

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.33486 of 2013

K.S.Palanichamy

...Petitioner

- Vs -

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- 1.The Superintendent of Police,
District Police Office,
Tiruppur District @ Tiruppur.
- 2.The Inspector General of Police,
West Zone, Coimbatore
(i/c) Deputy Inspector General of Police,
Coimbatore Range,
Coimbatore 641018.

....Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified Mandamus, calling for the records pertaining to the order of the first respondent herein in his C.NO.F1/P.R.04/2012 u/r 3(b) dated 6.12.2012 imposing a punishment of postponement of increment for one year with cumulative effect and the consequential order passed by the second respondent herein in his C.NO.D2/698/2013 dated 14.02.2013 rejecting the petitioner's appeal petition and quash the same and consequently direct the respondents herein to grant all the consequential service and monetary benefits withheld due to the above punishment .

For Petitioner : Mr.Ravi Shanmugam

For Respondents : Mr. A.N. Thambidurai,
Spl .G.P.

ORDER

This writ petition has been filed by the petitioner to call for the records pertaining to the order of the first respondent herein in his C.NO.F1/P.R.04/2012 u/r 3(b) dated 6.12.2012 imposing a punishment of postponement of increment for one year with cumulative effect and the consequential order passed by the second respondent herein in his C.NO.D2/698/2013 dated 14.02.2013 rejecting the petitioner's appeal petition and quash the same and consequently direct the respondents herein to grant

all the consequential service and monetary benefits withheld due to the above punishment .

2. The case of the petitioner joined the police service as Grade II Police Constable in the year 1988 and the post was upgraded as Grade I Police Constable in the year 1999 and was further upgraded as Head Constable in the year 2004 and the petitioner is due for promotion as Special Sub Inspector of Police. While serving thus, a charge memo dated 24.01.2012 was issued on the petitioner, under Rule 3(b) of the Tamil Nadu Police Subordinate Service (D& A) Rules, 1955, on the allegation that the petitioner had received mamool from one accused Mani who was involved in Cr. No.749/2011 registered on the file of the Kamanaickenpalayam Police Station. The petitioner denied all the charges and, therefore, an enquiry was conducted. On completion of enquiry, the enquiry officer, held the charges proved and submitted his report. The petitioner was provided with a copy of the report and he submitted his further explanation denying all charges levelled against him. However, not satisfied with the said explanation, the 1st respondent imposed punishment of postponement of increment for one year with cumulative effect on 06.12.2012. Against the said order, the petitioner preferred appeal to the 2nd respondent on 02.01.2013, which was rejected vide order dated 14.02.2013 and aggrieved by the said rejection, the present petition has been filed.

3. Learned counsel appearing for the petitioner submitted that inspite of repeated requests even during the enquiry to cross examine the crucial witnesses in the present case, PW.1 / Defacto complainant and D.W.1/ wife of the defacto complainant, opportunity was not granted and that there is no evidence against the petitioner as the defacto complainant and his wife turned hostile. However, the Disciplinary authority without considering the said aspect, erroneously imposed the punishment, which was confirmed by the appellate authority, which is against the settled legal proposition and, hence, the impugned order is unsustainable. Hence he prays for allowing the petition.

4. Per contra, learned Special Government Pleader appearing for respondents, in support of his contention, referred the counter affidavit filed by the respondents, and contented that pursuant to the charge memo, enquiry was conducted leading to the submission of a report holding the charges proved which culminated into the punishment by the disciplinary authority, which was confirmed by the appellate authority. It is the further submission of the learned Special Government Pleader that pursuant to the said rejection, the petitioner has submitted a Mercy petition before the Director General of Police, Chennai dated 11.08.2013, which is pending. It is the

further submission of the learned Special Government Pleader that though the charges levelled against the petitioner are grave, which attracts even the major punishment of dismissal from service, however, the authorities, taking a lenient view, have imposed only cut in increment with cumulative effect and in view of the ratio laid down by the Courts, unless the punishment imposed is disproportionate and shocking the conscience of the Court, the Courts should be slow in interfering with the said punishment and, therefore, prayed for dismissal of the present petition.

