



W.P(MD)No.13590 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13590 of 2021

and

W.M.P.(MD)Nos.10526, 10528 & 10530 of 2021

Muniappan

... Petitioner

Vs.

1.The Director General of Police,
Nungambakka, Chennai 60 004.

2.The Commissioner of Police,
Madurai City.

3.The Deputy Commissioner of Police,
(Law and Order) Madurai City.

4.The Deputy Commissioner of Police,
Headquarters, Madurai City.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the records relating to the impugned order passed by the 1st Respondent in Pro.Roc.No.836173/AP II (3)/2020 dated 07.06.2021 in having rejected petitioner's mercy petition and the consequential orders passed by Deputy Commissioner of Police, Law and Order, Madurai City in Rc.No.D1 (1)/PR No. 27/2019 - CPO 1090/2020 dated 05.08.2020 and by the Deputy Commissioner of Police, Headquarters, Madurai City in C.No. L4/33708/2020



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CPO No. 1199/2020 dated 01.08.2020 and quash the same as illegal and consequently direct the 1st and 2nd Respondents to set aside the modified punishment of stoppage of increment for 2 stages without cumulative effect and direct the third and fourth respondents to settle his out of employment period 153 days from 18.07.2019 to 17.12.2019 as period spent on duty within a specific time frame as fixed by this Court.

For Petitioner : Mr.W.Pamelin

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2. The writ petitioner joined the Police Department as Grade-II Police Constable. He is now working as Special Sub Inspector of Police. He was arrested in Crime No.1567 of 2017 registered on the file of the K.Pudur Police Station for the offences under Sections 45 & 46 of Tamil Nadu City Police Act, 1988. Following his implication and arrest in the aforesaid criminal case, he was issued with charge memo dated 16.03.2018. Enquiry was conducted and the disciplinary authority passed order dated 16.07.2019 imposing compulsory retirement from service. Aggrieved by the same, the petitioner filed an appeal before the appellate authority. The appellate authority passed the order dated



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09.12.2019 modifying the punishment from compulsory retirement to postponement of increment for a period of two years without cumulative increment. Challenging the same, the petitioner filed a mercy petition before the first respondent. The first respondent also confirmed the order passed by the appellate authority vide proceedings dated 07.06.2021. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the impugned orders and grant relief as prayed for.

4. The learned Additional Government Pleader appearing for the respondents sought time to file counter affidavit.

5. I however decline to grant the said request. The matter was listed on 01.10.2022 and was posted to 11.11.2022. When the matter was taken up on 11.11.2022, the learned Additional Government Pleader requested time so that they could file the counter affidavit. Accommodating the said request, I posted the matter to 21.11.2022 at 2.15 p.m. The matter has been in the list and it



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reached only today. In any event, the issue raised in the writ petition can very well be adjudicated based on the available materials. I called upon the learned Additional Government Pleader to justify the impugned orders.

6. The learned Additional Government Pleader submitted that the petitioner being a member of the uniformed service is expected to conduct himself appropriately while on duty or while on leave. He pointed out that he took leave on the pretext of going to Palani Murugan Temple. However, he was found to indulge in gaming in the premises of a recreation club. By conducting himself in such a manner, he allowed himself to be implicated in a criminal case. The petitioner has brought disrepute to the organization. The learned Additional Government Pleader submitted that a lenient view has been taken by the authorities. Merely because the case against the petitioner got quashed, that will not tie the hands of the authority from conducting an enquiry into the petitioner's misconduct. He pressed for dismissal of the writ petition.

7. I carefully considered the rival contentions and went through the materials on record.

8. The disciplinary action was initiated against the petitioner only



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because of his implication and arrest in Crime No.1567 of 2017 on the file of the K.Pudur Police Station. It is not in dispute that FIR was quashed vide order dated 27.09.2019 in CrI.O.P.(MD)No.2498 of 2018. The order quashing the criminal proceedings has become final. Therefore, Charge No.2 framed against the petitioner will not lie at all.

9. The other charge is that the petitioner had taken leave on a false pretext. It is true that the petitioner had taken leave for a period of three days in order to fulfill the religious vows. The petitioner's specific case is that the religious vows were completed on 29.12.2017 itself and he returned to Madurai on the next day. His further defence is that he went to the recreation Club only to meet a friend by name Loganathan. He categorically states that he did not indulge in any playing of cards. When FIR itself was quashed, the very implication and arrest of the petitioner has become illegal. The first charge also reads that the petitioner was only found inside the premises of the recreation club. It is not as if the petitioner was found in a forbidden place. It is not the case of the disciplinary authority that the petitioner indulged in gaming. In my view, Charge No.1 is also inherently not maintainable. The petitioner had not committed any kind of misconduct. The findings of the enquiry officer as well as the disciplinary authority are inherently perverse. The punishment imposed



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on the petitioner are also liable to be set aside. The impugned orders are quashed. The petitioner is also entitled to all the consequential benefits.

10. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

23.11.2022

Index : Yes / No

Internet : Yes/ No

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G.R.SWAMINATHAN, J.



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