



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.07.2021

Pronounced on : 29.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P (MD)No.7938 of 2021

and W.M.P (MD)No.6051 of 2021

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Saravanakumar, S/o.Sangaiyapillai

... Petitioner

vs.

1.The Director General of Police,
Law and Order,
Chennai - 600 004.

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

3.The Superintendent of Police,
Dindigul District,
Dindigul.

4.The Deputy Superintendent of Police,
Vedasanthoor Sub-Division,
Dindigul District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in P.R.No.116 of 2015, dated 04.04.2017, passed by the third respondent and the consequential modification order passed by the second respondent in Rc.No.AP-20/A2/2017, dated 16.06.2017, and the consequential rejection order passed by the first respondent in R.C.No.060617/AP.2 (3)/2018, dated 11.08.2018, quash the same and further direct the respondents 1 to 4 to reinstate the petitioner as Grade - I Police Constable (P.C.1636) and he was serving in Samynathapuram Police Station, Dindigul District, with all service benefits.

For Petitioner	: Mr.G.Prabhu Rajadurai for Mr.C.Susi Kumar
For Respondents	: Mr.P.Subbaraj Government Advocate

ORDER

The petitioner has filed this Writ Petition seeking to quash the impugned order in P.R.No.116 of 2015, dated 04.04.2017, passed by the third respondent and the consequential modification order passed by the second respondent in Rc.No.AP-20/A2/2017, dated 16.06.2017, and the consequential rejection order passed by the

<https://hcservices.courts.gov.in/hcservices/>

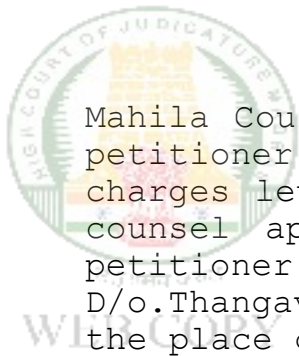


first respondent in R.C.No.060617/AP.2(3)/2018, dated 11.08.2018, and further direct the respondents 1 to 4 to reinstate the petitioner as Grade - I Police Constable (P.C.1636) with all service benefits.

2.The petitioner while working as Grade - I Police Constable in Samynathapuram Police Station, Dindigul District, a criminal case in Crime No.427 of 2014 for the offences under Sections 294(b), 341 and 506(i) IPC was registered against him. Based on the registration of the said F.I.R., the petitioner was kept under suspension on 03.10.2014. While the trial of case was pending, a charge memo dated 31.07.2015, was issued by the third respondent to the petitioner alleging the very same incident as misconduct. The petitioner has submitted his explanation on 10.12.2015 and also participated in the enquiry. The fourth respondent / Enquiry Officer submitted his report dated 28.12.2016, holding that the charge levelled against the petitioner was proved. On the basis of the enquiry report, the third respondent, by order dated 04.04.2017, dismissed the petitioner from service. Aggrieved over the same, on 27.04.2017 the petitioner filed an appeal before the second respondent, who vide proceedings dated 16.06.2017, modified the punishment of dismissal from service as that of compulsory retirement. Thereafter, the petitioner filed review petition before the first respondent. The first respondent rejected the said review petition on 11.08.2018. Challenging the above said orders, the petitioner has come out with the present Writ Petition.

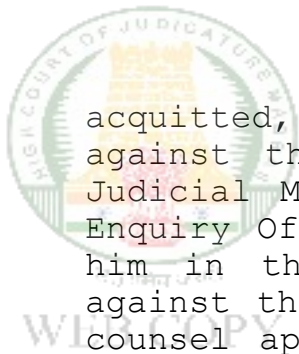
3.The learned counsel appearing for the petitioner submitted that the fourth respondent / Enquiry Officer without there being any material, has held that the charge levelled against the petitioner has been proved. The fourth respondent / Enquiry Officer failed to see that the complainant - Amutha, in cross-examination, has given contradictory statement with regard to the date of complaint and time of occurrence. Without there being any evidence that the petitioner was having illicit relationship with one Pandiyalakshmi, the fourth respondent / Enquiry Officer held that the said charge was proved. After trial in the criminal case, the learned Judicial Magistrate No.I, Dindigul, vide judgment dated 04.02.2019, in C.C.No.152 of 2015, acquitted the petitioner and others, as the prosecution failed to prove the case beyond reasonable doubt. The respondents 3, 2 and 1 have passed the impugned orders in a mechanical manner without appreciation of the judgment dated 04.02.2019, rendered in C.C.No.152 of 2015, by the learned Judicial Magistrate No.I, Dindigul. The impugned orders are illegal and arbitrary.

