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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 21.04.2022

ORDERS PRONOUNCED ON : 29.04.2022

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
and
THE HON'BLE MRS. JUSTICE N.MALA

W.A.No.1056 of 2022

E.Ilaiyaraja

...Appellant

vs.

1.State of Tamil Nadu rep. By its Secretary,
(Home, Police-III) Department,
The Secretariat,
Chennai - 9.

2.The Additional Director General of Police,
Dr.Radhakrishnan Road,
Chennai - 4.

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

4.The Superintendent of Police,
Villupuram District.

...Respondent

Prayer: Writ appeal filed under Clause 15 of Letter's Patent, to set aside the order dated 23.09.2021 passed in W.P.No.23357 of 2018.

Prayer in WP 23357/2018: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified Mandamus calling for the records and quashing the impugned order of the 1st respondent vide G.O.(D).No.122 dated 31.01.2018 Home(Pol.IV A)Department confirming the order of punishment of postponement of increment for 3 years with cumulative effect passed by the 3rd respondent vide his order dated 28.7.2014 and consequently direct the 2nd respondent to grant proper seniority to the petitioner with all attendant benefits within time frame.



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For Appellant : Mr.K.Ravi Anantha Padmanaban
For Respondents : Mr.V.Nanmaran
Additional Government Pleader

J U D G M E N T

[Order of the Court was made by N.MALA, J.]

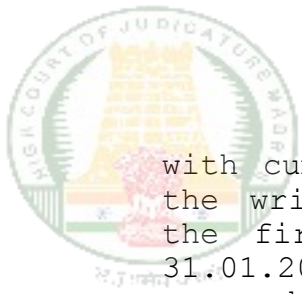
The Writ Appeal is filed by the petitioner to set aside the order dated 23.09.2021 passed in W.P.No.23357 of 2018.

2.The Writ Appeal is filed by the unsuccessful writ petitioner in writ petition. The writ petition is filed against the order dated 31.01.2018 passed by the first respondent confirming the order of the third respondent dated 28.07.2014, wherein a punishment of postponement of increment for three years with cumulative effect was imposed. The petitioner also prayed for a direction to grant him proper seniority with all attendant benefits within time frame.

BRIEF FACTS OF THE CASE:

3.The petitioner was originally appointed as Grade-II Police Constable on 31.03.2010, thereafter he was selected and recruited directly as a Sub-Inspector on 01.02.2011. The writ petitioner seems to have developed intimacy with one Usha, while he was working as a police constable.

4.According to the defacto complainant Usha the petitioner developed intimacy with her and further promised to marry her. As the petitioner failed to keep up his promise, the defacto complainant filed the complaint against the petitioner to the third respondent stating that the petitioner had developed intimate relationship with her, promised to marry her and failed to keep up his promise. In pursuance of the said complaint a charge memo was issued on 14.03.2013 to the petitioner vide charge memo vide PR.No.13/2013. An Enquiry Officer was appointed and on enquiry, the Enquiry Officer held that the charges were proved. The third respondent, who was the then Disciplinary Authority awarded the punishment of compulsory retirement from service vide order dated 29.06.2013. The petitioner thereafter filed an appeal to the second respondent and the second respondent set aside the order of compulsory retirement and remanded the matter back to the third respondent for fresh orders vide order dated 17.07.2014. On remand the third respondent modified the punishment of compulsory retirement into one of postponement of increment by three years



with cumulative effect vide order dated 28.07.2014. Thereafter the writ petitioner sent a mercy petition-cum-revision before the first respondent. The first respondent by order dated 31.01.2018 vide G.O.(D)No.122, confirmed the order of the third respondent dated 28.07.2014. The writ petition is filed against the said orders.

5.The respondent filed a counter and stated that in the enquiry proceedings charges against the petitioner were proved and thereafter the original punishment of compulsory retirement was modified and the punishment of postponement of increment for three years was imposed which was later confirmed by the first respondent. It was further stated that the enquiry was conducted as per the established procedure and rules and also the principles of natural justice. The respondents therefore prayed for dismissal of the writ petition.

6.The learned Judge dismissed the writ petition and on his finding that the petitioner taking advantage of his official position had got into a relationship with the defacto complainant, promised to marry her and subsequently failed to keep up his promise.

