



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.32987 of 2016

P.Kumanan

... Petitioner

-Vs-

1.The Commissioner of Police,
Greater Chennai,
Egmore,
Chennai - 600 008.

2.The Deputy Commissioner of Police,
Armed Reserve Police,
St.Thomas Mount,
Chennai.

3.The Assistant Commissioner of Police,
Armed Reserve Police,
St.Thomas Mount,
Chennai.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus calling for records relating to the impugned order of 1st respondent in C.No.135/39567/PR V(2)/CPO/2014 - PR No.155/PR IV(3)/2012-PR No.110/H2/2011 dated 06.01.2016, quash the same and further direct the respondents to reinstate the petitioner in service with all attendant benefits w.e.f. 25.7.2012.

For Petitioner : Mr.Diwakar
for Mr/M.S.Balaji

For Respondents : Mr.C.Selvaraj
Additional Government Pleader

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. On a charge memo dated 20.04.2012, the petitioner was alleged to have married a minor girl, in connection with which, he was arrayed as an accused in a criminal case in FIR No.22 of 2010. On enquiry, the charges were held to be proved



and the 2nd respondent herein had imposed the punishment of dismissal from service through the impugned order dated 25.07.2012. On 06.08.2012, the petitioner had filed an appeal before the 1st respondent herein, which came to be rejected on 06.01.2016, confirming the order of dismissal. Challenging these orders of punishment and the appellate order, the present writ petition has been filed.

3. Mr. Diwakar, learned counsel appearing for the petitioner would submit that after the original order of dismissal dated 25.07.2012 was passed, the criminal case for which he was charged had culminated into S.C.No.154 of 2013 and by judgment dated 06.02.2014, the petitioner herein was honorably acquitted. This aspect has not been dealt with by the 1st respondent and therefore sought for interference to the punishment.

4. Per contra, the learned Additional Government Pleader placed reliance on the counter affidavit and submitted that the petitioner, being a member of the armed force, is required to maintain dignity and honour in the profession and the charges for which he has been dealt with, are very serious in nature. He also submitted that when the original order of punishment was passed, the criminal case was pending and therefore, there was no infirmity in the punishment of dismissal.

5. When the petitioner was originally dismissed from service on 25.07.2012, the criminal case in S.C.No.154 of 2013 was still pending and therefore, the question of considering the subsequent judgment of acquittal does not arise. Likewise, when the petitioner had filed an appeal before the 1st respondent on 06.08.2012, the criminal case was pending. However, when the Appellate Authority had confirmed the order of acquittal, there is nothing on record to show that the judgment of acquittal in S.C.No.154 of 2013 dated 06.02.2014 was brought to the 1st respondent's notice. However, the fact remains that the petitioner has been acquitted on 06.02.2014 itself by the Criminal Court on analysing the oral and documentary evidences before it. This order of acquittal may have some significance for consideration by the Appellate Authority. Thus, this court is of the view that the petitioner may be given an opportunity to raise the grounds before the 1st respondent once again for reconsideration.

6. This apart, Rule 6 of the Tamil Nadu Police Subordinate Services (Discipline and Appeal Rules), 1955 (hereinafter referred to as 'the Rules') stipulates the procedure for the Appellate Authority to consider an appeal. As per the said Rule, the Appellate Authority, while considering an appeal, is required to consider as to whether the facts on which the original order of punishment was passed have been established, whether the facts established afford sufficient ground for taking action and whether the penalty



was proportionate to the leveled charges. In the Appeal order dated 06.01.2016, the 1st respondent herein has rejected the appeal by making an observation that the victim girl had spoken about the affair she had with the delinquent and that she had lived with him as a spouse. Apart from that, there is no factual finding as stipulated in Rule 6 of the Rules. Since the appellate order itself is in violation of the Rules, the order requires interference on this ground also.

7. In the result, the impugned order of the 1st respondent dated 06.01.2016 is quashed and consequently, the matter is remanded back to the 1st respondent for reconsideration. The petitioner is granted liberty to raise additional grounds and also enclose a copy of the judgment in S.C.No.154 of 2013 dated 06.02.2014 of the 1st respondent to reconsider the issue. Such an appeal petition raising additional ground shall be filed within 15 days from the date of receipt of a copy of this order. On receipt of the same, the 1st respondent shall afford due opportunity to the petitioner and thereafter pass a speaking order in conformity with Rule 6 of the Rules, within a period of 3 months therefrom.

8. The writ petition stands ordered, accordingly. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

rap/MMR

To

1.The Commissioner of Police,
Greater Chennai,
Egmore, Chennai - 600 008.

2.The Deputy Commissioner of Police,
Armed Reserve Police,
St.Thomas Mount, Chennai.

3.The Assistant Commissioner of Police,
Armed Reserve Police,
St.Thomas Mount, Chennai.

+1cc to Mr.M.Balaji, Advocate SR. No.2576
+1cc to Government Pleader SR. No.3415

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