4.The learned counsel appearing for the petitioner submitted that the wife of the petitioner gave a complaint against the petitioner, his father, his sister and brother and the said Pandiyalakshmi for dowry harassment. In the said criminal case in



Mahila Court, Dindigul, by judgment dated 13.03.2020, acquitted the petitioner and others, as the prosecution failed to prove the charges levelled against them beyond reasonable doubt. The learned counsel appearing for the petitioner further submitted that the petitioner was attending the engagement function of one Kavitha, D/o.Thangavel at the time of occurrence and he was not present at the place of occurrence. Three witnesses examined by the petitioner to prove his case was rejected by the fourth respondent / Enquiry Officer without any valid reason. Further, no evidence was let in before the fourth respondent / Enquiry Officer to prove that the petitioner was having illicit relationship with the said Pandiyalakshmi and without there being any evidence, the fourth respondent / Enquiry Officer as well as the third respondent / disciplinary authority have held that the charge levelled against the petitioner was proved.

5.The learned counsel appearing for the petitioner elaborately referred to the evidence placed before the fourth respondent / Enquiry Officer and submitted that without properly appreciating the evidence let in by the respondents as well as by the petitioner, the fourth respondent / Enquiry Officer erroneously held that the charge levelled against the petitioner was proved. The learned counsel appearing for the petitioner further submitted that there was a civil dispute between Amutha and Pandiyalakshmi with regard to lease of a house property belonging to Pandiyalakshmi. The same was converted into a criminal case and the said Pandiyalakshmi was humiliated by the officials of the Dindigul Town West Police Station. In view of the same, Pandiyalakshmi attempted to commit suicide and in the statement taken from her in the Hospital, she implicated the Police officials of Dindigul Town West Police Station. In order to get over the said statement, the Police officials forced Amutha to give a false complaint. The petitioner was not present in the place of occurrence on the date and time mentioned in the complaint. The petitioner examined three witnesses and proved that he was attending the engagement ceremony of one Kavitha, D/o.Thangavel. The petitioner examined the said Thangavel and also two other witnesses, who accompanied the petitioner to the said function. The fourth respondent / Enquiry Officer rejected the same stating that they are giving evidence only to favour the petitioner. Before the fourth respondent / Enquiry Officer, no evidence was produced to show that the petitioner was having illicit relationship with Pandiyalakshmi. When there is no charge or evidence, the fourth respondent / Enquiry Officer, in his report, has stated that the petitioner and Pandiyalakshmi with whom the petitioner was having illicit relationship, abused and threatened Amutha and her husband and father. The petitioner while working in Samynathapuram Police Station, Dindigul District, was suspended from service. The respondents have not called for report to show that the petitioner was not present within Samynathapuram Police Station limit on the date of occurrence. On the very same complaint given by Amutha and others, after full-fledged trial, were

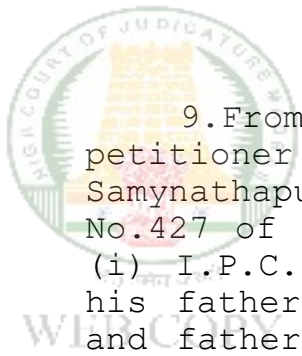


acquitted, as the prosecution failed to prove the charge levelled against them. The evidence given by Amutha before the learned Judicial Magistrate was not accepted, but the fourth respondent / Enquiry Officer has accepted the statement of Amutha, given before him in the domestic enquiry and held that the charge levelled against the petitioner is proved, which is erroneous. The learned counsel appearing for the petitioner contended that in any event, the punishment imposed on the petitioner is disproportionate to the alleged misconduct, which has nothing to do with the discharge of his official duty.

