

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.1200 of 2020

K.Sivakumar

... Appellant

Vs.

1.The Deputy Superintendent of Police,
(Armed Reserve),
Vellore.

2.The Superintendent of Police,
Vellore, Vellore District.

3.The Deputy Inspector General of Police,
Vellore Range, Vellore.

... Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 18.9.2020 made in W.P.No.40420 of 2005.

For Appellant : Mr.L.Chandrakumar

For Respondents : Mr.V.Jayaprakash Narayanan
State Government Pleader

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

The appeal arises out of the dismissal of a writ petition by a police personnel who suffered a punishment of compulsory retirement. By the judgment and order impugned dated September 18, 2020, the writ Court found no occasion to interfere with the findings rendered against the writ petitioner and the punishment handed down to him.

2. The writ petitioner was charged on two counts as follows:

"1. You have given false promise as to marry the school girl Selvi. Kanthalakshmi, Age 17, D/o. Rangasamy and has taken her from her house several times and molested her modestly and committed rape and by that committed condemnable act and violated the Rule 23 of the Tamil Nadu Police Sub-ordinate Service (Discipline Control and Appeal) Rules, 1964.

2. From 3.9.2004 went on medical leave for 30 days and when you were in the medical leave, on 10.9.2004 in contra to your promise, you have married one of your relative girl by counterfeit and Selvi. Kanthalakshmi gave complaint against you at Vellore All Women Police Station and case registered in Cr. No.38/2004 u/s. 417, 376 and 506(i) of IPC and involved in the criminal case and by that committed condemnable act and spoiled the good name and image of the police force."

3. An inquiry was conducted by the Deputy Superintendent of Police, Armed Reserve, Vellore. The inquiry officer rendered a finding that the first charge had not been proved but the second charge had been proved. The inquiry report was placed before the disciplinary authority, being the Superintendent of Police, Vellore District. The concerned Superintendent of Police agreed with the finding rendered by the inquiry officer on the second count of charge, but disagreed with the finding rendered on the first count. The reason for disagreement was indicated in the following words:

"4. PW1 Ganthalakshmi has clearly stated the intimacy developed with the delinquent in detail in her statement. The statement was corroborated by her mother and

maternal uncle. The IO in criminal case in Vellore AS PS Cr.No.38/2004 PW5 and the preliminary enquiry officer have also deposed the facts relating to the intimacy between PW1 and the delinquent. PW5 - the preliminary enquiry officer has deposed that the delinquent has promised PW1 Ganthalakshmi that he will marry her after the marriage of his sister and also that the neighbours have seen PW1 in the company of the delinquent riding motorcycle on several occasions."

4. Following such partial disagreement with the inquiry officer's report, a notice was issued on March 9, 2005 by the Superintendent of Police calling upon the writ petitioner to make a further representation. Such further representation was made by the writ petitioner by way of a writing dated March 26, 2005. There is no dispute that both the inquiry report and the further representation of the writ petitioner of March 26, 2005 were taken into account before the Superintendent of Police passed the order of punishment on June 30, 2005. Such order of punishment and the subsequent affirmation thereof in the departmental appeal were assailed by way of the petition under Article 226 of the Constitution.

5. On behalf of the appellant it is submitted that the procedure adopted by the disciplinary authority was bad since no notice of disagreement with any finding rendered by the inquiry officer had been issued to the delinquent. It is contended that the letter dated March 9, 2005 was the usual notice for further representation since the disciplinary authority had agreed with the finding of the inquiry officer to the effect that one of the charges stood proved. The categorical submission is that to the extent that the disciplinary authority did not agree with the finding of innocence rendered by the inquiry officer in respect of the first charge, specific notice of the delinquent ought to have been invited to the fact that a contrary view was taken by the disciplinary authority for the delinquent to be alive to such aspect and address the disciplinary authority on such count.

6. The contention has to be rejected out of hand. It was clearly indicated at the end of the third paragraph of the notice of March 9, 2005 that the disciplinary authority did not agree with the finding of the innocence rendered by the inquiry officer in respect of the first count of charge. The following paragraph indicated the reasons why the disciplinary authority did not agree with the finding rendered on

the first count by the inquiry officer. Thus, the attention of the delinquent was specifically drawn to the fact of disagreement and the grounds for disagreement.

