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W.P.(MD)No.21476 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.03.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.21476 of 2015

and

M.P. (MD)No.1 of 2015

V.Santhosam

... Petitioner

vs

1. The Inspector General Cum
Chief Security Commissioner,
Railway Protection Force, Southern Railway,
Moor, Market Complex, Chennai - 600 003.
2. The Deputy Chief Security Commissioner,
Southern Railway, Moor market Complex,
Chennai - 600 003.
3. The Divisional Security Commissioner,
Railway Protection Force, Madurai.
4. Enquiry Officer,
Inspector of Protection Force,
Railway Protection Force,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pursuant to the impugned order passed by the third respondent in No.65/2015 dated 09.09.2015 UIN-8100858 Penalty advice and order reinstatement of the petitioner with effect from 23.04.2009 quash the same and issue a consequential direction, directing the respondents 1 to 3 herein to give all the monetary benefits to the petitioner from 23.04.2009.

For Petitioner : M/s.Lakshmi Gopinathan
for M/S/Polax Legal Solutions
For Respondents : Mr.S.Manohar for R1 to R4

O R D E R

This writ petition is filed to quash the impugned order, dated 09.09.2015 with the consequential relief to reinstate the petitioner to the effect from 23.04.2009 and disburse all the monetary benefits.

2. The petitioner was working in the Railway Protection Special Force from 25.09.1976 as Constable. Thereafter, he was promoted as

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Naik during the year 1983 and then promoted as Head Constable on 22.08.1996. The petitioner has put in service for 33 years and he was rewarded some awards. A Charge Memo dated 04.05.2008 was issued alleging that he demanded and accepted money for arranging job in Railway Department for one Mr. Nagendran of Pannian Village and the petitioner has alleged a sum of Rs.98,000/- on two occasions from one Pandiammal on 10.07.2007 and 25.07.2007 in the presence of one Ramar. The petitioner was charge sheeted for violating the Railway Protection Force Rules, under 146.04 for bringing discredit to Department, under 146.7. for improper use or attempt so to use position as such member for the personal gain, 147(i) violation of any duty, 147(ii) willful breach of lawful orders, 147(iii) disobeying lawful command of superior office.

3. The contention of the petitioner is that without getting any explanation, the respondents had taken steps to conduct enquiry by appointing an Enquiry Officer dated 20.08.2008. The Enquiry Officer posted the enquiry to be held on 20.08.2008. Aggrieved over the same, the petitioner has preferred appeal and the same was rejected. Then preferred revision petition with additional statement of grounds for revision, since the same was not considered, the petitioner preferred a writ petition in W.P.(MD)no.854 of 2010 and this Court, vide order, dated 28.01.2010 directed the first respondent to consider the revision Petition, dated 03.10.2009 and pass orders on merits. The respondents have rejected the revision, vide order, dated 10.02.2010 and the same was indicated to the petitioner. Again the petitioner has preferred a writ petition in W.P.(MD)No.10186 of 2010 and this Court pleased to remit back for fresh enquiry. The contention of the petitioner is that again the respondents have committed the same mistakes by confirming the charges and conducted an enquiry without perusing the evidence thereby, violation of principles of natural justice. The petitioner submitted an explanation on 25.07.2015 and once again the third respondent has confirmed the earlier punishment of "compulsory retirement from service".

4. The respondents have filed a counter affidavit stating that since the complaint was lodged by the said Pandiammal, the preliminary enquiry was conducted and based on the *prima facie* evidence, subsequent proceedings were initiated. The enquiry officer conducted an enquiry and submitted the enquiry report on 05.02.2009 and held that all the charges were proved. Thereafter, the disciplinary authority has awarded a punishment of compulsory retirement with effect from 23.04.2009. The petitioner submitted an appeal on 22.05.2009 and the same was rejected, vide order, dated 31.07.2009. On 03.09.2009, the Revision Petition was submitted and the same was rejected on 10.02.2010. Thereafter, the petitioner approached this Court against the punishment and the matter was remitted back to conduct a fresh enquiry. Again the matter was taken up and the fresh enquiry was initiated. The petitioner was



given sufficient opportunities and the competitive authority perused the entire file including the report of the enquiry officer and thereafter, the punishment was imposed in accordance to the Railway Rule. The respondents submitted that the presence of charged employee on 06.08.2007 in Chennai has been clearly proved by PW-8 and PW-10. Therefore, based on the records and evidence, the punishment was imposed.

5. Heard M/s.Lakshmi Gopinathan, learned Counsel appearing for the petitioner and Mr.S.Manohar, learned Counsel appearing for the respondents.

6. The contention of the petitioner is that there was a Civil dispute between the parties and in order to settle the rivalry between the parties, the de-facto complainant has preferred a complaint and the petitioner has not received such amount from the said Pandiammal.

7. On perusal of the material, it is seen that the allegation against the petitioner is that he has obtained Rs.98,000/- from the said Pandiammal with promise to get the job in the Railway Protection Force to his son namely Nagendran. The de-facto complainant has preferred a criminal complaint also and the petitioner has preferred the petition to grant Anticipatory bail and filed a Cr.OP.No.7623 of 2009. When the petition was taken up, the respondent police has submitted that there is no petition at all for enquiry and the bail application was dismissed. Recording the said submission, the bail petition was dismissed.

8. It is seen from the records that the said Pandiammal has not preferred any police complaint to initiate criminal case and has not initiated any civil proceedings to recover the said amount. The respondents have acted on the complaint petition, but this Court is of the considered view that the respondents ought to have directed the said Pandiammal to prefer the complaint before appropriate forum. When the petitioner claims that there was some civil dispute between the parties, the respondent ought not to have acted in such hasty manner. Moreover the said transaction is private in nature and nothing to do with his official duties. As on date, there is no complaint and no FIR against the petitioner for the alleged demand of money. When the said Pandiammal has not initiated any proceedings for recovery of the said amount, the version of the Pandiammal that she had paid Rs.98,000/- is not believable and the complaint is preferred only to disturb the job of the petitioner and she is successful in doing so.

9. Therefore, this Court is of the considered view that the punishment of compulsory retirement is improper and therefore, this Court is setting aside the punishment of compulsory retirement. The



has attained superannuation as on date. The respondents are directed disburse all the monetary benefits and other service benefits to the petitioner. It is made clear that the petitioner is not entitled to any salary for the non-employment period.

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10. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

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Chief Security Commissioner,
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Moor, Market Complex, Chennai - 600 003.
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Inspector of Protection Force,
Railway Protection Force,
Madurai.

+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-11960[F] dated 14/03/2022)

+1 CC to M/s.S.MANO HAR, Advocate (SR-12373[F] dated 16/03/2022)

W.P. (MD) No.21476 of 2015
14.03.2022

KB(04.04.2022) 4P 7C