



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:02.03.2020

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.2956 of 2010

and

M.P(MD)No.2 of 2010

WEB COPY

- 1.R.Thirugnanam(died),
- 2.Kousalya

Second Petitioner is substituted as LR of the deceased sole Petitioner as per order of this Court made in W.M.P(MD)No.3178 of 2019, dated 27.3.2019) ..Petitioner

Vs

- 1.The Director General of Police,
Mylapore,
Chennai - 600 004.
- 2.The Deputy Inspector General of Police,
Thanjavur Range,
Thanjavur.
- 3.The Superintendent of Police,
Thanjavur District,
Thanjavur.

..Respondents

Prayer: 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 on the file of the respondents 2 and 3 in connection with the impugned orders passed in C.No.B2/3080/2009, dated 8.9.2009 and Na.Ka.No.K4/Tha.Pa.70/2006, dated 2.3.2007 respectively and to quash the same as illegal and consequently to direct the respondents to reinstate the Petitioner with all back wages within the time stipulated by this Court.

For Petitioner :Mr.Raja Ravivarman
for M/s.G.Thalaimutharasu

For Respondents :Mr.C.Ramar
Addl.Govt.Pleader.

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus to quash the impugned orders passed in C.No.B2/3080/2009, dated 8.9.2009 and Na.Ka.No.K4/Tha.Pa.70/2006, dated 2.3.2007 respectively as illegal and consequently to direct the respondents to reinstate the Petitioner with all back wages



within the time stipulated by this Court.

2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. The case of the Petitioner is that the Petitioner was initially appointed as Police Constable on 1.10.1977 and holding the said post till 2.3.2007, ie., the date of dismissal from service. While so, the Petitioner was served with a charge-memo on the ground that the Petitioner had used abusive words intoxicated state and a case in Crime No.526 of 2006, for the offence under Section 294(b) of IPC r/w Rule 4(1)(i) of TNP Act was registered against the Petitioner and consequently departmental proceedings have been initiated for the very same set of charges. After enquiry, the Petitioner was imposed with a major punishment of dismissal from service. The criminal case also ended in acquittal. Moreover, during enquiry, no opportunity of personal hearing was provided to the Petitioner. Hence the Petitioner has come forward with this Writ Petition for the relief stated supra.

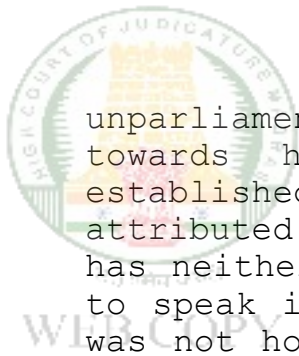
4. Aggrieved by the same, the Petitioner has filed an appeal against the punishment of dismissal from service narrating all the details and prayed the official respondents to reinstate him in service.

5. The said appeal was considered by the Deputy Inspector General of Police, Thanjavur Range, Thanjavur in C.No.B2/AP 29/2007, dated 7.7.2007. The appeal petition was considered within time stating that for his misconduct and high handedness he has been awarded with a punishment of dismissal from service by the disciplinary authority. His behavior, if left unpunished shall breed more such happenings and shall spoil the image of the force. He deserves for the same and the punishment is commensurate with the gravity of the delinquencies committed and I decline to intervene and the appeal petition is rejected.

6. The said order was challenged by the Petitioner before this Court in W.P(MD)NO.1021 of 2009 and this Court by order, dated 6.2.2009 has directed the second respondent to consider the appeal of the Petitioner on merits and in accordance with law giving reasons therein. Pursuant to which, the impugned order came to be passed by the second respondent in C.No.B2/3080/2009, dated 8.9.2009, wherein, the reference column does not contain any fresh materials to show that the notice was issued to the Petitioner, after the disposal of the Writ Petition.