7.The learned Judge further found that the petitioner was a Grade-II Police Constable at the relevant time and as a person in the uniform services, the petitioner ought not to have got into a relationship with a lady on false promise. Explanation given by the petitioner for retracting on his promise was rejected by the learned Judge.

8.The learned Judge further found that there was no allegation by the petitioner of irregularity in the procedure adopted by the respondents. The learned Judge held that as the petitioner did not deny his involvement with the lady. The punishment imposed was not disproportionate. The learned Judge did not interfere with the lesser punishment awarded to the petitioner by the first respondent as the learned Judge was of the view that the petitioner had not shown any remorse during the disciplinary proceedings. Rather he was unrepentive for the disgrace brought to the service by indulging in a false promise to marry the lady while in uniformed service. The learned Judge therefore dismissed the writ petition.

9.The crux of the case is whether the punishment imposed by the respondents on the writ petitioner is justified in the facts and circumstances of the case. The fact that the petitioner had developed friendship with the defacto complainant and that they were seeing each other for quite some time and the said friendship blossomed into love is not denied. The petitioner had not denied that he had promised to marry the defacto



complainant, but the only excuse he gave for breaking the promise was that his parents did not approve the proposal. The petitioner denied that he had ever got into any intimate relationship with her. The respondents on enquiry found that the petitioner the charges levelled against the petitioner were proved and therefore imposed the impugned penalty.

10.The learned counsel for the petitioner submitted that the very fact that the defacto complainant got marriage within months of complaint would go a long way to establish that the complaint was lodged only to harass the petitioner. He further submitted that soon after the petitioner's parents disapproval to the marriage proposal of the petitioner with the defacto complainant he stopped talking to her for over 10 months and therefore, the petitioner had no intention to cheat the defacto complainant. The learned counsel for the petitioner further submitted that the punishment was too harsh and disproportionate to the charges framed against him.

11.The learned Additional Government Pleader prayed for confirming of the order passed by the learned Judge and for the dismissal of the writ appeal as meritless.

12.Heard the learned counsels. The records are perused.

13.On the facts of the case, it is clear that the petitioner had developed a relationship with the defacto complainant and that he had further promised to marry her. The extent of the intimacy alone is disputed by the petitioner and not the relationship as such. Admittedly, the petitioner belongs to the uniformed services and at the relevant point of time he was a Grade-II Police Constable and therefore, the learned Judge has rightly found that the petitioner took advantage of his official position to get into a relationship with the defacto complainant with a promise to marry her. As a person belonging to the uniformed services, the petitioner ought to have maintained some decorum and shown more respect for his uniform. Though, the petitioner denied that he was involved in intimate relationship with the defacto complainant, the fact remains that he had a relationship with the defacto complainant for over 14 months and during this period made a false promise of marriage.

14.The learned counsel for the appellant submitted that the defacto complainant married another person within three months of the complaint and this would show that the complaint itself was a motivated one and without any basis. The said submission of the learned counsel is not acceptable because as the petitioner failed to keep up his promise, the defacto complainant had no other option but to marry another person and



such marriage would not exonerate the appellant of this misconduct committed by him.

15.The learned counsel for the appellant contended that as the parents of the appellant rejected the marriage proposal, he immediately stopped talking to the defacto complainant for 10 months which will show that he had no intention to cheat. We are of the view that the said submission will not support the petitioner, because as a person belonging to the uniformed services, the appellant should have been more responsible in his conduct.

16.The appellant and as also the defacto complainant have already married different persons and now leading their own life. In the light of the above, We are of the considered view that the punishment imposed by the respondents may be modified into one of censure under Section 3(b) of Tamil Nadu Police Subordinate Employees Disciplinary and Appeal Rules, 1955, which shall take effect from the date of Punishment order of the third respondent dated 28.07.2014.

17.With the above direction, this writ appeal stands disposed of. There shall be no order as to costs.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

- 1.The Secretary,
State of Tamil Nadu,
(Home, Police-III) Department,
The Secretariat,
Chennai - 9.
- 2.The Additional Director General of Police,
Dr.Radhakrishnan Road,
Chennai - 4.
- 3.The Deputy Inspector General of Police,
Villupuram Range,
Villupuram.
- 4.The Superintendent of Police,
Villupuram District.



+1cc to Mr.K.Ravi Anantha Padmanaban, Advocate, S.R.No.30154

+1cc to the Government Pleader, S.R.No.30979

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W.A.No.1056 of 2022

AJB (CO)
RN (13/05/2022)