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W.P.No.35604 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.35604 of 2016
and
W.M.P.No.30608 of 2016

B.Parimala

... Petitioner

Vs.

1.The Director General of Police,
Mylapore,
Chennai – 04.

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

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

... 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 in connection with the impugned order passed by the 3rd respondent in PR No.12/2012 dated 20.02.2013 and confirmed by the 2nd respondent in Na.Ka.No.B.2/Me.Mu.12/13 dated 27.05.2013 and further rejection by the 1st respondent in Rc.No.220892/AP.I (1)/2013 dated 27.04.2016 and quash the



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same and further direct the respondents to settle the pensionary benefits and all other consequential service and monetary benefits.

For Petitioner : Mr.S.Sivakumar

For Respondents : Mr.S.Rajesh
Government Advocate

ORDER

The punishment of dismissal from service imposed on the writ petitioner and confirmed by the Appellate Authority are under challenge in the present writ petition.

2. The petitioner states that her husband Mr.Baskaran entered into Police Service as Grade-II Police Constable on 26.12.1985 and promoted to the post of Grade-I Police Constable in the year 1995. He was further promoted as Head Constable in the year 2000 and upgraded as Special Sub-Inspector of Police. When the husband of the writ petitioner was holding the post of Special Sub-Inspector of Police at Needamangalam Police Station, he was issued with a charge memo based on the complaint of one Mrs.Bajaria, alleging that, “on 28.04.2012, the husband of the petitioner threatened the said complainant Mrs.Bajaria and her daughter Nisha by knocking the door of their house at midnight and misbehaved with them in an uncivilized manner.”



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3. The husband of the writ petitioner submitted his explanations, denying the charges. Not satisfied with the explanation, an Enquiry officer was appointed, who in turn, conducted the enquiry and submitted a report on 26.10.2012. Based on the findings of the Enquiry officer, a second show cause notice was issued, providing opportunity to the charged official to submit his further objections on the findings of the Enquiry officer. Further explanation was submitted by the charged official and thereafter, final order was passed, imposing the punishment of dismissal from service. The petitioner preferred an appeal to the 2nd respondent / DIG of Police, Tanjore Range on 22.03.2013, which was rejected. Thereafter, the petitioner preferred a Mercy Petition to the first respondent on 05.12.2013. During the pendency of the Mercy Petition, the husband of the writ petitioner met with an accident and died on 13.05.2014 and thus, the petitioner is constrained to file the present writ petition, challenging the order of punishment imposed on her husband.

4. The learned counsel for the petitioner mainly contended that the final order in the disciplinary proceedings was issued by the third respondent /



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Superintendent of Police, who has no jurisdiction to impose the punishment on the Special Sub-Inspector of Police. The Special Sub-Inspector of Police is equivalent to the post of Sub-Inspector of Police and for Sub-Inspector of Police, the 2nd respondent / Deputy Inspector General of Police is the punishing authority and therefore, the order impugned passed by the third respondent is liable to be set aside. The Superintendent of Police is the punishing authority only up to the cadre of Head Constable as per the Discipline and Appeal Rules. Therefore, the punishment of dismissal from service imposed on the husband of the writ petitioner by the Superintendent of Police is in violation of the rules in force and therefore, it is to be set aside.

5. The learned counsel for the petitioner relied on G.O.Ms.No.15, Home (Police-V) Department dated 07.01.2010, wherein the Powers of the Superintendent of Police / Commissioners of Police has been stated. As per the said Government order, the power of upgradation is granted to the Deputy Inspector General of Police / Commissioner of Police, to upgrade the police personnel, on completion of 25 years of service, out of which 10 years of service have been completed as Head Constables and not able to get regular promotion as Sub-Inspectors of Police from the first of the month succeeding



the date of completion of 25 years of service.

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6. Relying on the said Government order, the learned counsel for the petitioner contended that the power of upgradation was granted to the Deputy Superintendent of Police and therefore, the Superintendent of Police has no power to impose the major penalty of dismissal from service on the charged official.

7. The learned counsel for the petitioner further contended that the complainant had not made any complaint on her own accord and the Inspector of Police only invited the complainant and dictated the complaint and the women constable in the Police Station had written the complaint and the thumb impression of the complainant was obtained. Therefore, the complaint itself was motivated and received at the instance of the Inspector of Police and on that ground also, the departmental disciplinary proceedings are to be set aside.

8. The learned Government Advocate appearing on behalf of the respondents objected the said contention by stating that the proved misconduct against the husband of the writ petitioner was grave in nature.