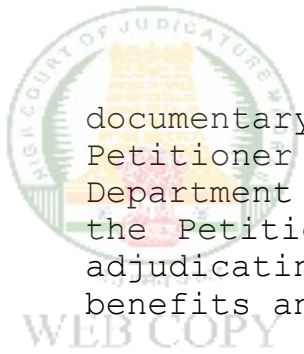
7. The impugned order which is an official memorandum and before passing the said order, no opportunity of personal hearing was given to the petitioner and it has not been passed in accordance with law, as directed by this Court. Further the above

<https://hcservices.ecourts.gov.in/hcservices/> reveals that the delinquent was loitering in the verandha of the Police Station Office, under the influence of intoxication and misbehaved with the officials by abusing them in



unparliamentary words. The findings in the PR focuses lime light towards his criminal attitude. The Enquiry Officer clearly established the charge against the appellant with evidence attributed by the prosecution statements and exhibits. The appellant has neither offered any explanation nor cited any defence witnesses to speak in his favour. The opportunities given by the prosecution was not honoured or responded by the appellant. This itself proves the acceptance of the delinquency. The complete proceedings of the disciplinary authority are based on recorded evidences and depositions of prosecution witnesses. Further it is held that the punishing authority did not have any bias while passing the final orders in this P.R. As stated there is no compromise or any thing in favour of this Petitioner. There may be certain verbatim omissions in the cross examination of the prosecution witnesses 1 to 6 which are irrelevant to the charge. There is non examination of the medical officer who issued the medical opinion after examining him in this issue. It is not essential to examine the medical officer as the medical opinion report was already filed in this PR as Ex.P11, in which, it is held that there is breath smell of alcohol present and was not willing to undergo blood or urine analysis. This itself proves the guilt of the appellant. Loitering in the Verandha shouting in disorderly manner was also witnessed by the prosecution witnesses 1 to 6. Nobody speaks in favour of appellant. Narrating the above facts, the second respondent come to the conclusion that the punishment awarded to the Petitioner, is within the frame of rules and the points given by the appellant in his appeal petition are not worthy for consideration and rejected the appeal confirming the dismissal of Petitioner from service by the disciplinary authority. This Court has to decide whether any proper reasoning was given by the appellate authority.

8. From the materials available on record, it is seen that when the delinquent petitioner was not given any opportunity of personal hearing this Court has clearly passed an order to give an opportunity of personal hearing and in accordance with law and as such, there is violation of principles of natural justice and for the punishment of dismissal of Petitioner from service the guilty of offence committed was not proved as the prosecution witnesses had given a contradictory statement which were not considered by the authority. The doctor who had examined the delinquent did not state that he was under the influence of alcohol and that mere smell of alcohol in breath did not prove that he was under the influence of alcohol. The doctor was not clear in his submissions and not proved that the Petitioner was under the influence of alcohol by conducting various medical tests. That being the case, there was no evidence that he had consumed alcohol and the charge that the Petitioner was loitering in Verandha at 14.00 hours causing disturbance to the official work was not proved by properly letting in evidences and the, prosecution witnesses also turned hostile. The Enquiry Officer has relied on the past conduct wherein it is seen that the Petitioner was acquitted in those cases giving benefit of doubt. Services appointed by the authorities order do not throw light about deciding the matter afresh in accordance with law. No personal hearing was given by the authority to the Petitioner. Only based on the



documentary evidence placed, the order is passed. Moreover, the Petitioner has also put in 30 years of service in the said Department and that the Petitioner is also no more as on date and the Petitioner, who is the wife of the deceased employee is only adjudicating this matter for getting the terminal and monetary benefits and to eke out her day to day life.

9.In view of the above discussion, this Court is of the view that the punishment imposed on the Petitioner is not proportionate to the charge and the same is modified from dismissal from service into one of Compulsory retirement from service.

10..Accordingly, this Writ Petition is allowed and the orders impugned herein is set aside and the punishment imposed on the Petitioner is modified from dismissal from service into compulsory retirement from service. Consequently, the respondent concerned is directed to sanction and pay the the terminal and monetary benefits accrued on the Petitioner, in accordance with law, as expeditiously as possible. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (AD I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsn

To

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

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

3.The Superintendent of Police,
Thanjavur District,
Thanjavur.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
+1cc to M/s.Special Government Pleader, SR No.9767

W.P(MD)No.2956 of 2010

and

M.P(MD)No.2 of 2010

02.03.2020