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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.06.2021

PRONOUNCED ON : 30.06.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.19468 of 2018

K.Ragupathi

... Petitioner

Vs.

1.The Superintendent of Police,
Kancheepuram District.

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

3.The Director General of Police,
Chennai-600 004,
Tamil Nadu.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the first respondent in connection with the impugned order passed by him in J2/P.R.48/2005 u/r. 3 (b) dated 03.01.2006 and confirmed by the second respondent in C.No.B2/AP.04/2006 dated 09.03.2006 and further confirmed by the third respondent in RC.No.156676/A.P.I(2)/2014 dated 01.12.2016 and quash the same.

For Petitioner : Mr.K.Venkataramani, Sr. Counsel
for Mr.M.Muthappan

For Respondents:Mr.K.V.Sajeev Kumar,
Counsel for Government

O R D E R

The present Writ Petition is heard through Video Conferencing on 23.06.2021.

2. Heard Mr.K.Venkataramani, learned Senior counsel appearing for the petitioner and Mr.A.V.Sajeev Kumar, learned counsel appearing on behalf of the Official respondents.



3. The petitioner herein, while serving as a Grade I Police Constable in the year 2004 was subjected to the following charges:-

"1. Misbehaving with a women police while on escort duty on 09.11.2004.

2. Misbehaving with another women police while on escort duty on 27.12.2004.

3. Assaulting one Purushothaman on 10.12.2004, who had come to Manimangalam Police Station and thereby created law and order trouble.

4. Quarrelling with a lorry driver and assaulting a private person on 06.01.2005 which resulted in a law and order problem."

Pursuant to the oral enquiry, the charges were held to be proved and the disciplinary authority had imposed the punishment of removal from service, through an order dated 03.01.2006. On appeal, the second respondent herein had modified the punishment into one of postponement of petitioner's increment for two years with cumulative effect and it shall operate to postpone his future increments. This Writ Petition is against these orders of punishments.

4. The learned Senior counsel for the petitioner had mainly embarked on the ground that the order of the second respondent modifying the punishment, is not proportionate to the levelled charges. On the other hand, the learned Government Pleader would submit that though the original punishment was one of removal from services, the second respondent had taken a lenient view and modified the punishment. It is his further case that the charges are grave in nature and therefore, there is no infirmity in the modified punishment awarded by the second respondent.

5. In service jurisprudence, a mere reference to the charges and claiming them to be grave in nature is not sufficient to substantiate the proportionality of the punishment. What requires to be substantiated is as to whether the charges were proved on the basis of satisfactory evidences both oral and documentary? Though the first respondent herein had originally passed the punishment of removing the petitioner from services, the second respondent herein, on appeal, had found it fit to modify the punishment into a punishment of postponement of his increment for two years with cumulative effect. The reason assigned by the second respondent for modifying the punishment is that the affected women police constables did not prefer any serious or grave complaints against the petitioner; that there was no entry made in the General Diary (GD); that there was no documentary evidence against the petitioner, such as complaint of the affected person or corresponding GD entry in respect of



other two charges. It was further held that the prosecution had relied only on the statements of prosecution witnesses for all the four counts and imposed the grave punishment of removal from services. Based on these findings, the second respondent had disagreed with the views of the punishing authority that the charges were grave in nature or affecting the moral turpitude and accordingly, modified the punishment.

6. The learned Senior counsel for the petitioner had submitted that the petitioner would be satisfied if the punishment imposed by the second respondent that stoppage of increment for the period of two years "with cumulative effect" is modified into stoppage of increment without cumulative effect. In order to consider such a plea, it would be appropriate to analyse as to whether the modified punishment is in proportion to the charges levelled against the petitioner.

7. The doctrine of proportionality is a well recognized ground on which a Writ Court can interfere with the order of punishment, when such a punishment is outrageously disproportionate to the nature of misconduct that shocks the conscience of the court. This proportion has been substantiated and reiterated in various decisions of the Hon'ble Apex Court.

