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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE **R.MAHADEVAN**

WP (MD) No.18352 of 2018

S.Suresh Kannan

... Petitioner

Vs.

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

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

3.The Superintendent of Police,
Virudhunagar District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance a Writ of Certiorari by calling for the records of the proceedings in P.R.No.51 / 2011 / U / r3(b) of TNPSS (Discipline and Appeals) Rules 1955 order dated 28.05.2013 issued by the 3rd respondent as well as the confirmation order dated 14.08.2013 of the 2nd respondent (ie) The Deputy Inspector General of Police, Dindigul Range I/c Madurai Range in C.No.A4 / 5640 / AP-32 / 2013 as well as the consequential order dated 19.05.2018 passed by the 1st respondent in his proceedings in RC No.155739/AP.2 (3)/2017 and quash the same and further direct the respondents to settle the suspension period 23.10.2010 to 27.05.2011 as duty.

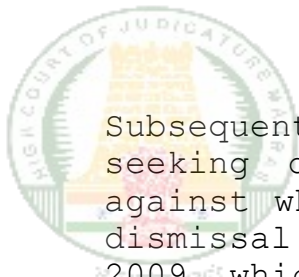
For Petitioner : Mr.A.Thirumurthy

For Respondents : Mr.CM.Marichelliah Prabhu,
Additional Government Pleader

ORDER

This writ petition has been filed seeking to quash the proceedings in P.R.No.51 / 2011 / U / r3(b) of TNPSS (Discipline and Appeals) Rules 1955 order dated 28.05.2013 issued by the 3rd respondent, the confirmation order dated 14.08.2013 of the 2nd respondent in C.No.A4 / 5640 / AP-32 / 2013 and the consequential proceedings dated 19.05.2018 passed by the 1st respondent in RC No.155739/AP.2(3)/2017 and further direct the respondents to regularise the suspension period from 23.10.2010 to 27.05.2011 as duty.

2.The case of the petitioner is that the he was appointed as Constable in the year 1997 and subsequently was promoted to the post of Gr.I. Constable 2007. In the year 2012 he got married with one Manickam and one baby girl was born to them.



Subsequently, due to familial disputes, the petitioner filed HMOP seeking divorce against his wife and the same was dismissed, against which, he filed appeal, which was also dismissed. The said dismissal order was challenged before this Court in CMSA No.14 of 2009, which is pending.

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3. It is the further case of the petitioner that his wife filed a maintenance case against the petitioner and he appeared before the Court in Usilampatti on 21.10.2010. In the Court premises, his wife's family members intercepted and tried to manhandle him and in order to defend himself, he retaliated. Subsequently, his wife gave a false complaint against him, pursuant to which, an FIR in Crime No.687 of 2010 was registered. Due to the registration of criminal case, the petitioner was placed under suspension on 23.10.2010 and subsequently, the same was revoked on 27.05.2011. Whiles, the petitioner was served with a charge memo under Section 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeals) Rules 1995, dated 26.05.2011, to which, he has also given a detailed explanation. Thereafter, enquiry was conducted and in the result, punishment of postponement of next increment for a period of three years was awarded on 28.05.2013, and the same was also confirmed in the appeal filed by the petitioner. Later, on 13.02.2017, the petitioner was acquitted from the criminal case and he filed a mercy petition on 14.03.2017 to the first respondent and the same was also rejected by the first respondent. Hence, Challenging the orders cited supra, the petitioner is before this Court.

4. Upon notice, the respondents have filed a counter affidavit, wherein at paragraph No.9 it is stated as follows:

"It is submitted that in criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a Court of Law. But, in a departmental enquiry on the other hand, finding of guilt and consequent penalty can be imposed on the delinquent officer on a finding recorded on the basis of the "preponderance of probability". The Facts of the present case squarely falls within the said parameters."

5. The learned Additional Government Pleader also submitted that the petitioner is involved in three other criminal cases and hence, he prayed for dismissal of the writ petition.

6. The learned Counsel for the petitioner objected to the above submission. According to him, considering the nature of the charges framed against the petitioner, the punishment inflicted on him is excessive and disproportionate to the charges levelled against him. Hence, he sought for modification of the same.



7. Having heard to the submissions made on either side and also on going through the materials placed on record, this Court is of the view that the core issue that arose for institution of the departmental proceedings is only the family dispute and as such, the punishment of postponement of next increment for a period of three years is excessive and disproportionate to the charges levelled against the petitioner. Hence, this Court, taking a lenient view, modifies the said punishment awarded to the petitioner to a cut in increment for a period of one year without cumulative effect. The petitioner is also permitted to approach the authority in respect of his prayer for regularisation of suspension period.

8. Accordingly, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

dsk

To

1. The Director General of Police,
Tamil Nadu, Chennai - 600 004.
2. The Deputy Inspector General of Police,
Virudhunagar, Range,
Virudhunagar.
3. The Superintendent of Police,
Virudhunagar District.

+1CC TO MR.A.THIRUMURTHY, Advocate Sr. No.56455
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No.56561

WP (MD) No.18352 of 2018

25.03.2019

SLR(CO)

TR (30.04.2019) 3P 6C