



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.20272 of 2017

and

W.M.P. (MD) .No.16517 of 2017

S.Senthil Kumar

... Petitioner

Vs.

1.The Commissioner of Police,
Madurai City @ Madurai.

2.The Deputy Commissioner of Police,
Traffic and Law and Order (Incharge),
Madurai City @ Madurai.

3.Mr.Velmurugan (Oral Enquiry Officer),
Town Crime Range,
Madurai City @ Madurai.

4.Indirani

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records from the first respondent in his proceedings in C.No.D1(1)/PR.No.59/2016 Dated 13.10.2017 by confirming the order passed by the second respondent in ol(1)/j.g.vz;; 59/2016 tpjp 3(M)Dated 23.06.2017 quash the same and consequently direct the first and second respondents to reinstate the petitioner into service with all monetary benefits with continuity of services.

For Petitioner : M/s.Isaac Mohanlal,
Senior Counsel,
For Mr.K.Muthu Ganesa Pandian

For R-1 to R-3 : Mr.N.Ramesh Arumugam,
Government Advocate (Civil Side).

For R-4 : No Appearance.

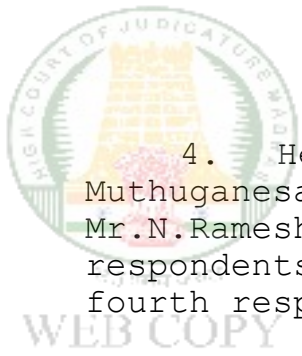
ORDER

This Writ Petition has been filed to quash the order dated 13.10.2017 by confirming the order of the second respondent dated 23.06.2017 and consequently direct the respondents to reinstate the petitioner into service with all monetary benefits with continuity of service



2. The petitioner was appointed as Grade-II Constable on 25.05.1988 then transferred to Law & Order section in the year 1998. Thereafter, promoted as Grade-I Constable in the year 2001, then promoted as Head Constable. On 22.07.2016, a charge memo was issued and the first charge is regarding the questionable relationship with the fourth respondent thereby violated Rule 23(2) of Tamil Nadu Subordinate Police Officers Conduct Rules, 1964. The second charge is that the petitioner was having relationship with the fourth respondent and later threatened her through mobile phone which has resulted into registration of criminal case in Crime No.1323 of 2015 under Section 294(b), 448, 427, 379(NP) & 506(ii) of IPC read with Section 4 of Tamil Nadu Women Harassment Act and Section 75(2)(a) of TNCP Act and thereby violated Section 24 of Tamil Nadu Subordinate Police Officers Conduct Rules, 1964. The third respondent was appointed as an enquiry officer. The fourth respondent has preferred CrI.O.P.No.10233 of 2015 and the Criminal Original Petition was registered as per the orders of the High Court, Madurai, but the respondents alleged that the petitioner had entered into house of the fourth respondent and ransack and damaged the household articles of the fourth respondent and threatened her, but, during examination all the three police officers who are departmental witness stated that the above case was registered only as per the orders of the Court and there is no independent witness examined. Another CrI.O.P.No.1323/2015 was filed by the fourth respondent by furnishing false information and the said criminal case has ended as mistake of fact by Investigation Officers as early as on 19.04.2017 that is prior to passing of the final order by the authority on 23.06.2017. In spite of the same, the third respondent filed his report and based on the same, the second respondent has called the petitioner to submit further explanation. The petitioner submitted his explanation on 18.05.2017. Thereafter, the second respondent passed an order of punishment of compulsory retirement from service on 23.06.2017. The petitioner preferred an appeal to the first respondent and the same was dismissed on 13.10.2017. Aggrieved by the same, the present Writ Petition is filed.