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The husband of the writ petitioner was holding the post of Special Sub-Inspector of Police and the charge memo was issued and the enquiry was conducted by affording opportunity to the charged official and thus, there is no infirmity in respect of the procedures followed by the Disciplinary Authorities. The allegation against the husband of the writ petitioner was that “for having knocked the door of Tmt.Bajaria on the midnight of 28.04.2012 and threatened her and her daughter to oblige his words and for misbehaving with the lonely women in the midnight”.

9. Regarding the allegation that the Inspector of Police obtained complaint from the complainant, the respondents have stated that the Prosecution Witness -3, Inspector of Police, Needamangalam Police Station, had clearly deposed in chief examination as well as in cross that, the complainant Tmt.Bajaria and her daughter Nisha had complained that the Special Sub-Inspector of Police Baskaran had frequently been knocking the door at night times, causing nuisance and of his knocking on 28.04.2012 in an inebriated condition and his misbehaviour made a request for such action. The deposition of the prosecution witness – 3 had been corroborated with the deposition of Prosecution Witness-4, the Deputy Superintendent of Police,



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Mannargudi Sub-Division, who had conducted preliminary enquiry. The Prosecution Witness-3 had also deposed that the petitioner's husband misused his position by knocking the door of complainants at midnight, who had no male help and threatened to foist brothels case against Nisha and to spoil her future life unless obliged to his words. The said incident had been confirmed by the oral evidence of Prosecution Witness-1 Tmt.Bajiria and Prosecution Witness-2 Nisha, the daughter of Bajiria, who were all the complainants in the case. The allegation raised by the charged official that the statement from the complainant was obtained by the Inspector of Police was found to be incorrect.

10. The Prosecution Witness-4, the Deputy Superintendent of Police, Mannargudi, who had conducted the preliminary enquiry in this case had also clearly deposed that, the complainants Bajaria, and her daughter Nisha have confirmed during the preliminary enquiry about the misbehaviour of the husband of the writ petitioner and chasing away of Nisha's would-be grabbing his cell phone in the midnight of 28.04.2012 and by handing Rs.500/- with a bunch of banana with a threat to oblige his words, lest to foist a brothel case and spoil her future. The story of the husband of the petitioner that he entered



the house of Bajiria to prevent any untoward incident is an after thought concocted defense to get away from the ditches of law, and the husband of the petitioner had no *locus standi* to enter into the house of ladies, when there was no complaint from them.

11. The respondents have stated that the rank of Special Sub-Inspector of Police is that of only Head Constable. It is only an upgraded post as per G.O.Ms.No.368 and therefore, the third respondent / Superintendent of Police is the competent Disciplinary Authority. Thus, the Superintendent of Police is vested with the power to impose penalty up to the cadre of Special Sub-Inspector of Police, which is a upgraded post of Head Constable.

12. Considering the nature of the charges framed against the husband of the writ petitioner and the deposition of the prosecution witnesses, this Court is of an opinion that it was cogent and consistent. The procedures as contemplated in the Discipline and Appeal Rules were followed, while conducting the departmental enquiry. Thus, the rules of natural justice had been complied with. The charged official was provided with an opportunity to defend his case. He participated in the enquiry and defended his case. The preliminary enquiry conducted by the Deputy Superintendent of Police is also



an important document, which was scrutinized by the Enquiry officer at the time of domestic enquiry. The allegation against the husband of the writ petitioner was proved based on the prosecution witnesses and more so, the husband of the writ petitioner entered into the house of the complainants Smt.Bajaria and her daughter and there was no male member in the family. The circumstances and the gravity of misbehaviour of the husband of the writ petitioner was considered by the Enquiry officer and the Disciplinary Authority and thus, this Court has no hesitation in forming an opinion that there is no infirmity in respect of the findings of the Enquiry officer and the Disciplinary Authority for the purpose of imposing the punishment of dismissal from service.

13. The allegations are undoubtedly serious, infringing the Fundamental Rights of a citizen. The men in uniform if allowed to enter into the house during midnight, where women alone were staying, the consequences were taken into consideration by the authorities and accordingly, the punishment of dismissal from service was imposed. The authorities found that the husband of the writ petitioner became misfit to serve in uniformed force. The findings of the Enquiry officer is undoubtedly



based on the documents and evidences and more so, the prosecution witnesses categorically deposed about the incident occurred. The preliminary enquiry conducted by the Deputy Superintendent of Police also reveal that the complainants have narrated the entire incident, which was established.

14. To prove the charges in departmental disciplinary proceedings, “preponderance of probabilities” are sufficient. In the present case, the preliminary enquiry was conducted by the Deputy Superintendent of Police and even during the domestic enquiry conducted, only after affording opportunity to the charged official, the charges were proved. Thus, the punishment of dismissal from service based on the proved charges, which all are grave in nature, cannot be construed as disproportionate.

15. The important ground raised by the petitioner that the Superintendent of Police has no jurisdiction to impose punishment of dismissal from service on the Special Sub-Inspector of Police, this Court directed the respondents to file a report regarding the Rule position.

