



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.17591 of 2020 and
W.M.P.(MD)No.14848 of 2020

N.Meena

... Petitioner

Vs.

1. The Director General of Police,
TN Police Head Quarters,
Dr.Radhakrishnan Road,
Mylapore, Chennai – 4.
2. The Additional Director General of Police,
Law and Order,
TN Police Head Quarters,
Dr.Radhakrishnan Road,
Mylapore, Chennai – 4.
3. The Deputy Inspector General of Police,
Madurai Range,
Outpost, Ramnad Reserve Line,
China Chokkikulam, Madurai – 2.
4. The Additional Superintendent of Police,
Prohibition and Enforcement Wing,
O/o.The Superintendent of Police,
Collectorate Complex,
Virudhunagar District -1,
Virudhunagar.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of respondents 1, 2 and 3 in connection with the orders passed by them



proceeding Rc.No.505232/AP2(3)/2020 dated 15.10.2020, proceedings Rc.No.373680/APII(3)/2020 dated 19.03.2020 and also in proceedings Na.Ka.No.A2/2170/187/2018 dated 13.11.2019 respectively and quash the same and direct the respondents to reinstate the petitioner in service with all monetary and service benefits.

For Petitioner : Mr.K.Govindarajan,
for Mr.D.Selvanayagam

For Respondents: Mr.R.Sureshkumar,
Additional Government Pleader.

* * *

ORDER

The writ petitioner joined the police department as Sub Inspector of Police in the year 1999. She was promoted as Inspector of Police on 07.04.2012. She was working as Inspector of Police at Thirumangalam All Women police station during the year 2017. The petitioner was issued with a charge memo dated 11.06.2018 framing as many as four articles of charges. The case of the disciplinary authority is that on 12.09.2017 at about 4.30 p.m, when the daughter of one Petchiammal was returning from her school, one



Balamurugan stopped her and insisted that she must love him.

Petchiyammal lodged complaint. The writ petitioner registered the same belatedly on 18.09.2017. She did not take speedy action for arresting the accused. The accused was all along working in a local spinning mill as a daily wager. He applied for anticipatory bail and even though it was dismissed twice, the petitioner did not have him arrested. On the third occasion, he was granted anticipatory bail. Since the writ petitioner did not take effective action, the accused Balamurugan became emboldened and set the victim child ablaze on 16.02.2018. The victim child died on 27.02.2018. The occurrence had taken place on account of the conduct of the writ petitioner.

2. In response to the aforesaid charge memo, the writ petitioner gave her explanation on 11.10.2019. An enquiry was conducted and witness was examined on the side of the disciplinary authority. The enquiry officer gave a report on 27.06.2019 holding that the charges stood proved. The writ petitioner gave her explanation. But the disciplinary authority was not satisfied with the writ petitioner's explanation and



dismissed her from service vide Order dated 13.11.2019.

Aggrieved by the same, the writ petitioner filed an appeal before the Additional Director General of Police. The appellate authority also vide order dated 19.03.2020 rejected the appeal and confirmed the order passed by the disciplinary authority against the petitioner. Challenging the same, the writ petitioner filed review petition before the first respondent. The first respondent even while confirming the finding of guilt, modified the punishment to one of compulsory retirement. Challenging the same, this writ petition came to be filed.

3. The learned counsel appearing for the writ petitioner took me through the averments set out in the affidavit filed in support of the writ petition. He submitted that the charges are incorrect and baseless and that they do not rest on any credible material. He also added that the finding of guilt has been unreasonably arrived at. He called upon this Court to set aside the impugned orders and allow the writ petition. He also on instructions from the writ petitioner submitted that if the writ petition is allowed and the petitioner



is ordered to be reinstated, the petitioner would be satisfied if she is granted continuity of service alone and she would forego her claim of back wages.

4. The respondents have filed a detailed counter affidavit. The learned Additional Government Pleader appearing for the respondents took me through its contents. The learned counsel submitted that a mere reading of the materials enclosed in the typed set of papers would show that the writ petitioner was negligent in the discharge of her duties. He pointed out that the case involved safety of a girl child. The offences registered against the accused were fairly serious and grave. During the relevant point of time, the protection of child from sexual offences Rule 2012 was in force. The learned counsel drew my attention to Rule 4(12) which speaks of care and protection of victims. He submitted that the writ petitioner had the duty to arrest the offender and she ought to have taken appropriate action. She failed to do so. Subsequent occurrence had taken place on 16.02.2018 leading to death of the child. The charges against the writ petitioner are very grave and the first respondent had taken a



lenient view and imposed the punishment of compulsory retirement instead of dismissal from service. He relied on a catena of decisions and contended that the scope for interference in disciplinary matters is fairly limited. He emphasised that this Court cannot re-appreciate the orders impugned in the writ petition or go into the adequacy of evidence or proportionality of the punishment. He pressed for dismissal of the writ petition.