6.The learned counsel appearing for the petitioner vehemently contended that no charge was framed against the petitioner that he was having illicit relationship with the said Pandiyalakshmi. The learned counsel appearing for the petitioner contended that without there being any charge and without there being any evidence, the fourth respondent / Enquiry Officer held that the petitioner and Pandiyalakshmi with whom the petitioner is having illicit relationship abused and threatened Amutha and her husband and father and caused dis-reputation to the Police force. The said finding rendered without any charge and evidence, vitiates the entire enquiry report. The learned counsel appearing for the petitioner further referred to the evidence let in before the fourth respondent / Enquiry Officer in support of his contention. The learned counsel appearing for the petitioner also submitted that the fourth respondent / Enquiry Officer has not given any finding based on the evidence let in before him and has given a finding that the charge levelled against the petitioner is proved based on the preliminary enquiry report and prayed for allowing the present Writ Petition.

7.The learned Government Advocate appearing for the respondents submitted that the petitioner was serving in Uniformed Service and he must maintain discipline and absolute integrity. On the other hand, the petitioner had an illicit relationship with one Pandiyalakshmi. In view of the same, he waylaid and abused one Amutha, her father in filthy language and threatened them. For the said misconduct, disciplinary proceedings was initiated against the petitioner. In the domestic enquiry conducted, the respondents proved the charge levelled against the petitioner. The fourth respondent / Enquiry Officer has given a report only based on the oral and documentary evidence placed before him. The respondents 3, 2 and 1 have considered all the materials in proper perspective and by giving valid reasons, passed the impugned orders. The impugned orders are not arbitrary and illegal. The petitioner has not made out any case for interference at the hands of this Court and prayed for dismissal of the Writ Petition.

8.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials on record.



9. From the materials available on record, it is seen that the petitioner while working as Grade - I Police Constable in Samynathapuram Police Station, Dindigul District, an F.I.R. in Crime No.427 of 2014 for the offences under Sections 294(b), 341 and 506 (i) I.P.C. was registered against him alleging that he along with his father and one Pandiyalakshmi waylaid one Amutha, her husband and father, abused and threatened them. In view of the criminal case registered against the petitioner, disciplinary proceedings was initiated against him. A Charge Memo dated 03.08.2015, containing a charge was issued to him. The petitioner submitted his explanation to the said charge memo and denied the charge levelled against him. The petitioner participated in the domestic enquiry and he examined three witnesses as defence witnesses to prove his innocence. The fourth respondent / Enquiry Officer gave a report holding that the charge levelled against the petitioner was proved.

10. It is seen from the explanation submitted by the petitioner to the second show cause notice that he has taken a specific stand about lack of evidence and the fourth respondent / Enquiry Officer not giving any finding based on the evidence let in before him. The third respondent / disciplinary authority has extracted the above explanation of the petitioner in the impugned order, but has not considered the explanation independently and has not given any finding for not accepting or rejecting the said explanation. The contention of the learned counsel appearing for the petitioner that without charge or without evidence, the fourth respondent / Enquiry Officer has given a finding that the petitioner and Pandiyalakshmi with whom the petitioner is having illicit relationship, waylaid, abused and threatened the complainant - Amutha, her husband and father, is proved. The third respondent / disciplinary authority without considering the materials placed before him in proper perspective, has passed the impugned order of dismissal and therefore, the impugned order of dismissal is liable to be set aside, has considerable force. In the domestic enquiry, strict proof of evidence as required in the criminal case is not necessary and based on the preponderance of probability, the charge levelled against the petitioner can held to be proved. But, at the same time, there must be some evidence to prove the charge levelled against the petitioner. From the impugned order of dismissal of the third respondent, it is seen that the third respondent has extracted the charge levelled against the petitioner, his explanation and has held that 9 witnesses examined and 15 documents marked on behalf of the prosecution proved the charge levelled against the petitioner and that the petitioner having illicit relationship with Pandiyalakshmi, committed misconduct and caused dis-reputation to the police force. This finding rendered without considering the explanation of the petitioner and analyzing the evidence, amounts to non-application of mind. In the appeal filed by the petitioner, the second respondent has modified the punishment of dismissal to that of compulsory retirement. Again, the second respondent also except

<https://hcs.eports.gov.in/cservices/> is taking lenient view, has not given any other



reasons. When the appellate authority confirms the order of the disciplinary authority, the appellate authority need not give any elaborate reason, but when the order is modified or set aside, the appellate authority must give reasons for modifying or setting aside the punishment.

