



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2021

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)No.10319 of 2014

and

M.P. (MD)No.1 of 2014

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P.Deenadayalan

... Petitioner

vs.

1.The State of Tamil Nadu
represented by its Principal Secretary to Government,
Home Department,
Secretariat, Chennai.

2.The Director General of Police,
Chennai - 4.

3.The Inspector General of Police
cum Commissioner,
Madurai City, Madurai.

4.Deputy Commissioner of Police,
Armed Reserve,
Madurai City, Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the first respondent in his proceedings G.O.(2D)No.401, Home (Police VI) Department, dated 01.08.2013 confirming the order passed by the second respondent in his proceedings C.No.104553/AP.2(3)/2010, dated 20.01.2011 modifying the order passed by the third respondent in his proceedings in Na.Ka.No.D1(2)/Appeal.11/09, dated 23.10.2009 confirming the order passed by the fourth respondent in his proceedings in F order, dated 19.05.2009 and to quash the same as illegal and consequentially to direct the respondents to promote the petitioner as Head Constable with effect from the date on which his immediate junior was promoted.

For Petitioner : Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates
For Respondents : Mr.M.Linga Durai
Government Advocate

**ORDER**

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of the first respondent vide G.O.(2D)No.401, Home (Police VI) Department, dated 01.08.2013, confirming the order passed by the second respondent in his proceedings, dated 20.01.2011, modifying the order passed by the third respondent in his proceedings, dated 23.10.2009, confirming the order passed by the fourth respondent in his proceedings, dated 19.05.2009, and to direct the respondents to promote the petitioner as Head Constable with effect from the date on which his immediate junior was promoted.

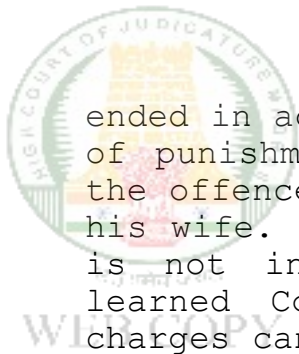
2.Heard, Mr.C.Venkatesh Kumar, learned Counsel appearing for the petitioner and Mr.M.Linga Durai, learned Government Advocate appearing for the respondents.

3.Brief facts, that are necessary for the purpose of disposal of this Writ Petition, are as follows:

3.1.The petitioner was appointed as Police Constable Grade-II on 24.05.1999. He was promoted as Police Constable Grade-1 on 24.05.2010. While the petitioner was working as Police Constable Grade-II, the fourth respondent issued a charge memo on 09.08.2008 alleging that he was arrested in connection with a criminal case lodged by his ex-wife for dowry harassment. After receiving the explanation from the petitioner, the fourth respondent appointed an Enquiry Officer and based on the Enquiry Officer's report holding that the charge against the petitioner stood proved, the fourth respondent by order, dated 19.05.2009, imposed the punishment of postponement of increment for a period of one year without cumulative effect. It is admitted that the punishment was imposed after issuing second show cause notice and furnishing the copy of the enquiry report.

3.2.The order of the fourth respondent was challenged by the petitioner by way of appeal before the third respondent, who rejected the appeal, by impugned order, dated 23.10.2009. Thereafter, the petitioner preferred a revision/review petition before the second respondent, who in turn, by impugned proceedings, dated 20.01.2011, modified the punishment of postponement of increment for a period of one year without cumulative effect into that of black mark. Even thereafter, the petitioner preferred a mercy petition before the first respondent, who rejected the request of the petitioner, by impugned order vide G.O.(2D)No.401, dated 01.08.2013. Challenging the orders of respondents, the above Writ Petition is filed.

4.The learned Counsel for the petitioner raised several grounds in the Writ Petition, in the course of argument submitted <https://hservices.ecourts.gov.in/hservices/> and the criminal case registered at the instance of his ex-wife



ended in acquittal and that the respondents cannot sustain the order of punishment without any independent enquiry into the charges or the offences stated to have been committed by the petitioner against his wife. Stating that the charges levelled against the petitioner is not in connection with the petitioner's official duty, the learned Counsel for the petitioner submitted further that the charges cannot be independently proceeded, as the Criminal Court has given a verdict acquitting the petitioner from the charges. The learned Counsel for the petitioner referring to several factual details submitted that the complaint was lodged by his ex-wife based on no evidence and that therefore, his wife has given evidence before the Criminal Court contrary to, what she has stated in the complaint. It is further contended that the findings of the Enquiry Officer was based on no evidence and that therefore, the order of punishment cannot be sustained.

