



W.P(MD)No.23667 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.23667 of 2019

and

W.M.P.(MD)No.20262 of 2019

S.I.Sankari

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Additional Chief Secretary
to Government,
Home (Police-V) Department,
Secretariat, Chennai – 9.

2.The Director General of Police,
Mylapore,
Chennai – 4.

3.The Superintendent of Police,
Theni, Theni District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the order passed by the 3rd Respondent in his proceedings in Tha.Pa.No.F1/52/2007 dated 13-10-2009 and the order modifying the punishment passed by the 2nd Respondent in his proceedings R.C.No.248739/AP/2(3)/2011 dated 21-02-2013 and the consequential rejection order passed by the 1st Respondent in his proceedings in



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G.O.(D).No.1083 Home (Police V) Department dated 17-09-2019 and quash the same as illegal.

For Petitioner : Mr.A.Nawaz Khan,
For M/s. Ajmal Associates.

For Respondents : Mr.A.K.Manikkam,
Spl. Government Pleader.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner is working as Superintendent of District Police Office, Theni. She had joined the department as Typist in the year 1989 and was promoted as Assistant in the year 1997. Subsequently, she got promotion as Superintendent in the year 2014. The petitioner was served with charge memo dated 12.04.2007 alleging that she had developed illicit intimacy with one M.Malaisamy who was then working as Grade – I Police Constable. The writ petitioner submitted her explanation denying the charges. Enquiry was ordered to be held. The enquiry officer gave his report dated 06.06.2009 holding that the charges framed against the petitioner stood proved. Copy of the enquiry report was served on the petitioner and the petitioner gave her further representation. Not satisfied with the same, the disciplinary



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authority/third respondent passed the order dated 13.10.2009 confirming the finding of the enquiry officer and imposing punishment of postponement of increment for a period of two years with cumulative effect. Aggrieved by the same, the petitioner filed a mercy petition before the Director General of Police, Mylapore. The second respondent by order 21.02.2013 modified the punishment and direct that the postponement of increment without cumulative effect. Thereafter, the petitioner filed a memorial petition before the first respondent. The first respondent by the impugned order dated 17.09.2019 confirmed the order passed by the second respondent. Challenging the same, the present writ petition has been filed.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the orders impugned in the writ petition.

4.The learned Special Government Pleader for the respondents submitted that the petitioner as a government servant was expected to maintain highest standard of conduct and she had brought disrepute to the department and that therefore punishment imposed on her cannot be said to be disproportionate. He pressed for dismissal of the writ petition.



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5.I carefully considered the rival contentions and went through the materials on record. The case against the writ petitioner is that she had developed illicit intimacy with one Malaisamy who was then working as Grade – I Police Constable. It is true that Malaisamy's wife namely Saritha had given complaint originally. But even before commencement of the enquiry, she had turned hostile and informed the department that she was not pursuing her allegation. She was examined as witness during enquiry. In the enquiry also, she did not support the charges. The prime witness in support of the charges could have only been the wife of Malaisamy. When she herself has not chosen to stand by her original allegations, I must necessarily hold that the charges against the writ petitioner have not been proved. It is true that two witnesses were examined on the side of the disciplinary authority namely, P.W.8/Senthil Karupiah and P.W.9/Rathinavelu had stated that they saw Malaisamy as well as the writ petitioner in a house near Moondrumavadi. It has been elicited from their testimony that they had financial transaction with Malaisamy. Therefore, their evidence will have to be taken only with a pinch of salt. In any event, it is only their own oral statement without being backed by any other material. If really Malaisamy had been residing in a separate establishment with the writ petitioner, certainly Malaisamy's wife/Saritha would not have turned hostile.



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6.In this view of the matter, I have to hold that the finding arrived at by the enquiry officer is not sustainable. The disciplinary authority as well as the other authorities have not taken note of the fact that Saritha, wife of Malaisamy has turned turtle. In this view of the matter, the order impugned in the writ petition is quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

11.10.2022

Index : Yes / No
Internet : Yes/ No
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To:

- 1.The Additional Chief Secretary to Government,
Home (Police-V) Department,
Secretariat, Chennai – 9.
- 2.The Director General of Police,
Mylapore,
Chennai – 4.
- 3.The Superintendent of Police,
Theni, Theni District.



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G.R.SWAMINATHAN, J.

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