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

6. The writ petitioner was the Inspector of Police, All Women police station, Thirumangalam during the year 2017. The occurrence had taken place on 12.09.2017 at 04.30 p.m. When the victim child was returning from her school, the accused Balamurugan intercepted her and threatened her and criminally intimidated her that she must fall in love with him. It is not as if the parents of the child lodged complaint immediately. They lodged the complaint only six days later. (ie.) on 18.09.2017. The petitioner had promptly registered



Crime No.87 of 2017 under Sections 7 and 8 of the Protection of Child from Sexual Offences Act 2012 and Section 506(2) of I.P.C. The primary question that arises for consideration is whether the writ petitioner was at fault and committed the act of misconduct by not arresting the offender.

7. A mere reading of the First Information Report itself would show that the offence attributable to the accused fell only under Section 12 of the POCSO Act 2012. Section 12 provides for punishment for sexual harassment for a term which may extend to three years. In fact the accused eventually came to be punished only for the offence under Section 12 of the POCSO Act and sentenced to two years' imprisonment. The other offence was only under Section 506(2) of I.P.C. It is seen that the accused and the victim are relatives. Even the parents did not lodge any complaint immediately after the first occurrence on 12.09.2017. Later when the accused once again committed the act, the parents approached the police station and lodged a complaint that led to registration of First Information Report in Crime No.87 of 2017. The accused was aged around 20 years. The Hon'ble



Supreme Court as well as the Hon'ble High Court have been repeatedly emphasising that arrest should not be made merely for the reason that it is lawful. In this case, the offence under Section 12 of the Act is punishable only for a period up to three years.

8. Section 41(A) of Cr.P.C. states that the police officer must satisfy himself or herself whether arrest is really necessary in such cases. Rule 4(12) of POCSO Rules 2012 does not mandate that in every case registered for the offence under the POCSO Act, arrest must follow. It is not as if the writ petitioner kept idle. She examined the child under Section 164 of Cr.P.C. on 22.10.2017. By December 2017 itself, final report came to be filed. The case itself was taken cognizance by the Mahila Court, Madurai, in Spl.S.C.No.16 of 2018. The writ petitioner was examined as P.W.8. The case ended in conviction and the accused Balamurugan was sentenced to three years Rigorous Imprisonment for the offence under Section 506(2) of IPC and two years Rigorous Imprisonment for the offence under Section 12 of the POCSO Act. It shows that the petitioner effectively investigated the



case and filed charge sheet. The writ petitioner came under adverse notice only because of the subsequent occurrence that had taken place on 16.02.2018 when the victim was set ablaze by the very same accused Balamurugan. The conduct of the petitioner cannot be retrospectively analysed. If really the writ petitioner was at fault, she ought to have been charged in the year 2017 itself. The charge memo came to be issued only on 11.06.2018. This clearly shows that the writ petitioner came under a negative scan by virtue of subsequent developments. This approach is clearly incorrect and unreasonable. An act or omission will amount to misconduct if there is ill-motive or gross negligence. The petitioner had acted with utmost promptitude. Failure to arrest cannot be characterised as misconduct in the facts and circumstances of the case. If the subsequent occurrence had not taken place, the petitioner would not have been subjected to disciplinary action at all. What was not a misconduct originally cannot later become one.

9. In this view of the matter, I hold that the findings arrived at by the enquiry officer, disciplinary authority,



appellate authority and also the reviewing authority are perverse. The orders impugned in this writ petition are set aside and the writ petition stands allowed. The writ petitioner shall be reinstated in service forthwith and without any delay with all attendant and consequential benefits except backwages. No costs. Consequently, connected miscellaneous petitions are closed.

30.09.2022

Index : Yes / No
Internet : Yes/ No
PMU

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TN Police Head Quarters,
Dr.Radhakrishnan Road, Mylapore, Chennai – 4.
2. The Additional Director General of Police,
Law and Order, TN Police Head Quarters,
Dr.Radhakrishnan Road, Mylapore, Chennai – 4.
3. The Deputy Inspector General of Police,
Madurai Range, Outpost, Ramnad Reserve Line,
China Chokkikulam, Madurai – 2.
4. The Additional Superintendent of Police,
Prohibition and Enforcement Wing,
O/o.The Superintendent of Police,
Collectorate Complex, Virudhunagar District -1,
Virudhunagar.



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G.R.SWAMINATHAN,J.

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