



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2020

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.7161 of 2011

R. Pandi

.. Petitioner

vs.

1.The Superintendant of Police,
Ramanathapuram District.

2.The Deputy Director General of Police,
Ramanathapuram Range,
Ramanathapuram.

.. Respondents

PRAYER:- This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent Tha.Pa.No.39/2009 dated 10.03.2010 and C.No.F1/P.R.No.39/2009 dated 08.04.2010 and the order passed by the second respondent in C.No.B1/Appeal 12/2020 dated 20.07.2010 and the consequential order passed by the 1st respondent in C.No. F2/12670/AP.15/2010 dated 14.08.2010 and quash the same and consequently, direct the respondents to repay the monetary benefits and give other benefits.

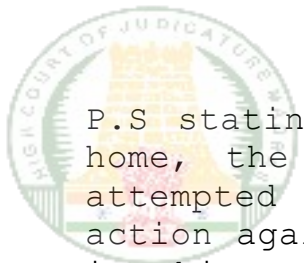
For Petitioner : Mr. A.K. Manickam

For Respondents : Mr. J. Gunaseelan Muthaiah
Additional Government Pleader

ORDER

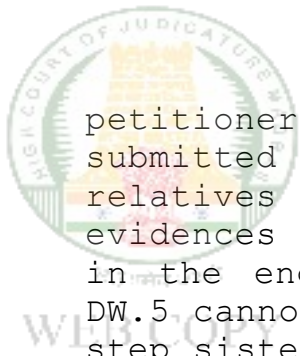
This Writ Petition has been filed to quash the impugned order passed by the 1st respondent in Ka.Pa.No.39/2009 dated 10.03.2010 and C.No.F1/P.R.No.39/2009 dated 08.04.2010 and the order passed by the second respondent in C.No.B1/Appeal 12/2020 dated 20.07.2010 and the consequential order passed by the 1st respondent in C.No. F2/12670/AP.15/2010 dated 14.08.2010 and consequently, to direct the respondents to repay the monetary benefits and give other benefits.

2. The case of the petitioner is that he was enlisted as Grade II Police Constable and his native is Vithanoor Village in Ramanathapuram Town P.S. Limits and he is presently working in Therirveli P.S. During his tenure at Uthirakosamangai P.S one



P.S. stating that on 20.02.2009 at 15.00 hours, while she was at home, the petitioner had allegedly misbehaved with her thereby attempted to outrage her modesty and she made a request to take action against the petitioner. A preliminary enquiry was conducted in this regard and a charge was framed against the petitioner in P.R.No.39/09, u/r. 3(b) of TNPSS (D&A) Rules, 1955 and an oral enquiry was held by the Deputy Superintendant of Police, Rameswaram and the charge against the petitioner was held as proved vide enquiry report dated 16.01.2010. The Superintendent of Police, Ramanathapuram concurred with the findings of the minute drawing officer and awarded the petitioner punishment of "Postponement of next increment for a period of one year with cumulative effect" in his order dated 10.03.2010. Thereafter, the petitioner had preferred an appeal before the second respondent against the punishment awarded to him. The second respondent had issued a show cause notice to the petitioner in B1/APP.12/2010, dated 01.06.2010 and the petitioner submitted his explanation for the same on 09.07.2010. The second respondent took a serious view of the delinquency and enhanced the punishment of "Postponement of next increment for a period of one year with cumulative effect" into "Reduction in rank by one stage for a period of five years" in his proceedings in C.No.B1/Appeal.12/2010, dated 20.07.2010. Challenging the same, the petitioner has filed the present Writ Petition before this Court with a prayer to quash the punishment awarded to him by the respondents 1 and 2.

3. The learned Additional Government Pleader appearing for the respondents filed a counter affidavit and submitted that the appellate authority is authorised to enhance the punishment awarded by the disciplinary authority. The delinquency of the petitioner was viewed seriously and accordingly, enhancement of punishment was ordered and hence, the order is legally sustainable. It is further stated that to prove the contention of the petitioner that Gomathi had lodged a false complaint and she was maintaining enmity because of assistance rendered by him to the Police for the arrest of her brother Sakthivel in a criminal case in Ramanathapuram Town P.S., there is no proof produced for the same. Further, there is no material evidence to establish the claim that PW.3 Muniyasamy was having enmity with the petitioner and that Muniyasamy was not allowed to be cross examined by him to bring out the alleged motive. It is further stated that at the time of committing delinquency by the petitioner, at the house of Gomathi, she ran out of fear from the house and informed the vulgar act of the petitioner immediately to other witnesses. Their evidences clearly prove the delinquency against the petitioner. Hence, the said charge against the petitioner was held proved rightly. Further, the findings of the enquiry officer proved the mis conduct of the



petitioner who deserves imposition of penalty. It is further submitted that the defence witnesses 1 to 5 are the close relatives of the petitioner and his wife and hence, their evidences could not be considered and this fact has been explained in the enquiry report itself. Moreover, the witnesses DW4 and DW.5 cannot be considered as independent witnesses as they are the step sisters of the petitioner. It is also further stated that there was probability of the petitioner having himself being set free by the Court by compounding the offence since the defacto complainant / PW.1 is the step brother's wife of the petitioner. Moreover, at her request only, there was no criminal case registered against him, but, departmental proceeding was initiated against him instead of registering a criminal case on the complaint of PW.1. The enquiry report discloses that the charge against the petitioner was held proved and hence, the respondents have passed an appropriate order based on the enquiry report rendered by due consideration.

4. I have heard the learned counsel appearing on either side and perused the materials available on record.

5. On perusal of the complaint given by PW.1 it is made clear that the complainant is a relative of the petitioner in order to safeguard the petitioner and also keeping in mind the relationship between them only she had requested the respondents not to register any criminal case against the petitioner. At her request only, departmental proceedings were initiated against the petitioner. At the end of enquiry, the charges levelled against the petitioner were held as proved. Even during the enquiry, the officer while trying to conduct enquiry at the local area where the aged victims were examined he has recorded that the petitioner was acting high-handedly and was trying to threaten them with unparliamentary words and behaved indecently. Hence, the first respondent awarded punishment of stoppage of one increment against the petitioner. On appeal, considering the heinous act of the petitioner and also mis-conduct committed by him the second respondent enhanced the said punishment and demoted his rank for the period of five years.

6. Considering the facts and circumstances of the case, I am of the view that as a public servant, especially a police official, the petitioner has to make all arrangements for maintaining the law and order and to take steps for safeguarding the rights of general public he should follow morality in his personal life. As per the proverb "Fence should not graze the crops", the petitioner in his rank as a dutiful police official should not breach the moral and ethical laws of our culture. Hence, I am of the view that the punishment awarded by the first respondent for the charges proved, which was modified and enhanced



by the second respondent in to reduction in rank by one stage for a period of five years needs no interference.

7. Accordingly, this Writ Petition is dismissed. No costs.

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Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

trp

To

1.The Superintendant of Police,
Ramanathapuram District.

2.The Deputy Director General of Police,
Ramanathapuram Range,
Ramanathapuram.

+1 CC to SPL.GP (SR-11997[F] dated 17/03/2020)

W.P(MD)No.7161 of 2011

16.03.2020

KM (10.07.2020) 4P 4C