7. Though the further representation of March 26, 2005 furnished by the delinquent is not on record, it is evident from the third paragraph of the order of punishment dated June 30, 2005 that the disciplinary authority took such further representation of the delinquent into account. The order of punishment records in such regard that the delinquent had asserted that in the absence of any documentary material to establish the first charge, the inquiry officer's finding in such regard had to be accepted.

8. Notwithstanding such position and the objection on technical grounds, which is founded on the principle of natural justice, not being worthy, it is also the duty of the writ Court to ensure that no injustice is occasioned to a party. It is here that the fourth paragraph of the order of punishment of June 30, 2005 is of significance:

"4. But, I disagree with the findings of the Enquiry Officer regarding the charge in counter No.1 against the

delinquent. The charge in count No.1 also clearly proved through the P.Ex.1 to 9 and P.Ws.1 to 9. The P.W.1 Selvi Kanthalakshmi had clearly stated the intimacy developed with the delinquent in detail in her statement. her mother and maternal uncle corroborated the statement. the Investigation officer in criminal case in Vellore AWPS Cr.No.38/2004 u/s.417, 376, 506(ii) IPC ad P.W.5 Selvi. Kanthalakshmi that he will marry her after the marriage of delinquent's sister and also that the neighbors have seen P.W.1 in the company of the delinquent riding motor cycle on several occasions."

9. It may do well at this stage to notice once again that the first charge levelled against the delinquent was in two parts: that the delinquent had promised to marry the minor girl; and, that the delinquent had taken the minor girl from her house "and molested her modesty and committed rape ..."

10. It is one thing to say that a person had promised to marry another or that a man and a woman were found to be so intimate and so engrossed in each other's company that it was more likely than not that they would get married, and an altogether different cup of tea to

suggest that the physical closeness of a man and a woman suggested that the man may have been physically intimate with the woman or may have outraged her modesty or raped the woman. In a sense, paragraph 4 of the order of punishment reiterates the grounds indicated in paragraph 4 of the notice issued by the disciplinary authority on March 9, 2005, forwarding the inquiry officer's report to the delinquent along with the note of disagreement of the disciplinary authority qua the first charge.

11. What weighed with the disciplinary authority was that several witness had said that the delinquent was found to be intimate with the minor girl and the delinquent was found in the company of the minor girl several times. The witnesses also claimed that the delinquent had promised to marry the minor girl. It was possible, in such circumstances, considering the nature of the intimacy as brought out by the witnesses, for the adjudicating authority to hold, on a balance of probabilities, that the delinquent's denial of his promise to marry the minor girl may not have been truthful. However, merely because the delinquent may have promised to marry the minor girl or the disciplinary authority may have been convinced on the state of the

evidence that the delinquent may have or is likely to have proposed marriage to the minor girl or promised to marry her would not entail that a charge of outraging the modesty of the minor girl or of molesting her or committing rape would stand established.

12. Since the first charge was worded as it was - in a sense it was loaded, so to say - both parts of it had to be affirmatively established for the harsh punishment of compulsory retirement from service to be meted out to the delinquent. Surely, the failure to live up to a promise to marry cannot be equated with the commission of the offence of rape. What is evident from the appreciation of the evidence by the disciplinary authority is that the intimacy between the two was established but there is not a shred of evidence alluded to, to indicate that any physical violence was resorted to by the delinquent. In such circumstances, it is only the first part of the first charge that can, at best, be found to have been established; certainly, not the second and the more grievous part of the charge.

13. The second count of charge was really irrelevant and whether or not it was proved is of little consequence once it is seen

that the criminal proceedings resulted in an acquittal. Thus, the delinquent was found to have made a promise to a minor girl to marry her, the delinquent was found to be intimately associated with such minor girl and the delinquent ultimately reneged on his promise and married another. Such facts, even to the meanest mind, would not warrant a punishment of compulsory retirement from service. Considering the extent of the charges that was proved, the punishment appears to be shocking.