5.The learned Counsel also submitted that the Appellate Authority has not passed any reasoned order in conformity with Rule 6 of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, and that the orders of respondents are liable to be quashed, as they have not considered relevant material facts placed before him and the verdict of Criminal Court. Since the punishment of black mark will have serious implications affecting the promotion of the petitioner, the learned Counsel also stated that the impugned orders cannot be sustained without any independent evidence to prove the charges.

6.The learned Counsel relied upon a judgment of the Honourable Supreme Court in the case of **Roop Singh Negi vs Punjab National Bank and others**, reported in **(2009) 2 SCC 570**, to sustain his arguments that the orders passed by the second and first respondent without referring or assigning reasons cannot be sustained. The relevant portion of the said judgment of the Honourable Supreme Court reads as follows:

"23.Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been



sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

7.The learned Counsel for the petitioner relied upon a judgment of this Court in the case of **V.P.Suresh Kumar vs Deputy Inspector General of Police and another**, reported in (2011) 7 MLJ 1282, to sustain his argument that the appellate and review authority have not considered the grounds raised by the petitioner before them and the non speaking order passed by the respondents 2, 3 and 4 are liable to be set aside.

8.The learned Counsel also relied upon an unreported judgment of the learned Single Judge of this Court, dated 04.06.2015, W.P.15751 of 2015 in the case **Jyothi vs Vice Chancellor, Indhra Gandhi National Open University and others**, wherein, this Court has held as follows:

"3.Considering the above facts, I am not inclined to issue a direction as sought for by the petitioner. It is clearly a matrimonial dispute. Now the divorce proceedings is pending before the concerned court. If the petitioner is aggrieved by the conduct of her husband in getting married, while the marriage with her is subsisting, she can very well initiate proceedings in a criminal court in the manner known to law. The department cannot initiate criminal action for bigamous marriage. Even in the case of request to take departmental action, I am of the view that in the family matters, the department shall be very slow in taking departmental action. It is for the department to decide based on the facts of the each case. I am not inclined to issue direction to the department to take disciplinary action in the purely matrimonial dispute, by invoking the extraordinary jurisdiction under Article 226 of the Constitution of India. I find no merit in the Writ Petition."

9.The learned Counsel for the petitioner relied upon yet another judgment of this Court in the case of **K.Pichaimani vs The Management of TNSTC and others another**, in W.P.(MD)No.3365 of 2006, dated 14.12.2012, wherein, this Court has held as follows:

"19.A perusal of the above referred ruling of the Hon'ble Apex Court would show that the finding of the criminal Court has got a bearing on the departmental proceedings and though the decree of proof varies, the department cannot proceed to take a different view without showing strong reasons and circumstances to deviate from the finding of the criminal Court. When the management has miserably failed to prove the case against the petitioner,



considering his past conduct does not arise at all. Equally any admission said to have been made by the petitioner before police also cannot be relied upon as the contention of such admission cannot be taken as a conclusive proof."

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10. In the counter affidavit, except stating the involvement of the petitioner in the criminal case pursuant to the complaint lodged by the petitioner's ex-wife for offences punishable under Section 498A of IPC and Section 4 of Dowry Prohibition Act, no other independent charge is stated. In other words, the disciplinary proceedings were initiated against the petitioner on the ground that he was arrested pursuant to the criminal complaint and that his involvement in such criminal prosecution is a misconduct. Even in the order of second respondent, it is admitted that the wife has given criminal complaint immediately after the petition for divorce was filed by the petitioner against his wife. It is also admitted that the Criminal Court, by order in C.C.No.386 of 2014, dated 26.02.2010, acquitted the petitioner from the criminal case, which was registered at the instance of the petitioner's ex-wife. With regard to the judgment in the criminal case, it is stated that the judgment of the criminal case was delivered on 26.02.2010 after the appeal was dismissed by the third respondent and that therefore, the contention of the petitioner cannot be considered. Therefore, indirectly, it is admitted that the punishment against the petitioner was confirmed or modified without even considering the material facts that the petitioner was acquitted from the criminal case.