3. The respondents had filed a counter stating that a charge memo was issued and proceedings were initiated in P.R.No.59/16 under Rule 3(b) of Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules, 1855. As per the fourth respondent submission that her earlier petition in CrI.O.P. No. 4350/2015 the facts are not narrated properly and the present CrI.O.P. No. 10233/2015 the facts are narrated are correct one. Based on the High Court order and after enquiry, the criminal case was registered. The petitioner developed illicit relationship and pressed for sex during day time that is 2.00 p.m. and the deposition of Sakthivel also clearly states that both the petitioner and the fourth respondent lived as husband and wife. Based on the other witness and materials on records, the enquiry officer has concluded the charges are proved. Thereafter, the punishment was imposed on the petitioner. Hence the



4. Heard Mr.Isaac Mohanlal, Senior Counsel for Mr.K. Muthuganesapandian, learned counsel for the petitioner and Mr.N.Ramesh Arumugam, learned Government Advocate (Civil Side) for respondents 1 to 3. There is no one appearance on behalf of the fourth respondent.

5. The Learned Senior Counsel submitted that the entire reasoning stated in the punishment order as well as the appellate order is based on the observation made in Crl.O.P.No.18095/2015 wherein this Court has held in the order as *prima facie* material available that the appellant is having illicit relationship with Tmt.Indirani.

6. Moreover the appellate authority ought to consider the appeal as per Rule 6 of the Appellate Rules. The petitioner relied on 2009 (4) SCC 240 in Chairman Disciplinary Authority Vs. Jagdish Sharan Varshney where it has been held that the appellate order should disclose the application of mind. Whether there was an application of mind or not, can only be ascertain by some reasons, atleast in brief, mentioned in the order of the appellate authority. The proposition that an order of affirmation need not contain any reasons at all is not acceptable. That order must contain some reasons, atleast in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority. The petitioner also relied on K.Kandasamy Vs The Deputy Inspector General of Police reported in 2006 (4) MLJ 1382 where it has been held by this Court that the department appeal is the last resort for the delinquent to shape his case on factual details and the rules also support the detailed enquiry. Non speaking order of the appellate authority is liable to be quashed. The petitioner also relied on order passed in W.P. (MD). No. 23113 of 2019 dated 10.03.2021 is extracted hereunder:

"Rule 6. (1) In the case of an appeal against an order imposing any penalty specified in Rule 2, the Appellate Authority shall consider:

(a) Whether the facts on which the order was based have been established;

(b) Whether the facts established afford sufficient ground for taking action; and

(c) Whether the penalty is excessive, adequate or inadequate and after such consideration, shall pass orders.

(i) confirming, enhancing, reducing or setting aside the penalty; or



(ii)remitting the case to the authority which imposed the penalty or to any other authority with such directing, as it may deem, fit in the circumstances of the case;"

7. The appellate authority while considering the appeal imposing punishment, should apply their mind on the aforesaid aspect and pass appropriate speaking orders. In the present case, the appellate order is not only a cryptic order but influenced by the observation made in the order while granting bail. Even in the bail order it is stated only prima facie case, but the respondents have taken that as proved. The respondents ought not to have been influenced by the order passed in bail order. The non speaking order is in violation of Rule 6 of the aforesaid rules.

8. On perusal of the impugned order and the bail order it is seen that the respondents were influenced by the observation of this Court while granting bail. Therefore, this Court is inclined to set aside the impugned order. Hence following orders are passed:

i.The petitioner shall be reinstated only for the purpose of enquiry alone and the petitioner is not entitled to any benefits.

ii.The respondents are directed to pass an order uninfluenced by the observations made in the bail order.

iii.The respondents shall independently analyze the material on records and thereafter pass a speaking order.

iv.The said exercise shall be completed within a period of six (6) weeks from the date of receipt of a copy of this order.

9. With the above observation, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

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Sub Assistant Registrar(CS)

Nsr

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.

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Commissioner of Police,
Madurai City @ Madurai.

2.The Deputy Commissioner of Police,
Traffic and Law and Order (Incharge),
Madurai City @ Madurai.

3.The (Oral Enquiry Officer),
Town Crime Range,
Madurai City @ Madurai.

+1 CC to M/s.SPL GP (SR-9778[F] dated 03/03/2022)

+1 CC to M/s.K.MUTHU GANESA PANDIAN, Advocate (SR-10034[F] dated
04/03/2022)

**W.P. (MD) .No.20272 of 2017
02.03.2022**

MK/28.03.2022/5P/6C