



WEB COPY



W.P.No.249 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2022

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.249 of 2020

J.Subburaj

... Petitioner

Vs.

1.The Director General of Police,
Kamarajar Salai,
Mylapore,
Chennai - 600 004.

2.The Dy. Inspector General of Police,
Coimbatore Range,
Coimbatore,
Coimbatore District.

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

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders in :

i) Rc. No.152494/AP.1 (1)/2019 dated 28.06.2019 passed by the 1st respondent, confirming the order in



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ii) C.No.D2/6546/2018 dated 04.07.2018 passed by the 2nd respondent, confirming the order in

WEB COPY iii) PR No.F1/PR 06/2017 U/R. 3 (b) dated 17.04.2018 passed by the 3rd respondent;

Quash the same and consequently direct the respondents to reinstate petitioner in service with all attendant service benefits and back wages with effect from 17.04.2018.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.L.S.M. Hasan Fizal
Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the orders (a) dated 28.06.2019 passed by the first respondent, (b) dated 04.07.2018 passed by the second respondent and (c) dated 17.04.2018 passed by the third respondent, confirming the dismissal of service order issued against the petitioner, pursuant to the disciplinary proceedings initiated against him.

2. The petitioner was a Grade-I Constable. Disciplinary proceedings were initiated against him and a charge memo was issued to him on 02.02.2017 stating that he has married a second wife by name Josephine



Julia Mary. The Disciplinary Authority viz., the third respondent herein, based on the enquiry report, ordered for removal of the petitioner from service. Aggrieved by the same, the petitioner preferred an Appeal before the second respondent, who also confirmed the orders of the Disciplinary Authority. Thereafter, the petitioner filed a Mercy Petition before the first respondent. The first respondent has also rejected the Mercy Petition, confirming the orders of the second and third respondents. Aggrieved by the same, the petitioner has filed this Writ Petition.

3. The petitioner contends, in this Writ Petition, that Josephine Julia Mary has been given lesser punishment by the first respondent by his order dated 07.08.2019 viz., *"postponement of increment for a period of three years which shall operate to postpone her future increments from the date of original orders"*.

4. The petitioner also contends that the criminal prosecution launched at the behest of his first wife has also ended in acquittal by the Judgment in C.C.No.282 of 2017 passed by the learned Judicial Magistrate-I, Tiruppur. The petitioner contends that a categorical finding has been given in the said



Judgment that the petitioner is innocent with regard to the offences charged against him in the charge sheet.

5. A Counter Affidavit has been filed by the respondents, denying the allegations of the petitioner and would reiterate their stand that only based on the evidence available on record it has been proved that the petitioner has married Josephine Julia Mary as the second wife during the life time of his first wife. Therefore, according to them, the impugned orders have been passed only in accordance with law.

6. Learned counsel for the petitioner also drew the attention of this Court to the order passed by the first respondent dated 07.08.2019, pertaining to Josephine Julia Mary, whom the respondents contend that the petitioner had married for the second time and would submit that her punishment has been modified by the first respondent by taking a lenient view and she has now been given the punishment of postponement of increment for a period of three years instead of dismissal of service.

7. Learned counsel for the petitioner also drew the attention of this



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Court to the Judgment of the Criminal Court in which the petitioner as well as Josephine Julia Mary have been acquitted and would submit that when a categorical finding has been given by the Criminal Court that the petitioner is innocent with regard to the commission of the alleged criminal offence, the question of dismissal of the petitioner from service will not arise.

8. Learned Additional Government Pleader appearing for the respondents would reiterate the contents of the Counter Affidavit filed by the respondents before this Court.

9. Admittedly, the contentions raised by the petitioner in this Writ Petition have not been considered by the first respondent. Admittedly, the punishment, in so far as Josephine Julia Mary is concerned, has been modified from removal of service to postponement of increment for a period of three years. The charges framed against the petitioner as well as Josephine Julia Mary are almost one and the same. The charge is that the petitioner has married Josephine Julia Mary and his marriage with her is a second marriage. Josephine Julia Mary is also working as a Police Constable in the very same Department of the respondents. The first respondent has



taken a lenient view in so far as Josephine Julia Mary is concerned by awarding lesser punishment.

10. As seen from the impugned order dated 28.06.2019, the same yardstick has not been taken by the first respondent. In the impugned order, the first respondent has confirmed the orders of the second and third respondents by dismissing the petitioner from service. Since the contentions of the petitioner, as raised in this Writ Petition, have not been considered by the first respondent in the impugned order, the matter will have to be remanded back to the first respondent for fresh consideration on merits and in accordance with law within a time frame to be fixed by this Court.

11. No prejudice would be caused to the first respondent, if such a direction is issued by this Court.

12. For the foregoing reasons, the order of the first respondent dated 28.06.2019 is alone quashed and the matter is remanded back to the first respondent for fresh consideration on merits and in accordance with law and the first respondent is directed to pass final orders, after taking into



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consideration the order dated 07.08.2019 passed in favour of Josephine Julia

Mary, within a period of twelve weeks from the date of receipt of a copy of this order.

13. With the aforesaid directions, this Writ Petition is disposed of. No

Costs.

26.10.2022

Index : Yes/No
Speaking Order : Yes / No
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To

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ABDUL QUDDHOSE. J.,

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