



WEB COPY

W.P.(MD)No.9089 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.04.2022

PRONOUNCED ON : 02.06.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.9089 of 2015

and

M.P. (MD) .Nos.1 and 2 of 2015

V.Veluchamy

... Petitioner

-Vs-

1.The Deputy Inspector General of Police,
Madurai Range,
Madurai District.

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

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned punishment order passed by the second respondent in his proceedings in P.R.No.113/2012 dated 08.10.2013 and the consequential rejection order passed by the first respondent in his proceedings in C.No.A4/0183/AP/2014 dated 28.02.2014 and quash the same as illegal and consequentially to direct the respondents to promote the petitioner as Head Constable with effect from the date on which juniors were promoted with seniority and all other benefit within the period that may be stipulated by this Court.

For Petitioner : Mr.K.Suresh Kumar

For Respondents : M/s.D.Farjana Ghoushia
Special Government Pleader

ORDER

This Writ Petition is filed to quash the impugned orders in P.R.No.113/2012 dated 08.10.2013 passed by the second respondent and in C.No.A4/0183/AP/2014 dated 28.02.2014 passed by the first respondent respectively and consequentially to direct the second respondent to promote the petitioner as Head Constable with effect from the date on which juniors were promoted with seniority and all other benefit.



2. The brief facts of the case are that the petitioner was initially appointed as Police Constable Grade-II on 15.04.1997 and he was promoted as Police Constable Grade-I in the year 2007. A charge memo was issued under Rule 3(b) of Tamil Nadu Police Subordinate (Disciplinary and Appeal) Rules, 1995, in P.R.No.113/2012 dated 21.11.2012 alleging that without getting any prior permission either from Mining Department or from the Police Department, the petitioner was running Brick Chamber at Thendral Nagar, Rajapalayam in the name of his wife viz., Mrs.Pasupathi. The petitioner had submitted his explanation refusing the allegations stating that he was not running any Brick Chamber in the name of his wife. The second respondent appointed an enquiry officer and the enquiry report was submitted on 30.04.2013. The report was served on the petitioner and the second respondent directed the petitioner to summon his further explanation on the enquiry report. The petitioner has submitted his explanation, which reads as follows:

i.The land in Survey No.180/3C1 were the chamber situates is not belonging to the petitioner and there is no Brick Chamber is running in the said Survey.

ii.There is no material to prove that the petitioner submitted application for grant of license in the name of his wife for running the Brick Chamber and the petitioner has got Customary Divorce from his wife on 19.05.2009 itself.

iii.The statement of One Marimuthu who runs the Brick Chamber in the said Survey was not considered that he runs the chamber before 2010 and thereafter no chamber is functioning in that place.

iv.Either the Village Administrative Officer, Revenue Inspector or the Thasildar has not conducted any enquiry from the petitioner before filing the report and everything has been done behind the petitioner's back based on the Hearsay evidence.

v.The witnesses 1, 2 and 3 are all nothing but who gave a complaint against the petitioner due to personal dispute between them.

vi.The survey number mentioned in the charge memo belongs to eight persons but none of the land owners has been examined."

3. After receipt of the aforesaid explanation, the second respondent has passed the impugned order in P.R.No.113/2012 dated 08.10.2013 imposing punishment of postponement of increment for a period of three years with cumulative effect. Aggrieved over the same, the petitioner had preferred an appeal before the first respondent and the same has been rejected on 28.02.2014 on the ground of limitation. Aggrieved over the said order, the present writ petition has been filed.

