promotion to the post of Superintendent, immediately, above his erstwhile junior within eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1.The Director General of Police,
Dr.Radhakrishnan Salai,
Mylapore, Chennai.

2.The Deputy Inspector General of Police,
Madurai Range, (i/c) Ramanathapuram Range.



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

4. The Enquiry Officer,
Personal Assistant to the Superintendent of Police,
Ramanathapuram,
Ramanathapuram District.

+1cc to Special Government Pleader, SR.No. 44762

+1cc to M/S.K.K.Ramakrishnan, Advocate SR.No. 44258

W.P. (MD) Nos.20854 of 2016 & 22803 of 2015
25.01.2018

tsg

JM/SV MMS/SAR 1/18.04.2018/5P/7C