

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.40420 of 2005

K.Sivakumar

... Petitioner

-vs-

1. The Deputy Superintendent of Police
(Armed Reserve)
Vellore.

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

3. The Deputy Inspector General of Police,
Vellore Range, Vellore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mamdamus to call for the records of the third respondent dated 23.09.2005 in his proceedings C.No.B/A 28/2005 confirming the order of the second respondent in Ref.C.No.H1(1) PR No.237/2004 dated 30.06.2005 of "Compulsory Retirement" and quash the same and consequentially direct the respondents to reinstate the petitioner with continuity of service and back wages together with all attendant benefits.

For Petitioner: M/s.Bala & Daisy

For Respondents: Mr.A.Zakir Hussain
Govt. Advocate

O R D E R

The Writ Petition has been filed, challenging the order of the third respondent dated 23.09.2005 made in C.No.B/A 28/2005, which confirmed the order of the second respondent passed in Ref.C.No.H1(1) PR No.237/2004 dated 30.06.2005, whereby awarding the punishment of "Compulsory Retirement" to the petitioner. The petitioner also sought a direction to the respondents to reinstate him with continuity of service and back wages together with all attendant benefits.

2. The case of the petitioner is that he, while in service, is said to have involved in a case of rape, alleging that he, having promised to marry a school going girl, married her relative without marrying the victim girl and based on the

complaint given by the victim girl, a criminal case has been initiated, apart from initiation of departmental proceedings. It is further case of the petitioner that the criminal case foisted against the petitioner under Sections 417, 376 and 506(ii) IPC in Crime No.38 of 2004 on the file of All Women Police Station, Vellore, ended in acquittal, whereas in the departmental proceedings, he was awarded the punishment of Compulsory Retirement, despite his acquittal in the criminal case and the witnesses including the complainant turning hostile. It is also the case of the petitioner that he already married his relative on 10.09.2004 and that there is no iota of evidence to establish the charges under the Domestic Enquiry. The punishment imposed in the departmental enquiry was based on the contradictory statement made before the criminal Court and the order of compulsory retirement was issued on 30.06.2005 by the 2nd respondent, which has been confirmed by the 3rd respondent on 23.09.2005 on the erroneous ground, which need to be interfered with. It is stated that even assuming that the charges are established, the order of compulsory retirement is very harsh and this Court has to mould the relief and grant the relief, as the petitioner was acquitted in the criminal case.

3. The 2nd respondent has filed a counter affidavit, stating that the petitioner was recruited as Police Constable on 09.06.1993 and that there were two complaints dated 14.09.2004 and 15.09.2004 lodged by one Kanthalakshmi (hereinafter referred to as 'the Victim Girl') and her mother respectively, alleging that the petitioner, under the pretext of marrying the Victim Girl, who was aged 17 years, took her to his house and had a sexual intercourse with her and later, instead of marrying her, married some other lady on 10.09.2004, that too while on medical leave in a hurried manner. It is further stated that a detailed enquiry has been conducted, apart from registering a criminal case in Crime No.38 of 2004 under various provisions of IPC stated supra and based on the complaint of the Victim Girl, departmental proceedings under Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 was also simultaneously taken. It is narrated in the counter affidavit that in the enquiry, it was proved that the petitioner used to pick up the Victim Girl from her house frequently and the other charge that he committed rape on her, has not been proved, whereas the charges levelled against him that he married his relative's girl while on medical leave on 10.09.2004 and he involved in a criminal case, have been duly proved. An enquiry report was submitted to the Disciplinary Authority and the Disciplinary Authority disagreed with the findings of the 1st respondent in respect of Charge No.1, while agreeing with other findings. The petitioner was asked to submit his explanation and after careful examination, the punishment of compulsory retirement was imposed vide proceedings dated 30.06.2005.

3.1. In the counter affidavit, it is described that the fact that the petitioner was moving with the Victim Girl was duly established and the act of the petitioner had totally spoiled the image of Police Force, which attracts Rule 23 of Tamil Nadu Subordinate Police Officers Conduct Rules, 1964 and if the petitioner is really innocent, there was no reason to marry his relative while on medical leave, after having promised to marry the Victim Girl and the said Victim Girl, in the departmental proceedings categorically stated that both the petitioner and she were moving voluntarily and he, under the pretext of going to temple, took her away from her house and had sexual intercourse with her under coercion and threat and later, betrayed her.

3.2. It is further narrated in the counter affidavit that the mother of the victim girl deposed in the enquiry that she was informed by her daughter's teacher that her daughter confessed to her that she was raped by the petitioner and P.W.3, a colleague of the petitioner also deposed that he had seen the petitioner and the Victim Girl in front of his house in the Armed Reserve Quarters, where outsiders are prohibited and therefore, there is a convincing evidence about the close relationship between the petitioner and the Victim Girl, who has no business to visit the quarters of the petitioner and since the preponderance of his guilt has been proved, the Writ Petition is liable to be dismissed.

4. Heard the learned counsel for the parties and perused the material documents available on record

5. It is seen that the petitioner was charged under Rule 3 (b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1995 and though other charges were held to be not proved, his close association with the Victim Girl was duly proved through witnesses. The plea of the petitioner that he was acquitted from the criminal case and therefore, the punishment imposed in the departmental enquiry cannot stand in the eye of law, cannot be accepted in view of the fact that departmental proceedings cannot be conducted like a criminal trial, as the prima facie requirement, as far as departmental proceedings is concerned, is the proof of preponderance of probability and the question of proving the charge beyond reasonable doubt, like that of criminal case does not arise in an enquiry.

6. In the present case on hand, de hors the criminal case, departmental enquiry has also been conducted, in which the Victim Girl and her mother have given evidence against the petitioner. Taking into account the totality of the circumstances, the Disciplinary Authority came to the conclusion

that a portion of Charge No.1 was proved and finally, a punishment was imposed. The plea put forth by the petitioner that the punishment needs to be interfered with by this Court and the punishment has got to be modified, cannot be countenanced, as this Court is not an Appellate Court to modify the punishment given by the Disciplinary Authority, which has been confirmed by the Appellate Authority. The Appellate Authority rightly came to the conclusion that the Victim Girl was a minor and the petitioner has, not only spoiled the life of the Victim Girl, but also the image of Police Force for his sexual lust and in order to get rid of the problem, he applied for Medical Leave and during that period, he suddenly married another girl. Several witnesses have given categorical evidence against the petitioner, which has been duly taken note of by the Appellate Authority and rightly upheld the order of the 2nd respondent, which, in the considered opinion of this Court does not warrant any interference by this Court.

7. In view of what is discussed and observed hereinabove, this Court finds no scope either to interfere with the punishment of compulsory retirement or to modify the punishment. Accordingly, finding no merits in the argument put forth on the side of the petitioner, the Writ Petition is dismissed. No costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To:

1. The Deputy Superintendent of Police
(Armed Reserve)
Vellore.
 2. The Superintendent of Police,
Vellore, Vellore District.
 3. The Deputy Inspector General of Police,
Vellore Range, Vellore.
- +1 CC to Mr.G. Bala & Daisy, Advocate sr 30550.

W.P.No.40420 of 2005

LN(CO)
SP(24/11/2020)