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W.P.No.16640 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2023

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No. 16640 of 2016

1.B.Selvaraj, P.C.No.1219

... Petitioner

Versus

1.The Director General of Police,
Administration,
Dr.Radhakrishnan Salai, Chennai-600 004.

2.The Inspector-General of Police,
Armed Police,
Trichy.

3.The Commandant-II,
Tamil Nadu Special Police
XIV Battalion, Palain.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, prays to issue a Writ of Certiorarified Mandamus, calling for all relevant records relating to the impugned order in C.No.A2/Apl.26/2008 dated 29.11.2008, issued by the 2nd respondent herein, to quash the same as arbitrary, improper, unjust, thereby directing the 1st and 2nd respondents herein to set aside the punishment of “Reduction in time scale of pay by two stages for a period of two years and the period of reduction shall operate to postponement his future increments” imposed on the petitioner by the 2nd and



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3rd respondent and consequently to provide all the consequential service and monetary benefits due for the petitioner.

For Petitioner : Mr.A.Kalaivanan

For Respondents :Mr.M.Shahjahan
Special Government Pleader

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed in C.No.A2/Apl.26/2008 dated 29.11.2008 by the 2nd respondent herein, and consequently direct the 1st and 2nd respondents herein to set aside the punishment of “ Reduction in time scale of pay by two stages for a period of two years and the period of reduction shall operate to postponement his future increments” imposed on the petitioner by the 2nd and 3rd respondent and consequently to provide all the consequential service and monetary benefits due for the petitioner.

2. The brief facts as set out in the affidavit filed in support of the writ petition are that the petitioner was appointed in the Tamil Nadu Police Service as Grade- II Police Constable on 11.07.2005. Thereafter, he was



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upgraded as Grade-I Police Constable in July 2014. Initially, he was posted as Grade-II Police Constable in Tamil Nadu Special Police, XIV(Guard) Battalion, Palani and thereafter, he has been serving as Grade-I Police Constable in K-7, Crime Branch, ICF Police Station, Chennai.

3. The petitioner states that on 20.09.2007, his wife gave birth to a girl child and because of her sudden illness, the petitioner had requested 3 days Casual Leave to take his wife to the hospital for medical treatment from 27.11.2007 to 29.11.2007. During the time of the said casual leave, a false complaint has been registered against him in Crime No.810 of 2007 in K-4, Anna Nagar Police Station and three charges were framed. The petitioner had submitted his explanation to the 3rd respondent denying all the charges. According to the petitioner, he was acquitted in the criminal case in C.C.No. 223 of 2008 on 25.08.2008. Without properly appreciating his explanation, the authorities have imposed the punishment under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules 1955. Moreover, the impugned order does not even specify the time duration of the operation of the punishment imposed on the petitioner. On these grounds, the petitioner seeks for quashing the impugned order dated 29.11.2008.



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4. The 3rd respondent has filed a counter denying the averments made in the affidavit filed in support of the writ petition. According to the 3rd respondent, on 28.11.2007, the petitioner had assaulted one D.Muthu, technical staff of Chennai Corporation and one R.Somasundaram, Assistant to the contractor, who were attending to road extension work, causing injuries to them. It was also found that the petitioner was arrested and enlarged on statutory bail. He was placed under suspension with effect from 06.12.2007. The enquiry has been conducted properly and charges have been proved. Only in such circumstances, the appeal which was filed by the petitioner also came to be dismissed. Therefore, the respondents sought for dismissal of the writ petition.

5. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

6. The learned counsel for the petitioner invited the attention of this Court to the Chief Office Memorandum No.32788/SR 2/1982 dated 23.07.1982 issued by the 1st respondent and contended that when the charges



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are grave in nature, the punishment inflicted would be under Rule 3(b) subject to the charges being proved. In the event of any lesser punishment being inflicted on the charges framed, Rule 3(a) of Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules 1955 would be applicable. The impugned order has been passed invoking Rule 3(b) whereas the punishment imposed is for a period less than three years, namely two years. Therefore, according to the writ petitioner on this ground itself the writ petitioner is entitled for relief as prayed. The writ petitioner also took this Court to the explanation submitted by him to each of the three charges and contended that the disciplinary authority as well as the appellate authority have not considered the explanation submitted by him and proceeded to impose punishment on the writ petitioner.

7. Per contra, Mr.Shahjahan, learned Special Government Pleader for the respondents submitted that even though the petitioner was on casual leave, the main charge against him was that he was drunk and got into a fight with another Government servant, causing injuries also for which, he was arrested and enlarged on statutory bail. The petitioner, being a Police Constable cannot seen to feign ignorance of the fact that he was arrested and



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enlarged on bail. In so far as the period of punishment is concerned, according to the learned Special Government Pleader, the same will not in any prejudice the writ petitioner since the punishment is imposed only for a period of two years, even though there is a reference to Rule 3(b).

8. Having considered the rival submissions of the learned counsel on either side, this Court is of the considered view that in so far as invocation of Rule 3(b), the petitioner cannot have any grievance at all since the punishment imposed was only reduction in time scale of pay for two years and postponement of increment for a period of two years. No doubt, in such cases, Rule 3(a) should have been invoked. But, mere invocation of a wrong rule will not entitle the writ petitioner to quash the order itself, especially when there is absolutely no prejudice caused to the writ petitioner. In so far as the charges are concerned, the learned counsel for the writ petitioner would contend that when the writ petitioner was acquitted in the criminal case, the respondents ought to have quashed all the charges. However, this Court is unable to accept such argument as rightly contended by the learned counsel for the respondent that in criminal cases proof beyond reasonable doubt is necessary before conviction. However, when it comes to



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departmental proceedings, it is otherwise and even a preponderance of probability would be sufficient to hold the charges against the delinquent official as proved.

9. In this case, the order passed in C.C.No.223 of 2008 dated 25.08.2008 is perused. It is seen that the prosecution has filed documents in support of their claims that the writ petitioner was in a drunken state. The acquittal order came to be passed only on the ground that the prosecution did not establish the crime beyond reasonable doubt. Merely because the petitioner was acquitted in the criminal case, it does not absolve him from the charges framed against him in the departmental proceedings. Even in affidavit filed in support of the writ petition, the petitioner does not even specifically deny the allegation that he was in a drunken state. This Court feels no interference is warranted in so far as the order of punishment imposed on the petitioner is concerned. However, at the same time, the impugned order namely reduction in time scale of pay by two stages for a period of two years imposed on the writ petitioner on 20.09.2008 does not specify the date of commencement of the said two year period. This aspect needs to be clarified. This Court finds that in view of the reduction of time



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scale of pay order having been issued on 20.09.2008, the two years period naturally commences from 20.09.2008 to 19.09.2010. Thereafter, the petitioner would be entitled to his regular pay and other benefits.

10. According to the learned counsel for the petitioner, in view of the vague impugned order passed reducing the time scale of pay by two stages, the petitioner has been deprived of increment and other benefits for over two years. While confirming the impugned order, this Court clarifies the period of punishment shall commence from 20.09.2008 and would be inforce till 19.09.2010. Thereafter, the petitioner would be entitled to all the benefits.

11. The writ petition is dismissed with the above observations. No costs

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Index : Yes / No

Internet: Yes

Speaking/non speaking order
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P.B.BALAJI, J.,

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