16. In this regard, two Status Reports were filed on behalf of the



respondents. It is contended that the scheme of upgradation as Special Sub-Inspectors of Police was introduced by the Government vide its orders in G.O.Ms.No.937, Home (Pol.3) Department dated 21.07.1998 with a higher vision in order to avoid the stagnation in the next level promotion to the police personnel and to ensure certain amount of monetary hike in their pay. Accordingly, the Government ordered that the personnel appointed as Police Constables, who have completed 25 years of service, out of which 10 years of service as Head Constables are entitled for upgradation as Special Sub-Inspectors of Police subject to the following conditions:

- i. They should not have earned any punishments preceding five years from the eligible date of promotion.
- ii. There should not be awarded with a charge u/r 3(b) or criminal case pending against them.
- iii. They should be eligible as per the guidelines issued with regard to preparation of 'C' list and promotion in G.O.Ms.No.368, P&AR(S) Department, dated 18.10.1993.
- iv. The post of Special Sub Inspector of Police is entirely different from the post of Sub Inspector of Police which is a regular promotion on seniority basis.



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v. The Special Sub Inspector of Police is not a post on promotion as per service Rules. It is only a concession.

vi. The crucial date for the consideration of upgradation as Special Sub Inspector of Police has been fixed as 1st June of every year.

vii. The persons who promoted to this new post of Special Sub Inspector would be eligible to get the pay and other allowances as applicable to the post of Sub-Inspectors.

viii. The Range Deputy Inspector Generals of Police / Commissioners of Police has to prepare the list of eligible persons as per the norms for upgradation as Special Sub Inspector of Police as on 1st June of the year and send it to Government through the Director General of Police and the Government will issue orders for upgradation as Special Sub Inspector of Police.

17. In the G.O.(Ms).No.15, Home (Pol.V) Department, dated 07.01.2010, the Government have ordered to delegate the powers to the Superintendent of Police / Commissioner of Police, as follows:-

i. To upgrade the Grade II Police Constables, who have not been promoted as Grade-1 Police Constables for want of vacancies, as Grade 1 Police Constables on completion of 10



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years of service in the post of Grade II Police Constable from the first of the month succeeding the date of completion of 10 years.

ii. To upgrade the Grade I Police Constables, who have not been promoted as Head Constable for want of vacancies, as Head Constables on completion of 5 years of service in the post of Grade-1 Police Constables from the first of the month succeeding the date of completion of 5 years.

18. Powers to the Deputy Inspectors General of Police / Commissioners of Police to upgrade the police personnel, who have completed 25 years of service, out of which 10 years of service have been completed as Head Constables and not able to get promotion as Sub-Inspectors of Police from the first of the month succeeding the date of completion of 25 years of service. Therefore, the Head Constables, who have completed 25 years of service, out of which 10 years of service have been completed as Head Constables are being considered for upgradation as Special Sub-Inspector of Police. The Government directed that the conditions stipulated in G.O.Ms.No.937, Home(Pol.3) Department, dated 21.07.1998 and G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993 and subsequent amendments issued from time to time shall



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be adhered to, while giving up-gradation option to the Police Personnel from the rank of Police constables and Head constables.

19. As per the G.O.(Ms).No.937, Home (POL.3) department, dated 21.07.1998, the Head constables, who have completed 10 years of service in the rank of Head constable and put in over all service 25 years are upgraded as special sub-Inspector of Police. The Special Sub- Inspector of Police is entirely different from the post of regular Sub-Inspector of Police. The Special Sub Inspector of Police is not a promotion as per the service Rules and it is a special concession granted by Government. The scale of pay of SSI and SI of Police are one and the same. Except the pay other service condition are with reference to the post of Head Constables. In all aspects, the status of the Special Sub-Inspector of Police is person oriented and it is not a regular post. Once the Head Constables, who were upgraded as Special Sub-Inspectors of Police are promoted as regular Sub-Inspectors of Police as per their seniority, then the post of Special Sub Inspectors of Police will be downgraded as Head Constables.

20. The provisions of the Special Rules and the Government orders



applicable to the Head Constables are also applicable to the Special Sub-Inspectors of Police. As per Rule 4 of the Tamil Nadu Police Subordinate Service (D&A) Rules, 1955, the Superintendents of Police in Districts are the disciplinary authority in respect of the Head Constables in awarding punishment u/r 3(b) of TNPSS (D&A) Rules 1955, Since upgradation of Head Constables as Special Sub-Inspectors of Police is not a promotion as per the service Rules and this upgradation is only for the monetary gain and for all the service related benefits, the Special Sub Inspectors of Police are treated as Head Constables. Hence, the District Superintendents of Police its equivalent authorities in units and higher authorities are the Competent Disciplinary Authority for the Special Sub Inspectors of Police as per the rules in force. The duties and responsibilities for the post of Sub-Inspector of Police and Special Sub Inspector are furnished as follows:-

Sub-Inspector of Police (Local police)	Special Sub-Inspector (Local Police)
1. The Sub Inspector in charge of a Police Station is fully responsible for the Police Administration of his charge. The Sub Inspector is an important and vital functionary in the Police	1. To visit the local areas within the jurisdiction, enlist public co-operation, develop sources of report and acquire local knowledge for prevention and detection of crime, enforcement of law and order.



