



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.20374 of 2017

and

W.M.P (MD)No.16617 of 2017

P.Selvi

... Petitioner

Vs.

1. Director General of Police,
Mylapore,
Chennai-4.

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, to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent herein calling for the records of the third respondent herein in his proceedings in D.O.No.328 of 2017 and C.No.F.1/12308/2017, dated 26.05.2017 and quash the same and consequently direct the respondents herein to reinstate the petitioner with all monetary benefits including seniority and other benefits.

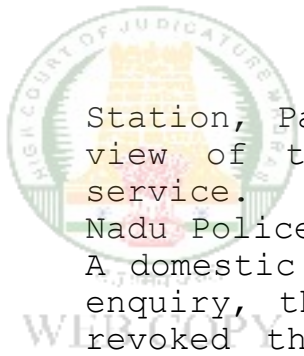
For Petitioner : Mr.T.Ramasamy

For Respondents : Mr.VR.Shanmuganathan,
Special Government Pleader

ORDER

This writ petition is filed challenging the order of the third respondent in his proceedings in D.O.No.328 of 2017 and C.No.F.1/12308/2017, dated 26.05.2017 and quash the same and consequently, direct the respondents to reinstate the petitioner with all monetary benefits including seniority and other benefits.

2. According to the petitioner, while she was working as Grade-I Police Constable at Chatrapatty Police Station, Dindigul District, there was a family dispute between her mother, sister and herself. Due to the instigation of her sister, her mother had given a complaint against the petitioner alleging that petitioner attacked her. A case was registered in Cr.No.669 of 2013 by the Town Police

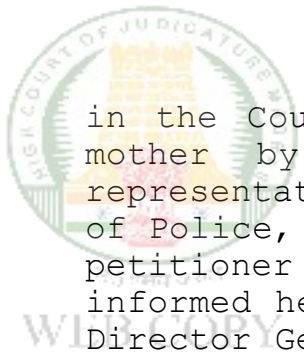


Station, Palani under Sections 294(b), 323 and 506(i) of IPC. In view of the said complaint, the petitioner was suspended from service. A chargememo was issued to her under Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955. A domestic enquiry was conducted. After conclusion of the domestic enquiry, the third respondent by the proceedings, dated 16.03.2014 revoked the suspension order. While so, the second respondent issued second show cause notice and after explanation submitted by the petitioner, the punishment of "stoppage of increment for two years without cumulative effect" was imposed. Subsequently, the petitioner was convicted in S.T.C.No.345/2014 by the learned Judicial Magistrate, Palani for the offences under Section 294(b) of IPC imposed a fine of Rs.500/- and Section 323 of IPC imposed a fine of Rs.1000/-.

3. Aggrieved against the order of conviction, the petitioner filed an appeal in C.A.No.57 of 2017 before the Additional District and Sessions Judge, Palani. Pending appeal, the third respondent issued a show cause notice as to why the disciplinary action should not be initiated against the petitioner. In the meantime, the petitioner submitted her explanation contending that for the very same charges, already she was awarded with punishment of 'stoppage of increment for two years without cumulative effect'. Not being satisfied with the explanation submitted by the petitioner, the third respondent by the impugned order, dated 26.05.2017, imposed punishment of compulsory retirement from service. The petitioner cannot be imposed two punishments for the same misconduct, one in disciplinary proceedings and another based on conviction. The learned counsel for the petitioner relied on the judgment reported in **2009(4) MLJ 708 (D.Narayanan vs. D.R.O., Virudhunagar)**.

4. The appeal in C.A.No.57 of 2017 filed by the petitioner was allowed by the Additional District and Sessions Judge, Palani, by the judgement, dated 28.07.2017. The petitioner made representation on 11.08.2017 requesting the third respondent to reinstate her in service. The petitioner also gave another representation on 21.09.2017, but the respondent has not set aside the impugned order of punishment.

5. The third respondent filed counter affidavit. The learned Special Government Pleader appearing for the respondents contended that subsequent to the imposition of punishment after conclusion of the domestic enquiry, the petitioner was convicted in C.C.No.345 of 2014 and imposed a fine of Rs.500/- and Rs.1000/- on the petitioner. Considering the nature of charges and conviction, the petitioner is unfit to be a Government servant and she was compulsorily retired from service under Order No.66(2) of the Police Standing Orders and Rule 3(c)(1) of TNPSS (D&A) Rules, 1955. The appeal filed by the petitioner against her conviction was set aside by the Additional District and Sessions Judge, Palani on the ground of ~~insufficient evidence~~ in the complaint and evidence given by her mother



in the Court. The fact remains that the petitioner attacked her mother by stick and poured kerosene. The petitioner gave representation, dated 28.06.2017 to the Additional Director General of Police, Chennai, which was received only on 10.07.2017. When the petitioner approached the first respondent, the first respondent informed her, as the representation was addressed to the Additional Director General of Police, no orders could be passed and directed the petitioner to give a fresh representation. Without submitting the fresh representation, the petitioner has come out with the present writ petition. The impugned order passed by the third respondent is valid as per the Tamilnadu Police Standing Orders. The learned Special Government Pleader further contended that on the date of passing impugned order, the petitioner was convicted and the punishment imposed is valid and legal and prayed for dismissal of the writ petition.

6. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

7. Based on the complaint given by the mother of the petitioner, domestic enquiry was conducted and the petitioner was imposed with punishment of 'stoppage of increment for two years without cumulative effect'. Subsequently, the petitioner was convicted in the criminal case and imposed fine. In view of the said conviction, the third respondent issued showcause notice and imposed punishment of compulsory retirement for the very same offence, for which already punishment was imposed on the petitioner, after domestic enquiry. The impugned order of the third respondent is invalid and it is liable to be set aside on two grounds.

(i) Firstly, the third respondent has no power to impose two punishments for the very same offence. Having imposed punishment after domestic enquiry, third respondent has no power to impose punishment for the same offence after the petitioner was convicted in criminal case. In the Judgment reported in **2009(4) MLJ 708 (D.Narayanan vs. D.R.O., Virudhunagar)** a Division Bench of this Court after considering various judgments, held that after imposing punishment in the Disciplinary Proceedings, the authorities have no power to impose second punishment on the same set of facts on conviction of employee in the criminal proceedings. The ratio in the said judgment is squarely applicable to the facts of the present case.

(ii) Secondly, the petitioner was acquitted by the Additional District and Sessions Judge, Palani, by allowing the appeal in C.A.No.57 of 2017 filed by the petitioner, challenging the order of conviction imposed by the learned Judicial Magistrate, Palani. In view of the appeal being allowed and the order of conviction being set aside, second punishment of compulsory retirement imposed on the



petitioner, based on the conviction by the Judicial Magistrate, is not valid.

8. For the above two reasons, the impugned order passed by the third respondent, dated 26.05.2017, is set aside and the writ petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

1. Director General of Police,
Mylapore,
Chennai-4.
- 2.The Deputy Inspector General of Police,
Dindigul Range, Dindigul.
- 3.The Superintendent of Police,
Dindigul District,
Dindigul.
- 4.The Special Government Pleader,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

- 1.The Judicial Magistrate, Palani.
- 2.The Additional District and Sessions Judge, Palani.

+1 CC to M/s.T.RAMASAMY, Advocate (SR-87767[F] dated 19/09/2019)

+1 CC to M/s.SPL GP (SR-88384[F] dated 20/09/2019)

W.P. (MD)No.20374 of 2017
19.09.2019

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