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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.11.2022

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THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.22480 of 2016
and
W.M.P.(MD)Nos.16110 and 16111 of 2016

M.Madhavan ... Petitioner

vs.

1.The State of Tamilnadu,
represented by its Secretary to Government,
Home Department,
Secretariat, Chennai.

2.The Director General of Police,
Chennai-4.

3.The Commissioner of Police,
Madurai City, Madurai.

4.The Deputy Commissioner of Police (Law & Order),
Madurai City, Madurai.

5.The Assistant Commissioner of Police Law & Order,
Town Range, Madurai City,
Madurai.

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6.The Inspector of Police,
B3, Theppakulam Law & Order,
Theppakulam, 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 relating to the impugned order passed by the 2nd respondent, vide his impugned proceedings Rc.No.058429/APII(3)/2015, dated 11.05.2016, confirming the order passed by the 4th respondent by his impugned proceedings in Tha.Pa.No.128/2012, dated 28.10.2013 and to quash the same as illegal and consequentially, to direct the respondents to reinstate the petitioner with all other attendant and monetary benefits within the period that may be stipulated by this Court.

For Petitioner : Mr.C.Venkatesh Kumar
For Respondents : Mr.P.Thambidurai
Government Advocate
*****

O R D E R

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned order dated 11.05.2016 passed by the 2nd respondent, by confirming the order dated 28.10.2013 passed by the 4th respondent and consequentially, to direct

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the respondents to reinstate the petitioner with all other attendant and monetary benefits within the period that may be stipulated by this Court.

2. The petitioner was initially appointed as Grade II Police on 01.11.1997, subsequently, promoted as Grade I Police Constable in November 2008. The petitioner availed medical leave for ten days commencing from 24.12.2011 on account of fracture in his left leg caused due to two wheeler accident and extended medical leave from 26.02.2012. The petitioner was not issued with medical passport and hence he was not in a position to join the post. Subsequently, the petitioner was directed to appear before the Medical Board in May 2012 and the petitioner has appeared before the Medical Board, but was not examined by the Medical Board on the ground that he did not have medical passport. Thereafter, the respondents considered the petitioner as deserted. A charge memo, dated 19.12.2012, was issued alleging that the petitioner forged the signature of witnesses and the enquiry officer in PR No.79 of 2010 and misplaced the copy of the connected file. The petitioner submitted an explanation stating

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that he have no connection to the charges and also denied the allegation of forging the signature. The petitioner further submitted that he was transferred in the month of September 2010 itself and hence, he is not responsible for the misplacing of the records. The respondents were not satisfied with the explanation and hence, an enquiry was conducted. The petitioner had fracture in his leg so he did not attend the enquiry. The respondents concluded the enquiry in the absence of the petitioner and held that the charges are proved. The enquiry report simply states that since the petitioner has not appeared, the charges are proved, but the report is not supported by any concrete evidence and is based on mere presumptions and conjunctions. Based on the report the 4th respondent has held that the charges are proved due to non-appearance of the petitioner to the enquiry and imposed the punishment of removal from service. The petitioner preferred mercy petition to the 2nd respondent and the same was rejected on the ground that the petitioner did not appear before the enquiry despite the enquiry notice. The order made in mercy petition would show that the punishment was reviewed and accepted by the 3rd respondent who is the appellate authority in his

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proceedings, dated 21.01.2014. Before reviewing the respondent had not issued any notice to the petitioner.

3. The contention of the petitioner is that the allegation of misplacing all the records and the second count of charge levelled against the petitioner that the petitioner is the reason for misplacing is completely wrong and contrary to the facts. The petitioner was directed to work as Computer Operator in the office of Assistant Commissioner of Police (Law & Order), Madurai City, for the period between September 2009 to October 2009. There is no allegation as to misplacing of records during that period. Moreover, the petitioner's duty is not to maintain the records and the petitioner's duty is to upgrade the records through computer and to dispatch the same to the concerned officer. There is no dispute for the fact that the petitioner updated the records in the system and dispatched the same. Therefore, there is no fault on the part of the petitioner. The above facts would clearly show that there is no necessity for the petitioner to misplace the records and there is no intention on the part of the petitioner for the purpose

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of forging and misplacing the records. Neither of the respondents says that it was intentional. When admittedly there was no intention either to forge or to misplace the records, the punishment of removal from service imposed on the petitioner is disproportionate.

4.The further contention of the petitioner is that there was no circumstances for forging the signature at all. The then Additional Deputy Commissioner (Prohibition Wing) has deposed that the enquiry should be conducted as against the then Assistant Commissioner of police and the petitioner. There was no proceedings against the said officer and one Ramu who was the Head Constable was imposed lesser punishment. Therefore, the learned Counsel for the petitioner submitted that the very basis of the enquiry proceedings was proceeded on wrong facts and the punishment imposed is on a higher side.

5. The respondents have filed a counter affidavit stating that a charge memo, in P.R.No.128 of 2003 was initiated for forging the signature of the

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enquiry officer and witnesses in P.R.No.79 of 2000 under Rule 3(b) against Head Constable one Ramu and misplaced the office copy of the connected file. The petitioner was inflicted with a punishment of removal from service by the disciplinary authority and his mercy petition was rejected by the Director General of Police. The petitioner's desertion was confirmed through orders. The petitioner has not co-operated with the enquiry officer and he did not turn up for the enquiry despite several reminders. The copy of findings of the enquiry officer was issued to the petitioner and the petitioner ought to have submitted his objections to the enquiry but he has not submitted his further representation. Hence, based on statements of witnesses, it is found that the petitioner tampered the documents and affixed the signatures of the witnesses. Hence, he was imposed with a punishment of removal from service. The punishment was reviewed and it was confirmed. The punishment was confirmed in the mercy petition also. The petitioner ought to have substantiated his claim that he has not forged the signatures by attending the oral enquiry and cross examination but the petitioner failed to do so. Since the petitioner is solely responsible for tampering the

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records, the punishment was imposed. If the petitioner wanted to prove his innocence, he should have attended the enquiry and listed the points in favour of him. Having failed to do so, the petitioner cannot file this writ petition and hence, the respondents prayed to dismiss the writ petition.

6.Heard Mr.C.Venkatesh Kumar, learned Counsel appearing for the petitioner and Mr.P.Thambidurai, learned Government Advocate appearing for the respondents and perused the records.

7. The allegation against the petitioner is that he has forged signatures of witnesses and the enquiry officer in the enquiry proceedings which were initiated against one Ramu. But the petitioner denied the said charges as false. However, the petitioner has not participated in the enquiry proceedings, in spite of several notices. The petitioner failed to submit any explanation for the enquiry report as well. Since it is an ex-parte order, this Court deems it fit to remit the case back to the authority for re-enquiry.

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8. Therefore, the impugned order of dismissal from service is set aside. The respondents are directed to reinstate the petitioner and conduct an enquiry. The petitioner shall participate in the enquiry without any default. The said enquiry shall be completed within a period of six months from the date of receipt of a copy of this order.

9. With the above said observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes

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