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Sub-Inspector of Police (Local police)	Special Sub-Inspector (Local Police)
department. He shall be responsible for proper management of the station and optimum utilization of the resources and facilities available. It shall be his duty to manage the staff and work of the Police Station in accordance with the law and rules and to make the Police Station a place where the needy public gets necessary and immediate response. 2. The SI is fully responsible for the Police Administration of his charge. It is his duty to assign to his subordinates their duties and to see that they perform them correctly. It shall be the duty of the SHO to use his best endeavours and ability to prevent crimes, preserve peace, apprehend disorderly and suspicious characters, to investigate and detect offences, bring the offenders to Justice, collect and communicate intelligence affecting public peace and promptly obey and execute all orders issued. 3. He shall take measures for	2. Investigation of crimes, prosecution offenders. 3. To prepare station crime history and maintaining other records. 4. To take preventive steps to bind over bad characters (BCs) after verifying their antecedents movements. 5. To attend to prosecution of cases investigated in the concerned police station by assisting the prosecutors. 6. To ensure collection of intelligence regarding grave communal situations and likely political un heavels within the concerned station limits. 7. To assist subordinates in their problems. 8. A Special Sub-Inspector, investigate cases involving social legislation. 9. To feed District Crime Record Bureau and formation with accurate details regarding higher



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Sub-Inspector of Police (Local police)	Special Sub-Inspector (Local Police)
the prevention of crime, for the preservation of peace, for speedy investigation and prosecution of cases.	crime and criminal statistics. 10. To assist the Station House Officer and to perform any such duties as may be entrusted to him by the Station House Officer.

21. Thus, it is made clear that as per Rule 4 of the Tamil Nadu Police Subordinate Services Discipline and Appeal Rules, the Superintendent of Police is the Disciplinary Authority in respect of the Head Constables and the Punishing Authority. Since the Head Constables are upgraded as Special Sub-Inspector of Police, it is not a promotion as per the Service Rules. Such upgradation is granted only to remove the stagnation and to provide monetary benefits to the Police personnel facing stagnation. In other words, the Special Sub-Inspector of Police, it is not a promotional post to the Head Constables. As per the Rules, the Head Constable is the Feeder category for promotion to the post of regular Sub-Inspector of Police. The Special Sub-Inspector of Police is granted by way of upgradation from the post of Head Constable, on



completion of 10 years of service. Such an upgradation is granted in order to remove stagnation and to give monetary benefits to the stagnated police personnel. Thus, the Special Sub-Inspector of Police is not a promotional post from the cadre of Head Constables as per the rules and the regular Sub-Inspector of Police is the next promotion to the post of Head Constable. Thus, the Superintendent of Police is the Disciplinary Authority upto the cadre of Special Sub-Inspector of Police and the punishing authority.

22. In the Discipline and Appeal Rules, the cadre of Special Sub-Inspector of Police is not included. As per the Rules, Head Constable is the Feeder category for promotion to the post of Sub-Inspector of Police. Thus, the post of Special Sub-Inspector of Police is being granted by way of upgradation and for providing better monetary benefits to the stagnated police personnel and thus, this Court do not find any force in the arguments as advanced by the petitioner. Thus, the Superintendent of Police is the punishing authority for the cadre of Special Sub-Inspector of Police, since it is an upgraded position of the post of Head Constable and thus, the contention raised in this regard by the petitioner stands rejected.

23. In view of the fact that the rules of natural justice had been



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complied with in the present case and the charges were proved based on the evidences and documents, this Court do not find any perversity in the departmental disciplinary proceedings. Regarding quantum of punishment, the proved charges are grave in nature and therefore, there is no reason whatsoever to interfere with the quantum of punishment. The punishment cannot be construed as excessive or disproportionate.



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24. For all these reasons, the writ petition fails and stands dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes

Speaking order: Yes

To

1. The Director General of Police,
Mylapore,
Chennai – 04.
2. The Deputy Inspector General of Police,
Tanjore Range,
Tanjore.
3. The Superintendent of Police,
Thiruvarur District,
Thiruvarur.



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S.M.SUBRAMANIAM, J.

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