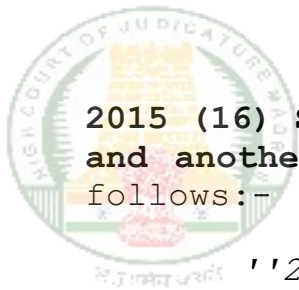
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11.The petitioner filed review petition before the first respondent. The first respondent treated the review petition as mercy petition. While considering the materials placed before him, the first respondent has erroneously held as follows:-

''The petitioner enquired the above civil dispute in the Police Station between Amutha and Pandiyalakshmi and ensured payment of only Rs.50,000/- by Pandiyalakshmi to Amutha and obtained a promise to pay the balance later. Subsequently, he abused and assaulted the said Amutha and her family members in favour of Pandiyalakshmi with whom he was having illicit intimacy, which resulted in registration of a criminal case under Sections 294(b), 341 and 506(i) I.P.C.''

This is not the charge framed against the petitioner and no evidence was let in to prove that the petitioner assaulted the complainant - Amutha and her family members. Similarly, the petitioner was not working in the Police Station where the complaint against Pandiyalakshmi was enquired. The petitioner while working as Grade - I Police Constable in Samynathapuram Police Station, Dindigul District, a complaint against one Pandiyalakshmi was enquired by the Police, Dindigul Town West Police Station. The statement made in the mercy petition is that the petitioner enquired the civil dispute between Amutha and Pandiyalakshmi in the Police Station, which is not the case of the respondents and no evidence was let in to show that the petitioner enquired the civil dispute in the Police Station. The petitioner was not working at Dindigul Town West Police Station at that time. This shows that the first respondent is finding out ways and means to confirm the order of punishment and reject the review petition / mercy petition.

12.It is well settled that Courts under Article 226 of the Constitution of India will not interfere with the disciplinary proceedings and punishment imposed. It is held that Courts while considering the writ petition challenging the disciplinary proceedings and punishment imposed, is not acting as Court of Appeal, but only considering the same by way of review. The Court is not entitled to re-appreciate the evidence and interfere with the punishment imposed by the disciplinary authority. At the same time, it has been held that if finding is based on no evidence and is illegal or on any other ground, the Courts can interfere with the findings of the Enquiry Officer and order of punishment. The Courts can either remand the matter or substitute the punishment. This has been held so by the Hon'ble Apex Court in the judgment reported in



2015 (16) SCC 415 [Prem Nath Bali Vs. Registrar, High Court of Delhi and another]. The relevant portion of the said judgment reads as follows:-

'20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority.'

When the punishment imposed is wholly unreasonable, arbitrary and disproportionate to the gravity of proven charges, the Court can interfere with the punishment imposed and either remit the matter to the authority or substitute the punishment in the writ proceedings itself. This issue was considered by a Division Bench of this Court in W.A.(MD)No.58 of 2011, by the judgment dated 15.02.2017, confirming the order of the learned Single Judge, who appreciated the evidence placed before the Enquiry Officer and held that the finding of the Enquiry Officer is not supported by evidence. In Paragraph 6, the contention of the learned counsel for the respondent/delinquent employee was extracted, which reads as follows:-

'6. Per contra, the learned counsel for the respondent, by placing reliance upon the unreported judgment of the Hon'ble Supreme Court dated 02.01.2017, in Civil Appeal No.7600 of 2014 in the case of Allahabad Bank & Ors. vs. Krishna Narayan Tewari, submitted that the Writ Court can interfere with the disciplinary enquiry on the ground of non-



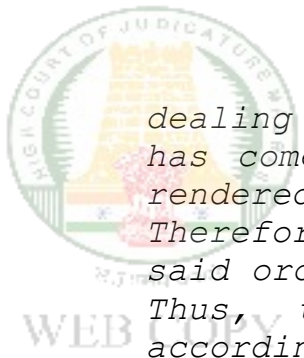
application of mind on the part of the enquiry officer or the disciplinary authority or for non-recording of reasons in support of conclusion arrived at by them. The relevant portion from the said judgment reads thus:

"7. We have given our anxious consideration to the submissions at the bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a Departmental Authority on the basis of evidence available on record. But it is equally true that in a case where the Disciplinary Authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment....."

Thus, he prayed for dismissal of the Writ Appeal.'

