



W.P.(MD)No.8711 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.10.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.8711 of 2014
and
W.M.P(MD)No.17774 of 2017
and
M.P(MD)No.1 of 2014

A.Kanagasabapathy

... Petitioner

vs.

1. The Principal Secretary to Government,
Home (Police-VI) Department,
Secretariat, Chennai.

2. The Superintendent of Police,
Tiruchirappalli,
Tiruchirappalli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of ***Certiorarified Mandamus***, calling for the entire records in connection with the impugned order passed by the 1st respondent in G.O.(2D) No. 692 dated 18.11.2013 confirming the punishment of 'stoppage of increment for



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one year with cumulative effect' imposed on the petitioner in G.O.(2D)No.273 Home (Police-2) department dated 10.06.2004 and quash the same and directing the respondents to regularize the service of the petitioner without affecting his seniority and promotion with all monetary benefits.

For Petitioner : Mr.K.K.Kannan

For Respondents : Mr.J.John Rajadurai
Government Pleader

ORDER

This Writ Petition is filed for issuance of *Certiorarified Mandamus*, to quash the impugned order passed by the 1st respondent in G.O.(2D) No.692, dated 18.11.2013, confirming the punishment of 'stoppage of increment for one year with cumulative effect' imposed on the petitioner in G.O.(2D)No.273 Home (Police-2) Department, dated 10.06.2004 and quash the same and directing the respondents to regularize the service of the petitioner, without affecting his seniority and promotion with all monetary benefits.



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2. The brief facts as stated in the affidavit is that the petitioner was appointed as Grade-II Police Constable on 24.10.1994. While he was working in Vayampatti Police Station, a charge memo was issued consisting of two charges, under Rule 3(b) of Tamil Nadu Police Subordinate Service [Discipline and Appeal] Rules. The first charge is that the petitioner had brought a woman to the police station for interrogation on 27.07.1989, thereby, violated the provision of Section 160(1) of Criminal Procedure Code. The second charge is that the petitioner gross reprehensible conduct by compelling one Lakshmi wife of Thekkamalai to come to the police station against her will on 27.07.1999, which would come under the meaning of abduction as defined in Section 362 of the I.P.C.

3. The petitioner has faced two criminal cases for the very same offence as alleged in the charge memo, on the complaint of Revenue Divisional Officer, Karur in Crime Nos.1 & 2 of 1997. The above two criminal cases were tried by the learned I Additional Assistant Sessions Judge, Thiruchirappalli and the petitioner was convicted. In CrI.A.Nos.31 & 32 of 2000 on the file of the I



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Additional Sessions Judge cum Chief Judicial Magistrate, Thiruchirappalli, the petitioner was acquitted from the charges framed against him, vide, judgment, dated 04.10.2000 and the above acquittal is “honorary acquittal. Against the acquittal, the respondents have not preferred any appeal and the acquittal order has become finality.

4. The respondent has issued a charge memo in P.R.No.357/H1/94 on 13.05.1994 and the petitioner has submitted his explanation on 05.03.1997. Thereafter, the respondents have conducted enquiry and issued second show cause notice dated 28.11.2012. In the departmental enquiry, P.W.1 has turned hostile and P.W.2 stated that, he had not seen any occurrence that he took the Lakshmi to the police station and she could not identify the delinquent. The enquiry officer finding was based on the complaint given by P.W.1, before the Revenue Divisional Officer, Karur. However, P.W.1 has become hostile and the same was not taken into account by the enquiry officer. Even though, P.W.1 has turned hostile, the enquiry officer hold that the charges were proved. Thereafter, the 1st respondent imposed major punishment 'for stoppage of increment with



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cumulative effect' for one year inclusive of period spent on leave if any and pension will be affected. Thereafter, the petitioner has submitted a representation before the 1st respondent for review of the impugned order, but the same was rejected, without considering the acquittal by the Criminal Court by order, dated 18.11.2013 in G.O.(2D) No.692. Aggrieved over the same, this Writ Petition is filed before this Court.

5. The respondents have filed counter affidavit and stated that during the departmental enquiry P.W.1 turned hostile and P.W.2 had stated that he had not seen any occurrence and the same is incorrect. It is further submitted that P.W. 1 to P.W.5 and Ex.P.1 to Ex.P.7 are positive proof that, both Lakshmi and Thekkamali had identified the petitioner at the time of identification parade conducted by the Revenue Divisional Officer and also during the enquiry. It is further submitted that the petitioner had took Lakshmi wife of Thekkamalai to the Vaiyampatti Police Station, on the pretext of interrogation in connection with the Crime No.152 of 1989 under Section 379 of IPC. The allegation was proved against the petitioner that, the petitioner was dealt for his bad intention and



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reprehensible conduct in the departmental enquiry, for bringing a woman for interrogation by compelling and threatening to come to the police station against her will and voluntarily causing hurt to a person, without any cause and the petitioner's bad intention and reprehensible conduct committed by the petitioner are the cause for punishment. Moreover, the said act amounts to abduction as defined in section 362 of I.P.C. and voluntarily causing hurt to Thekkamali as defined in Section 321 of I.P.C. After proper oral enquiry, it has come to the conclusion that the petitioner has committed an offence and the punishment is proportionate. Therefore, the respondents prayed to dismiss the writ petition.

6. Heard Mr.K.K.Kannan, learned counsel appearing for the petitioner and Mr.J.John Rajadurai, learned Government Pleader appearing for the respondents. Perused the material documents available on record.

7. It is seen from the records that, only allegation against the petitioner is that he brought one Lakshmi wife of Thekkamalai, to the police station for interrogation. Subsequently, the petitioner has compelled her for



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interrogation and caused grievous hurt. The claim of the petitioner is that the said Lakshmi has become hostile witness and hence, there is no proof that the petitioner has committed the alleged offence.

8. On perusal of the counter affidavit filed by the respondents, the respondents had simply stated in the counter that P.W.1 to P.W.5 had deposed before the enquiry officer. The respondents have not clearly stated that, Whether the said Lakshmi has turned hostile or not?. Therefore, the version of the petitioner ought to be accepted since there is no clear denial from the respondents. Therefore, this Court is of the considered opinion that, since the petitioner was acquitted from the criminal proceedings and there is no independent evidence to prove the allegation, the punishment imposed on the petitioner ought to be interfered with.

9. The respondents have imposed the punishment of stoppage of increment with cumulative effect for one year inclusive of period spent on leave, if any and pension will be affected. Based on the above discussions the



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punishment is modified as stoppage of increment for six months without cumulative effect and the same shall not affect the pensionary benefits. Consequently, the respondents are directed to regularize the service of the petitioner without affecting his seniority and promotion. This order shall be implemented within a period of four weeks from the date of receipt of a copy of the order.

10. With the above directions, this Writ Petition is disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
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To

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S.SRIMATHY, J

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