5. This Court bestowed its best attention to the contentions advanced by the learned counsel appearing on either side and also perused the materials available on record.

6. Before proceeding to analyse the facts of the present case to find out whether the punishment awarded to the petitioner is just and reasonable, the ratio laid down with regard to matters in which punishment has been imposed, which is impugned under Article 226 of the Constitution.

7. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415), the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the

court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

8. In the case on hand, a perusal of the materials available on record reveal that the allegation levelled against the petitioner is a grave one, which is not now expected from a disciplined force. The enquiry officer having found the petitioner guilty of the charges, the charges levelled being grave in nature, the disciplinary authority, after considering the explanation submitted by the petitioner and also taking into consideration the materials available on record, has imposed a punishment of only cut in increment with cumulative effect. The appellate authority also, on an independent consideration of the issue, has concurred with the punishment imposed. On a holistic consideration of the entire issue, this Court is of the considered view that the punishment imposed on the petitioner could in no way be said to be disproportionate or shocking the conscience of the Court warranting interference. The petitioner has not proved that the punishment imposed on him is arbitrary or bad or the punishment is disproportionate to the gravity of the proved charges and is in contravention of the rules. In such circumstances, this Court is of the considered view that the punishment imposed on the petitioner is just and reasonable and the same does not warrant any interference at the hands of this Court.

9. For the reasons aforesaid, this writ petition is dismissed as being devoid of merits. However, it is open to the petitioner to work out his remedies in a manner known to law, if so advised. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

jrs

To

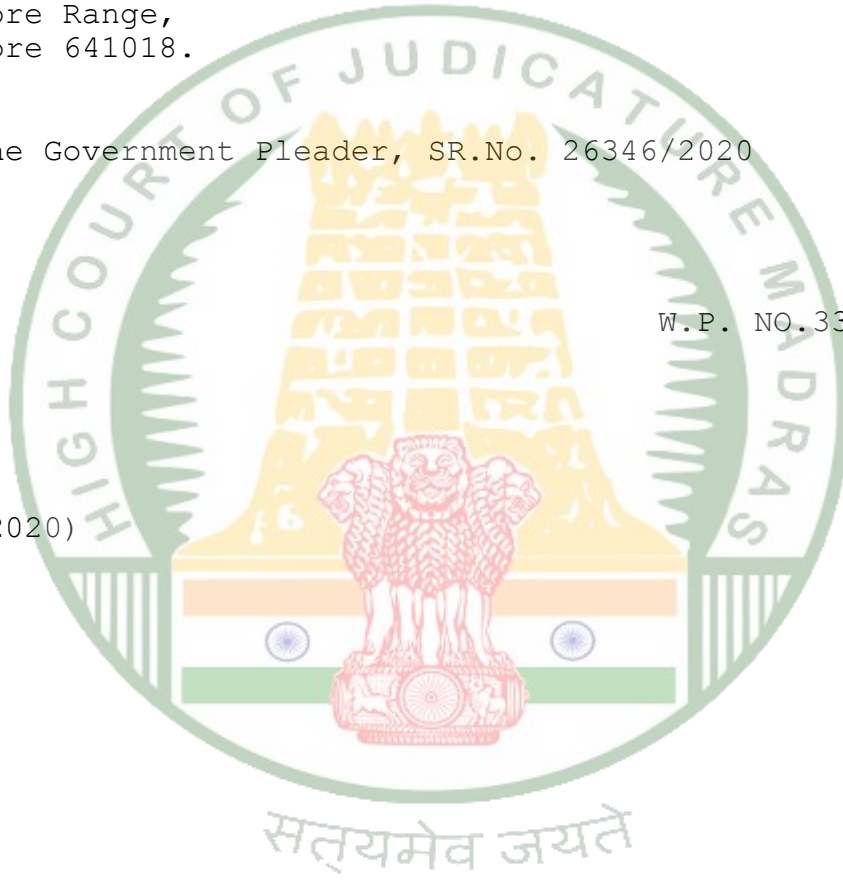
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+1cc to The Government Pleader, SR.No. 26346/2020

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