



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.01.2020

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) No.18162 of 2015

and

M.P. (MD) .No.1 of 2015

S.Manikandan

.. Petitioner

Vs.

1.The Deputy Inspector General of Police,
Tirunelveli Range.

2.The Superintendent of Police,
Tirunelveli.

3.The Deputy Superintendent of Police,
Reserved Police,
Tirunelveli District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings bearing Na.Ka.No.C4/Review 152/2015 dated 10.09.2015 passed by the 1st respondent and quash the same and with a consequential direction directing the 1st respondent to reinstate the petitioner into service with all consequential attendant benefits.

For Petitioner : Mrs.Porkodikannan

For Respondents : Mr.D.Muruganandham

Additional Government Pleader

ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings bearing Na.Ka.No.C4/Review 152/2015 dated 10.09.2015 passed by the 1st respondent and quash the same and with a consequential direction directing the 1st respondent to reinstate the petitioner into service with all consequential attendant benefits.

2.The case of the petitioner is that the petitioner was appointed in the year 2005 as Grade-II Constable and he was working at Munneerpallam Police Station in the year 2012. On the basis of the complaint given by one Valan Sweeti at Thomaiyarpuram, he was falsely implicated and a criminal case has been registered on 28.08.2012 in Crime No.19 of 2012, on the file of the All Women Police Station, Valliyoor. The allegation was that on 19.03.2012, the petitioner had sexual intercourse with the de-facto complainant and thereby, he committed the offences under Sections 417, 376 and 506(ii) IPC. Pursuant to which, the petitioner was placed under suspension vide proceedings dated 31.08.2012 issued by the second respondent. Thereafter, the second respondent had issued a charge memo dated 26.11.2012 and the following charges framed are extracted hereunder:

"1. While working as the Constable at Munneerpallam
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Police Station, on 19.03.2012, at night 8 'o' clock, I had sexual intercourse with Valan Sweeti and

2.As I have committed the offence of rape with Valan Sweeti on 19.03.2012, and on registration of FIR 28.08.2012 at the AWPS, Valliyoor under Sections 417, 376 and 506(ii) IPC and thereby caused black mark to the department."

3.The third respondent, who is the Enquiry Officer, had conducted an enquiry proceeding. During the enquiry, 12 prosecution witnesses and 20 documents were marked by the Department. During the course of Departmental Enquiry, except the said complainant, none of the private, independent witnesses appeared before the enquiry. The individual witnesses viz., D.W.2, 3 and 4 did not appear for the enquiry and hence, the third respondent had taken the statement given by them in the enquiry under Section 161(3) of Cr.P.C and only the departmental witnesses had appeared and none of them had stated that they have seen the alleged occurrence. The enquiry officer had erroneously concluded that the charges were proved and the respondent vide proceedings dated 31.03.2015 in P.R.No.120 of 2012 imposed a punishment of "Postponement of increment for three years which shall operate to postpone his future increments".

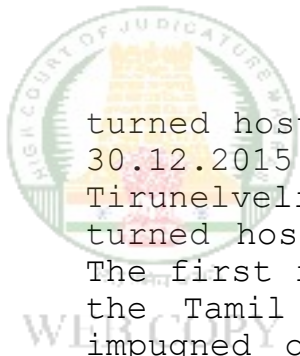
4.While so, the first respondent had issued a show cause notice dated 24.07.2015 under Rule 15A(1) of the TNPSS(D&A) Rules, 1955 seeking explanation as to why the punishment be reviewed and enhanced. The petitioner had sent his explanation on 31.08.2015. Thereafter, the first respondent had passed the impugned order in his proceedings bearing Na.Ka.No.C4/Review 152/2015 dated 10.09.2015 by enhancing the punishment to a major punishment of "dismissal from service." Against which, the present writ petition has been filed.

5.The learned Additional Government Pleader appearing for the respondents would submit that since there is an allegation against the petitioner under Section 376 IPC, the petitioner has been punished and therefore, interference of this Court is not necessary.

6.The learned counsel appearing for the petitioner submitted that the criminal case registered against the petitioner has ended in acquittal on 30.12.2015.

7.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

8.A perusal of the records show that the alleged occurrence said to have been taken place on 19.03.2012, whereas, the registration of the FIR was only on 28.08.2012 and there is a delay of five months in registering the FIR. The statement of the de-facto complainant is different in FIR, 161(3) statement and before the Enquiry Officer. During the trial, PW1/defacto complainant had



turned hostile and the criminal case also had ended in acquittal on 30.12.2015 in S.C.No.442 of 2013 by the learned Mahila Court, Tirunelveli. Therefore, since the de-facto complainant herself had turned hostile, there is no base for the departmental proceedings. The first respondent has not followed the procedures contemplated in the Tamil Nadu Police Subordinate Service Rules and passed the impugned order mechanically by relying upon the findings of the Enquiry Officer. The Second part of Rule 15A(1) of the TNPSS(D&A) Rules, 1955 mandates that the delinquent should be informed of the proposed punishment in case of enhancement and the entire enquiry proceedings in Rule 3(b) of the said Rules ought to have been conducted by the first respondent before passing the impugned order of dismissal from service. When a statute vests certain power with an authority to be exercised in a particular manner, then the said authority has to exercise the same only in the manner provided in the statute itself. But, in the present case, without following the manner provided in the statute, the impugned order has been passed, which is in violation of principle of natural justice.

9. Even the impugned order does not show the reason as to how the first respondent has come to the conclusion for imposing the punishment of dismissal from service of the petitioner and the criminal case has also ended in acquittal and therefore, I am inclined to interfere with the impugned order passed by the first respondent.

10. Accordingly, this Writ Petition is allowed and the impugned order dated 10.09.2015 passed by the first respondent is quashed and the first respondent is directed to reinstate the petitioner into service with all monetary benefits and service benefits. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (C-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1. The Deputy Inspector General of Police, Tirunelveli Range.
2. The Superintendent of Police, Tirunelveli.
3. The Deputy Superintendent of Police, Reserved Police, Tirunelveli District.

+1 CC to M/s. POLEX LEGAL SOLUTIONS, Advocate (SR-2491[F]

+1 CC to M/s. SPL.GP (SR-2572[F] dated 23/01/2020) **ORDER MADE IN**

W.P (MD) No.18162 of 2015

22.01.2020

SMA/11/02/2020/3P/6C

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