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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :19.06.2019
CORAM

The Honourable Mr.JUSTICE K.K.SASIDHARAN

and

The Honourable Ms.JUSTICE P.T.ASHA

W.A.No.2381 of 2012

1. The Senior Divisional Security Commissioner,
Railway Protection Force, V Floor,
N G O Annex Buildings,
Chennai -600 003.

2. The Chief Security Commissioner,
Railway Protection Force,
Chennai 600 003.

..Appellants/ Respondents
vs

E. Kamalakannan
S/o. Chellappa Chetty
Formerly Head Constable 490,
Railway Protection Force,
Ennore Out Post,
Chennai.

.. Respondent/ Petitioner

Prayer: Writ Appeal is filed under Clause 15 of Letters Patent praying to set aside the order of the learned Judge dated 05.01.2012 in Writ Petition No.10610 of 2008.

Prayer in Writ Petition No.10610 of 2008:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Certiorari Mandamus calling for the records of the respondents in connection with the impugned orders passed by the 1st respondent in No.MXP.227/4/2007 dated 30.8.2007 and the 2nd respondent dated 27.12.2007 and quash the same and direct the respondents to reinstate the petitioner into service with all consequential service and monetary benefits.



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For Appellants
For Respondents

: Mr. M. Vijayanand
: Mr. K. Venkatramani, Senior Counsel
for Mr. M. Muthappan

JUDGMENT

(Judgment of the Court was delivered by P.T.ASHA, J)

The above intra court Appeal arises against the order passed in W.P.No.10610 of 2008 in and by which the punishment of compulsory retirement imposed on the respondent herein was modified to one of stoppage of increment for 3 years with cumulative effect. The appellants were directed to impose punishment and reinstate the respondent with continuity of service within a period of three months.

2. The brief facts culminating in the filing of the Writ Appeal are as follows:

The respondent while working as Head Constable in the Ennore, Railway Station. On 6/7.1.2007, had quarreled with another staff of the same station, D.Fenn Deva Kirubakaran, a Head Constable using unparliamentary language in the presence of the public with reference to the sharing of illegal gratification received from persons smuggling the rice meant for public distribution. He had further intimidated two other of his colleagues which was a clear mis conduct and negligence of duty. Added to the above, he had also accepted an illegal gratification of Rs.120/- (Rs.30/- each) from four women transporting PDS rice illegally.

3. In view of the above, the respondent was issued a charge memo and after a detailed Enquiry, the Officer had held that the charges stood proved. Thereafter, the respondent was imposed punishment of compulsory retirement. The appeal to the second appellant also ended in dismissal and thereafter left with no other alternative, the respondent was constrained to challenge the order passed by the second appellant in the above Writ Petition.

4. The appellants herein who are the respondents in the above writ petition had filed a detailed counter affidavit in which they had contended that the charges against the respondent had been proved beyond doubt. Though 12 witnesses were examined on the side of the prosecution, the respondent did not deem it fit to examine any witness on



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his side. The Enquiry Officer had submitted a report and findings to the Assistant Security Commissioner holding the first and second charges namely the misbehavior as well as the unparliamentary language used had been proved but however with reference to the 3rd charge namely illegal gratification of Rs.120/-, the Enquiry Officer had found that only a sum of Rs.60/- had been received as illegal gratification. The appellants had further submitted that witnesses had been examined to prove the incident and they had also given unimpeachable evidence about the mis-conduct of the respondent. Therefore, the appellants, considering the fact that the respondent belonged to the Uniformed Force had imposed the penalty of compulsory retirement.

5. The learned Single Judge, partly allowed the writ petition on the ground that the Enquiry Officer ought not to have accepted the evidence of PW6 to PW9 to come to the conclusion that charge No.3 had been partly allowed. Learned Single Judge had further opined that if Charge No.3 had not been proved, then the extreme punishment of compulsory retirement would not have been imposed. With this view, the learned Judge altered the punishment of compulsory retirement to one of stoppage of increment for 3 years with cumulative effect. Since the respondent had not been working from the date of compulsory retirement, it was directed that he would not be entitled to back wages. However as he still had some more years of service, the period should be accounted for continuity of service only for the purpose of pension. Challenging the above order, the appellants are before this Court.

6. Mr M.Vijayanand, learned counsel appearing on behalf of the appellants would contend that along with the respondent, the other Head Constable D.Fenn Deva Kirubakaran was also charge sheeted and he was also given the punishment of compulsory retirement which has become final as the same has not been challenged. He would further argue that the respondent by his action had brought down the reputation of the force in the eyes of the public and being a Member of the Uniformed Force, he ought not to have indulged in such a ruckus. He would submit the fact that the respondent had obtained illegal gratification which has also been proved though not to the extent with which he has been charged. However the fact remained that the respondent had obtained illegal gratification and therefore the learned Single Judge ought not to have interfered with the order passed by the second appellant.



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7. Mr.K.Venkatramani, Senior Counsel arguing on behalf of the learned counsel for the respondent would contend that the Enquiry Officer has himself held that the 3rd charge had not been proved and the plea ought to have taken into account the fact that it is for the first time the respondent had being issued with a charge memo and being a first time offender, a lenient approach could have been taken.

8. The argument of the learned Senior Counsel that the respondent being a first time offender he ought to have been given a chance cannot be accepted. The respondent who is a Member of the Railway Protection Force entrusted with the task of protecting the person and property of the railways as also the passengers has sought to take an illegal gratification from passengers who have themselves been involved in an illegal act. The said conduct is totally unacceptable especially when it comes from a Member of the Uniformed Force who has to lead by example.

9. That apart, the other person who had been charge sheeted along with the respondent has also been compulsory retired from service and the order has become final. Therefore the respondent cannot be given a different treatment. The learned Single Judge was not justified in re appreciating the evidence and modifying the order passed by the second respondent. We therefore set aside the order passed by the Writ Court. In the result, Writ Appeal is allowed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mrn

To

1. The Senior Divisional Security Commissioner,
Railway Protection Force, V Floor,
N G O Annex Buildings,
Chennai -600 003.

2. The Chief Security Commissioner,
Railway Protection Force, Chennai 600 003.

+1cc to Mr.M.Muthappan , Advocate SR.No. 50982

W.A.No.2381 of 2012

A.SK(08/08/2019)