

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.18157 of 2020
and WMP.No.22572 of 2020

(Through Video Conferencing)

Prabhakaran

.. Petitioner

vs.

1.The Government of Tamil Nadu,
Rep.bt its Secretary to Government,
Home Department, Fort St.George,
Chennai 600 009.

2.The Director General of Police,
Tamil Nadu, Dr.Radhakrishnan Salai,
Chennai 600 004.

3.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai 600 007.

4.The Deputy Commissioner of Police,
Flower Bazar District,
Chennai 600 001.

.. Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 4th respondent in his proceedings in PR.No.12/PR N (1)/2018 u/r 3(b) dated 10.09.20219 as confirmed in the appeal by the 3rd respondent, in his proceedings in Rc.No.PR.V(1)/90254/CPO/2019 dated 03.01.2020 and confirmed in the revision by the 2nd respondent, in his proceedings in Rc.No.362362/AP.3(2)/2020 dated 14.04.2020 quash the same and consequently direct the respondents to reinstate the petitioner in service with all the arrears of salary and attendant benefits.

For Petitioner : Mr.C.Vigneswaran for
AMI V.Kataria

For Respondents : Mr.V.P.R.Elamparithi
Government Advocate.

O R D E R

The petitioner has challenged the impugned proceeding dated 10.9.2019 of the 4th respondent dismissing the petitioner from service and the dismissal of the appeal of the petitioner by the 3rd respondent vide an order dated 3.1.2020 of and rejection of the mercy petition of the petitioner by the 2nd respondent vide an order dated 14.4.2020.

2. A charge memo dated 10.1.2019 was issued to the proceeding to the petitioner was issued by the Assistant Commissioner of Police under Rule 3(b) of the Tamil Nadu Police Subordinate Service Rules which has culminated in the 1st mentioned impugned order dated 10.09.2019 of the 4th respondent. Following three charges were framed against the petitioner:-

Charge-I

" The Petitioner has sent obscene messages to one Tmt.XXX* against her wishes in whatsapp

Charge-II

The Petitioner has sent messages from
1.xxxxxxx2308 *
2.xxxxxxx4659*
3.xxxxxxx1838*

and also has spoken to Tmt.XXX * from his phone number."

Charge-III

"The petitioner has continuously harassed Tmt.XXX* by calling her even after a complaint was filed in the police station against the petitioner for sexual harassing her".

*(Name and Number not disclosed for privacy and to protect to identity.)

3. The 4th respondent accepted the report of the enquiry officer by concluding that the petitioner had made repeated calls to Tmt.XXX*, the defacto complainant when her husband was remanded to a judicial custody pursuant to a complaint filed by the defacto complainant in a matrimonial dispute.

4. The 4th respondent in the impugned order dated 10.9.2019 has found petitioner guilty of the above charges on three counts, namely:-

i. For having made obscene calls to the de facto complainant from the above numbers his CUG No. xxxxxx2308* to xxxxxx3785* of the accused, the husband of de facto complainant;

ii. For having shared the official CUG No. xxxxx2308* number with the accused and de facto complainant's husband and for making repeated phone calls during midnight xxxxxx3785* to the defecto complainant;

iii. For having sent obscene messages from xxxxxx4659* to xxxxxx3782* of the de facto complainant, examined as prosecution witness No.1 in the disciplinary proceedings.

5. Challenging the impugned proceedings of the respondent Nos. 2, 3, and 4, the learned counsel for the petitioner has submitted that the orders passed by the 4th respondent was wholly without any basis in the light of the answers elicited by the petitioner during cross-examination of the prosecution witness in the disciplinary proceeding.

6. Specifically, to a specific question as to whether the petitioner had indecently propositioned to the de facto complainant or not, the de facto complainant in her answer to question No.15 has clearly stated that "No". She merely stated that she was asked to accompany the petitioner on his bike and think about it and let him know.

7. It was therefore submitted that there was no indecent proposal. Learned counsel for the petitioner further drew attention to question No. 2 as to whether the petitioner had sent any WhatsApp message to the de facto complainant to which the defacto complainant has answered "No". It is further submitted that in the answer to question number 2, the defacto-complainant has clearly stated that in her complaint, she had not stated that the petitioner had sent any obscene WhatsApp message but merely stated that she had merely received messages from the petitioner.

