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W.P.No. 20737 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No. 20737 of 2019

F.Raja,
S/o. Felix

..Petitioner

Vs.

1. Director General of Police,
Chennai – 600 004.

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

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

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for Writ of Certiorarified Mandamus, to call for the records of the order passed by the 2nd respondent in C.No.B1/160/3168/2017 dated 26.06.2017 and modified punishment order passed by the 1st respondent in R.C.No.48891/AP2(2)/2017 dated 30.07.2018 and the communication of the 3rd respondent in D.O.No.816/2018, R.C.No.H3/PR 59/2016 dated 04.09.2018 and to quash the said orders and to direct the respondents to grant the petitioner service benefit without reference to the above



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punishment.

For Petitioner : Mr.P.Paramasiva Doss
For Respondents : Mr.U.M.Ravichandran
Special Government Pleader

ORDER

The prayer sought for herein is for a writ of certiorarified mandamus, to quash the order passed by the 2nd respondent in C.No.B1/160/3168/2017 dated 26.06.2017 and modified punishment order passed by the 1st respondent in R.C.No.48891/AP2(2)/2017 dated 30.07.2018 and the communication of the 3rd respondent in D.O.No.816/2018, R.C.No.H3/PR 59/2016 dated 04.09.2018 and to direct the respondents to grant the petitioner's service benefit without reference to the above punishment.

2. The petitioner was working as a Police Constable Grade – II at the respondents Department, against whom, his wife lodged a criminal complaint for the alleged offences punishable under Sections 498(A), 406 IPC read with Section 4 of the Dowry Prohibition Act. Therefore, a case was registered in Crime No.8 of 2015 at the Salem, Ammapet Police Station.



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3. Pursuant to which, a criminal case was conducted and ultimately the petitioner was acquitted from the said criminal case of-course on the benefit of doubt by the findings given by the Criminal Court.

4. Parallely, a disciplinary proceeding was also initiated, where enquiry was conducted, based on the Enquiry Officer's report, Disciplinary Authority i.e, Superintendent of Police concerned has decided to drop further proceedings.

5. However, Deputy Inspector General of Police, Salem Range i.e., the second respondent herein, who is the Appellate Authority by exercising his *suo motu* power by taking it as an appeal wanted to differ with the view taken by the Disciplinary Authority and therefore, he issued a show cause notice dated 18.05.2017 to the petitioner, where he has stated the following:

“4. Eventhough, you were acquired from the criminal case by the benefit of doubt, during oral enquiry, PW1 Tmt. R.Vanitha, in her statement has stated that you tortured her demanding dowry and caused mental agony. PW2, has corroborated her version. PW2 replied that witnesses were



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answered correctly during her enquiry. Hence, further action dropped by the Superintendent of Police, Salem is not acceptable.”

6. Pursuant to which, the petitioner had given explanation on 13.06.2017. Thereafter, considering the same, the Deputy Inspector General of Police i.e., the second respondent Appellate Authority has decided to impose the punishment of postponing the increment for a period of two years against the petitioner, which will operate on his future increments. As against the said order dated 26.06.2017 passed by the second respondent, the petitioner preferred further appeals to the first respondent i.e, Director General of Police, who on considering the appeal has modified the punishment that the postponing of increment for a period of two years, which shall not operate to postpone his future increments i.e., without cumulative effect. As against these orders of punishment, the petitioner has moved the present writ petition.

7. Heard Mr.P.Paramasiva Doss, learned counsel appearing for the petitioner, who would submit that insofar as the criminal complaint given by the wife of the petitioner, which ended in acquittal in favour of the



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petitioner and thereafter before the Family Court, the petitioner has filed a petition for divorce and the petitioner's wife has filed a petition for restitution of conjugal rights. After hearing both sides, the Family Court passed an order allowing the petition filed by the petitioner by giving a divorce and rejecting the petition filed by the petitioner's wife for restitution of conjugal rights. Therefore, the quarrel between the petitioner and his wife is not attributable towards the petitioner and the petitioner had never tortured his wife and therefore, the very basis of the charges, which culminated in the impugned order against the petitioner will have no substance. Therefore, the order passed by the Appellate Authority as well as the modified order passed by the Revisional Authority inflicting the punishment of postponing the increments for a period of two years even without cumulative effect is the punishment without any substance. Hence, the learned counsel seeks indulgence of this Court against these orders.

8. Heard Mr.U.M.Ravichandran, learned Special Government Pleader appearing for the respondents, who would submit that insofar as the criminal case is concerned even though the acquittal was recorded it



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was not an honorable acquittal, it is only an acquittal based on the benefit of doubt. Nevertheless, independently disciplinary proceedings were initiated, where P.W.1 and P.W.2 deposed before the Enquiry Officer and the P.W.1 is none other than the wife of the petitioner and she categorically deposed before the Enquiry Officer stating that the petitioner tortured her. Therefore, since that evidence was recorded by the Enquiry Officer, on what basis, the Disciplinary Authority has decided to drop the proceedings, is not known that is the reason why, the Appellate Authority *suo motu* by exercising its *suo motu* power taken up the appeal and since he wants to differ with the view taken by the Disciplinary Authority, a show cause notice was issued on 18.05.2017, pursuant to which, final orders were passed awarding the punishment of postponing the increment against the petitioner with cumulative effect for two years, which was subsequently modified by the Revisional Authority without cumulative effect. Therefore, both the orders are to be sustained and hence, the learned Special Government Pleaders seeks dismissal of this writ petition.



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9. I have considered the said rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

10. The *suo motu* power is already vested with the Appellate Authority, who in exercising the said power has issued a show cause notice to the petitioner on 18.05.2017, where he has given the reason that because of the evidences recorded from P.W.1, corroborate the evidence of P.W.2 disposes that there was a substance on the complaint given by the petitioner's wife, that the petitioner being the member of the disciplined force ought not to have tortured the wife of the petitioner. Therefore, based on such preponderance of probabilities, the Disciplinary Authority has taken a decision to inflict atleast a minimum punishment against the petitioner, which they have not done it, the Appellate Authority had decided to inflict such punishment of postponing the increment for a period of two years with cumulative effect which has been modified by the Revisional Authority without cumulative effect.



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11. Therefore, insofar as the inflicting a punishment on the petitioner is concerned, this Court feels that, it deserves to be accepted.

12. However insofar as the quantum of punishment is concerned for the said delinquency on the part of the petitioner, the punishment of withholding the increment of the petitioner for two years even without cumulative effect, in the considered opinion of this Court may be on the higher side or an excessive one. Hence, this Court is inclined to modify the said punishment of postponing the increment for two years into one year, which would be a deserving punishment for the proven delinquency on the part of the petitioner and in order to meets the ends of justice that modification is required.

13. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

- ◆ That the impugned orders including modified order passed by the Revisional Authority inflicting the punishment of postponing the increment of the petitioner for two years without cumulative effect is to be sustained with the following modification that such



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postponing of increment without cumulative effect will be effective, instead of two years, to be one year.

With this modification of the punishment, this writ petition is disposed of accordingly. No costs.

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Index : Yes/No

Internet: Yes/No

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To

1. Director General of Police,
Chennai – 600 004.
2. The Deputy Inspector General of Police,
Salem Range, Salem.
3. The Superintendent of Police,
Salem District, Salem.



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R.SURESH KUMAR.J,

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