14. As a consequence, the judgment and order impugned dated September 18, 2020 is set aside as it does not address the real issues and fails to take into account relevant considerations. The findings in the disciplinary order of June 30, 2005 are accepted to the extent that the charge of promise to marry was established and the delinquent did not deliver on such promise. However, there was no material for the disciplinary authority to come to a finding that the delinquent had outraged the modesty of the minor girl or molested her or committed rape on her.

15. The appellate authority ought to have applied its independent mind to the matters in issue and rendered a finding thereupon. As is usually the case, the appellate authorities make a facile attempt at regurgitating the words used in the order under appeal and paraphrasing some of the paragraphs to present the pretence of application of mind without there being any. In the instant case, it should have dawned on the appellate authority that it was only a limited aspect of the first charge that was established and not the more grievous part.

16. Accordingly, the writ petition is allowed by setting aside the order of punishment dated June 30, 2005 as upheld in the appellate order dated September 23, 2005 and by remanding the matter back to the disciplinary authority for considering a much lesser punishment which should not amount to dismissal from service or compulsory retirement but ought to be limited to withholding of a few increments with or without cumulative effect.

17. The judgment and order impugned are set aside. W.A.No.1200 of 2020, is disposed of without any order as to costs.

The disciplinary authority will do well to ensure that the fresh order of punishment is passed within a period of two months from the receipt of a copy of this order. For the period between the order of compulsory retirement and now, the writ petitioner will be entitled to half of the salary or wages as the writ petitioner would have earned if the writ petitioner was in service but had suffered the lesser punishment that may now be handed down to him. It has been submitted on behalf of the appellant that he has at least another ten years of service left.

(S.B., C.J.) (S.K.R., J.)
21.01.2021

Index : Yes
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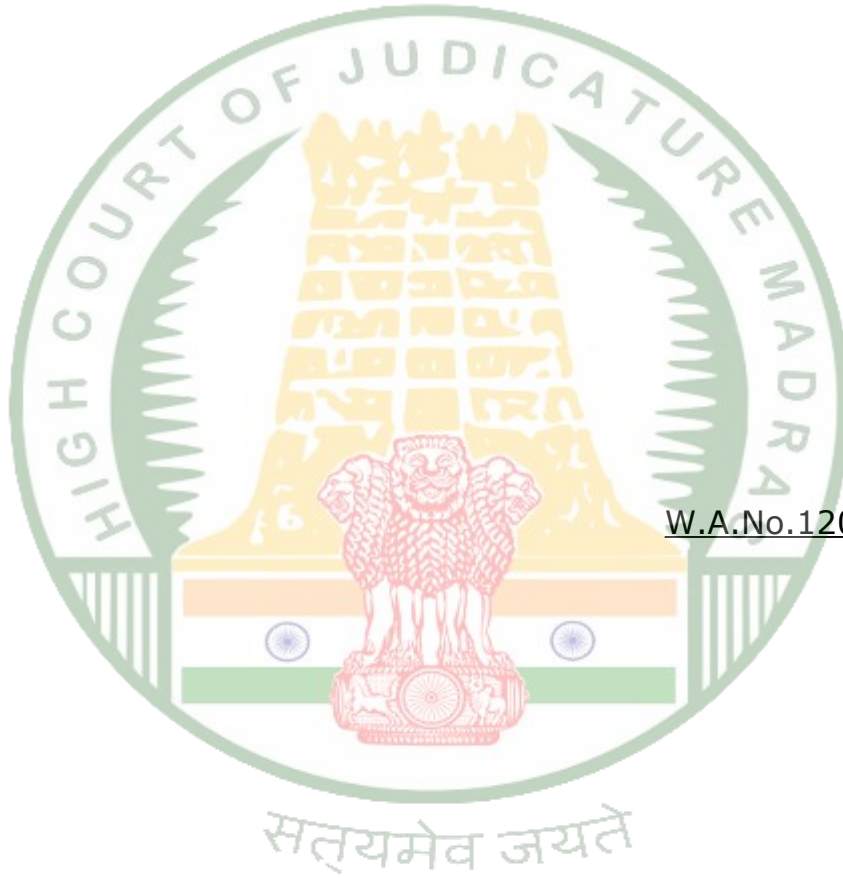
To

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