After considering the materials on record, the Division Bench of this Court dismissed the appeal filed by the Department. In Paragraph 8 of the judgment, the Division Bench of this Court has held as follows:-

'8. On perusal of the materials available on record, we find that the learned Single judge, by relying upon the entire evidence, has arrived at a finding that the Enquiry Officer has not considered the testimonies of witnesses in proper perspective. The findings of the Enquiry Officer were based on surmises and conjectures and the disciplinary authority also simply agreed with the findings of the Enquiry Officer and went through the report of the Tamil Nadu Public Service Commission and ordered for removal from service. The learned Single Judge has also come to the conclusion that the disciplinary authority has failed to consider the material points and simply accepted the findings of the Enquiry Officer. Therefore, in our considered view, if the finding of the Enquiry Officer is not supported by any evidence, the Court can make an interference. In the instant case, by



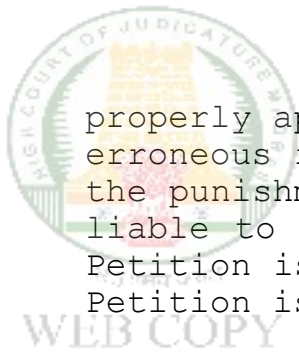
dealing with each and every aspect, the learned Single Judge has come to the correct conclusion that the Enquiry Officer rendered a finding based on surmises and conjectures. Therefore, absolutely, we do not find any infirmity in the said order warranting interference at the hands of this Court. Thus, the Writ Appeal is liable to be dismissed and accordingly, it is dismissed. The appellants are directed to disburse the retirement benefits, within a period of six weeks from the date of receipt of a copy of this judgment. No costs.''

The ratio in the said judgment is squarely applicable to the facts of the present case as the fourth respondent / Enquiry Officer has given a finding that the petitioner in view of his illicit relationship with Pandiyalakshmi, abused and threatened Amutha and her family members, without there being any charge or evidence. The fourth respondent / Enquiry Officer, the third respondent / Disciplinary Authority, the second respondent / Appellate Authority as well as the first respondent / Reviewing Authority have repeatedly mentioned that the petitioner was having illicit relationship with Pandiyalakshmi, which resulted in registration of F.I.R., when there is no evidence to that effect.

13.As per the judgment of the Division Bench of this Court, dated 15.12.2017, made in W.A.(MD)No.58 of 2011, when findings of the Enquiry Officer is on surmises and conjectures and not by acceptable evidence, the findings of the fourth respondent / Enquiry Officer are vitiated and this Court in a writ proceeding, can interfere with such finding and punishment imposed by the disciplinary authority.

14.In present case, the petitioner was prosecuted for the very same offence for same set of facts. After full-fledged trial, the petitioner was acquitted. Even after acquittal in the criminal case, the Department is entitled to proceed with the departmental proceedings. It is also held that when the delinquent employee is acquitted in the criminal case, the same has to be taken into account while considering continuation of departmental proceedings and punishment imposed. I had an occasion to consider this issue in W.P.(MD)No.22184 of 2019, relied on by the learned counsel appearing for the petitioner. I have passed an order on 18.11.2019 setting aside the order of punishment imposed on the delinquent employee. In the said order, I have referred to the judgment of this Court, dated 25.03.2019 in **S.Suresh Kannan Vs. The Director General of Police.**

15.In view of the findings without any evidence and imposition of punishment accepting the enquiry report and the second respondent not giving any reason while disposing the appeal and the first respondent rejecting the review petition / mercy petition without



properly appreciating the materials placed before him and giving new erroneous reason for rejecting the review petition / mercy petition, the punishment of compulsory retirement imposed on the petitioner is liable to be set aside. Accordingly, it is set aside and the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Director General of Police,
Law and Order,
Chennai - 600 004.

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

3.The Superintendent of Police,
Dindigul District,
Dindigul.

4.The Deputy Superintendent of Police,
Vedasanthoor Sub-Division,
Dindigul District.

+1 CC to M/s.C.SUSIKUMAR, Advocate (SR-24264[F] dated 29/07/2021)

+1 CC to M/s.The Special Government Pleader (SR-24950[F] dated 02/08/2021)

Pre-delivery order made in
W.P(MD)No.7938 of 2021
29.07.2021

RS (01.09.2021) 10P 7C