



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN  
AND  
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.NO.2867 OF 2021  
&  
C.M.P.NO.19194 OF 2021

1. The Superintendent of Police,  
District Police Office,  
Karur.
2. The Superintendent of Police,  
District Police Office,  
Perambalur.

..Appellants/Respondents

Vs.

K.Krishnamoorthy

..Respondent/Petitioner

Prayer: Writ Appeal as against the order dated 04.11.2020 made in W.P.No.47656 of 2006.

Prayer in W.P.No.47656 of 2006:-

This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari to call for the records of the 2nd respondent herein Na.Ka.No. C3/10306/2006 dated 17.10.2006 and quash the same.

For Appellants :: Mr.P.Anandakumar,  
Govt. Advocate  
For Respondent :: Ms.R.Elizabeth

J U D G M E N T

(Judgment of the Court was delivered by S.VAIDYANATHAN,J.)

The present appeal has been filed questioning the order dated 04.11.2020 made in W.P. No. 47656 of 2006.



2. The respondent filed the writ petition challenging the punishment imposed on him, namely, reduction in time scale of pay by two stages for a period of two years, by the 2<sup>nd</sup> respondent/2<sup>nd</sup> appellant herein vide proceedings dated 17.10.2006. After hearing the learned counsel on either side and perusing the materials available on record, the learned Single Judge allowed the writ petition setting aside the punishment imposed on the respondent/writ petitioner. Aggrieved by the same, the Department has preferred the present writ appeal.

3. According to the appellants, the respondent/writ petitioner had a love affair with one P.Vembu, daughter of Pakkirisamy, ever since college days and had even promised to marry her. Upon securing employment in the Police Department, the respondent joined the service as Constable in the year 1999 and married his sister's daughter on 20.04.2005. On coming to know about this, a complaint was given by Vembu on 27.04.2005 and an enquiry was conducted. In the enquiry, it was established that there was an affair between Vembu and the writ petitioner and the authorities came to the conclusion that the charges were proved and imposed the punishment of reduction in time scale of pay by two stages for a period of two years, without cumulative effect. However, the learned Single Judge has interfered with the order on the ground that the complaint has been lodged after five years from the date of entry of the respondent into service.

4. According to the learned counsel for the appellants, when the charges levelled against the respondent have been proved, when the prosecution witnesses and their statements have established the delinquency and the respondent has also not chosen to raise any objection over the proved minute or submit any defence witnesses/statement before the Disciplinary Authority to disprove the charge, the learned Single Judge ought not to have interfered with the punishment imposed.

5. Heard both sides.

6. The issue is with regard to the failure of the respondent to marry the lover and instead, marrying his sister's daughter. The complaint was given within a period of 7 days from the date of marriage and the learned Judge has erroneously presumed that there was a delay of 5 years in lodging the complaint. In the enquiry, though it has been stated by the writ petitioner that his relationship with Vembu was only that of a friend and there is no evidence to prove that he and Vembu had led life as husband and wife, on factual analysis of the



evidence, the Enquiry Officer came to the conclusion that the charges were proved, which was confirmed by the Disciplinary Authority as well. The Court cannot go into the adequacy of evidence in a domestic enquiry and it is suffice if the misconduct is established based on preponderance of probabilities. In this case, the charges have been established and a minor punishment has been imposed. Eventhough it has been mentioned in the charge memo that the employee namely, the writ petitioner has violated Rule 22 of Tamil Nadu Subordinate Police Officer's Conduct Rules, 1964, it is actually Rule 23(2) of the said Rules, which clearly applies to the case on hand. Mere quoting of a wrong provision will not vitiate the proceedings. Though a reading of Rule 23 would appear that it pertains to bigamy, a reading of sub-rules (1) and (2) of Rule 23 would show that they are completely independent of each other. As the misconduct has been proved in the domestic enquiry and the authorities have come to the conclusion that the misconduct has been established, the punishment mentioned supra has been imposed. The contention of the writ petitioner/respondent herein that it is completely a personal affair, which existed prior to his entry into service cannot be accepted and appreciated. When there is categorical evidence and the complainant and the father of the complainant had got into the box, which finding has been accepted by the Disciplinary Authority, we are of the view that the punishment imposed on the respondent cannot be said to be unwarranted. Hence, the order of the learned Single Judge allowing the writ petition holding that there was a delay of 5 years in lodging the complaint needs to be interfered with.

7. Accordingly, the order under challenge is set aside and the writ appeal is allowed. The punishment imposed on the respondent is confirmed. However, it is made clear that if the period of punishment is already over, then all the benefits available to the respondent/writ petitioner have got to be extended to him provided he satisfies other requirements applicable to the Uniformed Services. No costs. Connected C.M.P. is closed.

Sd/-  
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

nv



To

1. The Superintendent of Police,  
District Police Office,  
Karur.

2. The Superintendent of Police,  
District Police Office,  
Perambalur.

+1cc to Mr.S.V.Karthikeyan, Advocate, S.R.No.8864

W.A.No.2867 of 2021

KK(CO)  
RLP(09/03/2022)