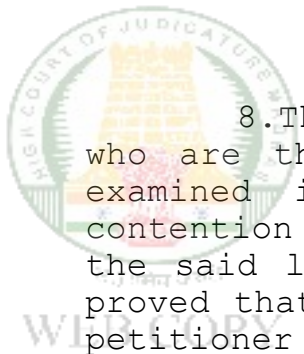


4.The respondent has filed a counter stating that this writ petition is not maintainable, since an alternative remedy is available to the petitioner to prefer a Review petition before the ADGP, Law and Order, Chennai. Further, it is stated that the Revenue Department has clearly established that the petitioner is running a Brick Chamber without getting any prior permission from the Mines Department. The witnesses 4, 5 and 6, who are working in the Revenue Department as Village Administrative Officer, Revenue Inspector, Thasildar, respectively have clearly established that the chamber was being run by the petitioner. The contention of the petitioner is that the eight persons, who are the land owners were not examined. But the reply of the respondent is that the petitioner ought to have produced them in order to disprove the allegations, but the petitioner failed to do so. The allegation levelled against the petitioner is that he has not obtained any prior permission from the concerned department. The petitioner has not established that he has obtained prior permission to run the Brick Chamber and the disciplinary authority has passed speaking orders after considering the enquiry officer report. Therefore, the petitioner has not established to interfere with the punishment order. Hence, the respondent prayed to dismiss the writ petition.

5. Heard the learned counsel appearing for the petitioner, the learned Special Government Pleader appearing for the respondents and perused the records.

6. The allegation against the petitioner is that he was running a Brick Chamber without obtaining prior permission from the Revenue, Mining and Police Departments. The contention of the petitioner is that he was not running the said Brick Chamber at all and in such circumstances, there is no question of seeking permission from the authorities. One Marimuthu was running the said chamber and the said Marimuthu has given statement stating that he was running the said chamber before 2010 and thereafter, no brick chamber is functioning in that place as of now.

7.The contention of the petitioner is that he divorced his wife through Customary Divorce on 19.05.2009 itself. According to the respondent, the Brick Chamber was running prior to 2010 and the petitioner divorced his wife in the year 2009 itself. Therefore, the petitioner claims that if the petitioner's ex-wife is running any Brick Chamber, he is not responsible for the same, since he divorced his wife. Admittedly the petitioner was not running the Brick Chamber in his name but in the name of his wife. But the records shows that one Marimuthu was running the Brick Chamber and the respondents have not stated the relationship between the said Marimuthu and the petitioner. Therefore this Court is of the considered opinion that there is no sufficient evidence to prove the allegation against the petitioner.



8.The land in Survey No.180/3 C1 belongs to eight persons, who are the land owners, but none of the land owners have been examined in the said case. The respondent replied to this contention that the petitioner ought to have taken steps to produce the said land owners before the Enquiry Officer and ought to have proved that the allegations levelled against him are false. But the petitioner failed to do so and now cannot claim that the respondent failed to prove the case. This Court is of the considered opinion that the land owners ought to have been enquired at least in the preliminary enquiry and not enquiring the land owners is fatal to the case.

9. Aggrieved over the disciplinary authority order, the petitioner has preferred an appeal and the same was dismissed as belated appeal and during appellate stage also the petitioner was not granted proper opportunity to contest the appeal. Admittedly, the petitioner has not preferred any review petition against the order of the disciplinary authority.

10.This Court is of the considered opinion that the evidence placed before the enquiry authority is not sufficient to prove the allegations levelled against the petitioner. Therefore, this Court is inclined to modify the punishment of stoppage of increment for three years with cumulative effect as stoppage of increment for six months without cumulative effect. Hence, the impugned orders are set aside and the respondents are directed to implement the punishment, which was modified by this Court and consequently, the petitioner may be considered for promotion, if the petitioner is otherwise qualified. This exercise shall be completed within a period of six (6) weeks from the date of receipt of a copy of this order.

11.With the above directions, this writ petition is disposed of. No costs. Consequently, the connected M.P.(MD).Nos.1 and 2 of 2015 are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Vsg

To:

1.The Deputy Inspector General of Police,
Madurai Range,
Madurai District.



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

+1 CC to M/s.SPL.GP (SR-24293[F] dated 03/06/2022)

W.P. (MD) No.9089 of 2015 and
M.P. (MD) Nos.1 and 2 of 2015
02.06.2022

RD(10.06.2022) 5P 4C