11. The learned Government Advocate relying upon the charge memo and the criminal complaint, submitted that the acquittal of petitioner by the Criminal Court is not honourable and that therefore, the Criminal Court's verdict cannot be the basis to quash the punishment imposed on the petitioner pursuant to the disciplinary proceedings initiated against him.

12. From the charge that was framed against the petitioner, it is seen that the petitioner's involvement in a criminal case resulting in his arrest was the cause for framing charges. Having regard to the nature of charge that was alleged against the petitioner, it is seen that the misconduct is not during employment, but as a result of domestic problem the petitioner faced with his wife. When disciplinary proceedings were initiated against a Government employee on the basis of a criminal complaint initiated at the instance of family members, great care should be taken, as it was observed in one of the judgments above referred to. It is to be seen that the petitioner's wife lodged a criminal complaint immediately after the petitioner filed a petition for dissolution of marriage against his wife. It is also seen that criminal offence alleged to have been committed by the petitioner is not in the



course of employment. The charge is based on a complaint by the petitioner's ex-wife against the petitioner.

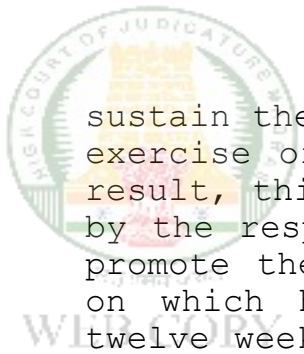
13. In such circumstances, the department should be cautious in taking departmental action, as they are not sure of getting the same witnesses. When the department cannot proceed against the Government servant independently, they cannot just ignore the verdict given by the criminal Court in relation to the offence, for which criminal prosecution was lodged.

14. It is admitted in this case that only on the basis of criminal complaint, the departmental action was initiated against the petitioner. The department, therefore, cannot ignore the petitioner's acquittal by the criminal Court after full fledged trial. There is no scope for conducting a roving enquiry for a case like, this, where department proceeded against the petitioner on moral grounds that the petitioner was involved in a criminal complaint and was arrested pursuant to the criminal complaint. Having framed the charges in that premise, the respondents appear to have proceeded, as if the petitioner has been convicted by the criminal Court. When the department proceeded on the basis that the petitioner had caused some stigma to the police department by involving himself in a criminal case, the conclusion of respondents should be based on separate and independent evidence. The department should exhibit their endeavour independently to find the petitioner's involvement rather than relying upon the wife's complaint, which was also the basis for registering the criminal case against the petitioner. When the petitioner has been acquitted by criminal Court, the findings during departmental action cannot be based on surmises and conjunctures in a case of this nature, when the misconduct is not in connection with employment.

15. When the department is concerned about the conduct outside the employment of the petitioner or his involvement in a criminal case, this Court is of the view that the petitioner should be discharged from the charges, once the criminal Court acquitted the petitioner from the criminal charges, as it was decided by the Honourable Supreme Court in **Roop Singh Negi vs Punjab National Bank and others**, reported in (2009) 2 SCC 570.

16. In this case, the appellate authority or review authority and the first respondent had passed the order without assigning reasons for accepting the order of disciplinary authority. It is pertinent to mention that the second respondent while modifying the punishment has rendered a finding that the criminal complaint was lodged under suspicious circumstances. Having noted the very integrity of the complainant, no further reason is assigned by the second respondent for imposing the punishment of black mark.

17. In view of the discussion above, this Court is unable to



sustain the order of disciplinary authority and other respondents in exercise of powers, as an appellate or reviewing authority. As a result, this Writ Petition is allowed and the impugned orders passed by the respondents are set aside. The respondents are directed to promote the petitioner as Head Constable with effect from the date on which his immediate junior was promoted, 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 (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

tmg/cmr

To

1.The Principal Secretary to Government,
The State of Tamil Nadu
Home Department,
Secretariat, Chennai.

2.The Director General of Police,
Chennai - 4.

3.The Inspector General of Police
cum Commissioner,
Madurai city, Madurai.

4.Deputy Commissioner of Police,
Armed Reserve,
Madurai City, Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-31139[F] dated 05/10/2021)

+1 CC to M/s.SPL.GP (SR-31200[F] dated 05/10/2021)

W.P. (MD)No.10319 of 2014

01.10.2021

RD(21.10.2021) 7P 7C