8. Learned counsel for the petitioner further submits that the 3rd respondent and the 2nd respondent as the appellate and higher authorities have merely accepted the order of the 4th

respondent without any application of mind and therefore the impugned orders are liable to be quashed.

9. Appearing on behalf of the respondents, the learned Government Advocate submits that the scope of judicial review under Article 226 of the Constitution of India is very limited. It is submitted that the petitioner cannot expect this court to examine the order as an appellate authority.

10. It is submitted that the court is only concerned with the decision-making process and not the decision per se. The learned Government Advocate further submits that the enquiry officer has given a clear finding that the petitioner was having three different mobile numbers and had deliberately used different numbers registered in different name to send obscene message as was confirmed by de facto complainant PW1 and PW3 (Inspector of Police). It is submitted that phone number of one Srinivasan Raju was used to send Whatsapp messages and indecent proposals to the de facto complainant and therefore the respondents were justified in imposing the punishment of removal from service to the petitioner.

11. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondents.

12. P.W.1 during examination admitted that no whatsapp message was received from the petitioner. Enquiry officer has clearly also stated that there is no evidence to substantiate receipt of any whatsapp message. The finding of the enquiry officer also indicates that a finding contrary to Charge No.1 in the Charge Memo has against the petitioner.

13. Though, a criminal complaint was filed against the petitioner by the de facto complainant, it was not pursued by her seriously. The charges against the petitioner in the disciplinary proceeding is specifically that the petitioner had sent obscene messages to the de facto complainant through WhatsApp messages. Since the de facto complainant has herself admitted that no WhatsApp message was received by her from the petitioner from number xxxxxx4659 of Srinivasan, it cannot be said that charges against the petitioner stood proved.

14. As the petitioner having spoken to the defacto complainant, it is to be noted that the petitioner was asked to accompany defacto complainant's husband when latter was remanded to judicial custody on 23.6.2018 to Puzhal jail.

15. As an officer of the police department, he was the interface between the de facto-complainant's husband and the defacto-complainant. The defacto-complainant in her complaint has merely stated that the petitioner had propositioned her to accompanying him on his motorbike and had asked the defacto-complainant to think about it. However, barring the above, the defacto-complainant has admitted to have not received any other obscene message or indecent proposal from the petitioner.

16. Possibly, the petitioner may have used this power. However, there has to be a preponderance of probability that the petitioner would have sent obscene messages to the defacto-complainant and/or sent indecent proposal to the defacto-complainant by taking advantage of the situation latter was placed before imposing a severe punishment from dismissal of service.

17. Considering the fact that the disciplinary authority as also the enquiry officer have not been able to even establish a preponderance of probability, order passed by the 4th respondent based on the enquiry officers' report is liable to be quashed.

18. The appellate order of the 3rd respondent and the subsequent rejection of the mercy petition by the 2nd respondent are non-speaking order and do not address to any of the submissions of the petitioner. At best, the petitioner could have been warned and left instead of dismissing the petitioner from service.

19. Since the petitioner had been handed with a severe punishment of dismissal from his service for the charges framed in Charge Memo dated 10.01.2019 which have not been proved, the impugned proceedings are liable to be quashed. Consequently, this court is inclined to set aside the impugned orders passed by the 2nd, 3rd and the 4th respondents.

20. The respondents may, however, keep a watch on the petitioner. If the petitioner is found to be involved with any similar deviant behaviour in future, his involvement in the impugned proceeding may be kept in mind. As a part of the police reform, the apex body of the respondents may consider the task of training the police force especially in the lower ranks and equip them with soft skills, gender sensitization and need for child protection considering the fact that they are interface between the criminals and victims as uniform force. A mandatory training and refresher course may be included as a part of their career.

21. This writ petition is allowed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kkd

To

- 1.The Secretary to Government,
Home Department, Fort St.George,
Chennai 600 009.
- 2.The Director General of Police,
Tamil Nadu, Dr.Radhakrishnan Salai,
Chennai 600 004.
- 3.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai 600 007.
- 4.The Deputy Commissioner of Police,
Flower Bazar District,
Chennai 600 001.

+1cc to Government Pleader Sr No.39432

W.P.No.18157 of 2020

BS (CO)
PR (24/09/2021)