8. As observed in the impugned order of the second respondent passed in appeal, the enquiry officer herein had relied only on the statements given by the prosecution witnesses and had held all the charges to have been proved. This aspect was noticed by the second respondent in appeal and by taking into account that there was no mitigating circumstances such as complaints from the women constables, absence of documentary evidences and no corresponding GD entries, it was held that the charges cannot be said to be grave in nature or affecting moral turpitude.

9. The mitigating circumstances, pointed out by the Appellate Authority/second respondent are the basis or foundation on which the charges can be sustained. Insofar as the first two charges against the petitioner for misbehavior with women police constables are concerned, the second respondent had found that there was no complaints from the women police constables and further that there was no entry in the GD. It was also observed that there was no documentary evidence against the petitioner. Insofar as the other two charges are concerned, the second respondent held that the affected party had not made any complaint and that there was no corresponding entries in the GD. Ultimately, these findings of the second respondent discloses that there was no basis at all to hold the



charges as proved. In other words, had the enquiry officer taken a similar view as that of the second respondent, all the four charges could have held as "not proved" and consequently the petitioner may have been absolved from the charges. When the charges itself are not sustainable, the punishment of stoppage of increment for a period of two years, "with cumulative effect", is not only disproportionate to the levelled charges, but is also shockingly disproportionate, since the punishment had affected the future earnings of the petitioner, including his pension. Thus, it could be said that the modified punishment imposed by the Appellate Authority shocks the conscience of the Court and hence it would be justifiable to interfere with the same.

10. The Hon'ble Supreme Court in Charanjit Lamba Vs. Commanding Officer, Army Southern Command and Others reported in 2010 (11) SCC 314 had taken into account various other decisions in connection with the doctrine of proportionality and held as follows:-

"19. That the punishment imposed upon a delinquent should commensurate to the nature and generally of the misconduct is not only a requirement of fairness, objectivity, and non-discriminatory treatment which even those of the quality of a misdemeanour are entitled to claim but the same is recognized as being a part of Article 14 of the Constitution. It is also evident from the long time of decisions referred to above that the courts in India have recognized the doctrine of proportionality as one of the ground for judicial review. Having said that we need to remember that the quantum of punishment in disciplinary matters is something that rests primarily with the disciplinary authority. The jurisdiction of a Writ Court or the Administrative Tribunal for that matter is limited to finding out whether the punishment is so outrageously disproportionate as to be suggestive of lack of good faith.

20. What is clear is that while judicially reviewing an order of punishment imposed upon a delinquent employee the Writ Court would not assume the role of an appellate authority. It would not impose a lesser punishment merely because it considers the same to be more reasonable than what the disciplinary authority has imposed. It is only in cases where the punishment is so disproportionate to the gravity of charge that no reasonable person placed in the



position of the disciplinary authority could have imposed such a punishment that a Writ Court may step in to interfere with the same."

11. However, since the petitioner herein was a member of the Armed Police Force, he ought not to have given room for such overt acts, leading to framing of these charges and on that basis, this Court intends to retain a part of the impugned punishment, with further modification. Incidentally, the petitioner concedes that the punishment could be modified to postponement of increment for two years, without cumulative effect.

12. In the light of the above observations, the impugned orders passed by the first respondent in J2/P.R.48/2005 u/r. 3 (b) dated 03.01.2006 and confirmed by the second respondent in C.No.B2/AP.04/2006 dated 09.03.2006 and further confirmed by the third respondent in RC.No.156676/A.P.I(2)/2014 dated 01.12.2016, are set aside. Consequently, there shall be a direction to the second respondent herein to pass appropriate orders, imposing punishment on the petitioner to the effect of postponing his increment for two years "without cumulative effect". The second respondent shall pass such orders within a period of six weeks from the date of receipt of a copy of this order.

13. It is needless to point out that in view of such a modification in the punishment, the petitioner would be entitled for all the consequential monetary and service benefits including the pensionary benefits. The Writ Petition Stands allowed accordingly. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Superintendent of Police,
Kancheepuram District.

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



3.The Director General of Police,
Chennai-600 004,
Tamil Nadu.

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+1cc to M/s.M.Muthappan, Advocate Sr.30502
+1cc to the Government Pleader Sr.30566

W.P.No.19498 of 2018

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