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W.P.No.4326 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.4326 of 2020
and WMP No.5125 of 2020
and WMP No.25232 of 2021

R.Nandhi Kesavan

... Petitioner

/vs/

- 1.The Director General of Police,
Tamil Nadu,
Chennai.
- 2.The Commissioner of Police,
Greater Chennai Police,
Chennai – 600 002.
- 3.The Deputy Commissioner of Police,
Kilpauk District, Greater Chennai Police,
Chennai.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, Calling for the records on the file of the 1st respondent in Rc.No. 4733/AP.3(2)/2019 dated 01.06.2019 and on the file of the 2nd respondent in Reference Rc.No. PRV(1)/ 99196/ CPO/ 2018 dated 22.10.2018



W.P.No.4326 of 2020

and on the file of the 3rd respondent in P.R.No. 64/ PR/ EZ/ 2017 dated 13.07.2018 and quash the same and direct the respondents to reinstate the petitioner in service with all monetary and service benefits.

For Petitioner ... Mr.V.S.Jagadeesan

For Respondents ... Mr.G.Nanmaran
Special Government Pleader

ORDER

This writ petition has been filed seeking to quash the proceedings of the 1st respondent in RC.No.4733/AP.3(2)/2019 dated 01.06.2019 and on the file of the 2nd respondent in Reference Rc.No.PRV(1)/99196/CPO/2018 dated 22.10.2018 and on the file of the 3rd respondent in P.R.No.64/PR/EZ/2017 dated 13.07.2018 and consequently, direct the respondents to reinstate the petitioner in service with all monetary and service benefits.

2.Heard the learned counsel on either side and perused the materials available on record.



3.The one and only ground that has been canvassed before the Court is that the punishment imposed was disproportionate to the charges made against the petitioner and that the appellate authority did not consider the grounds of appeal and passed an concatenated order just reproducing the order of the disciplinary authority.

4.It is trite law that in the matter of disciplinary proceedings, this Court cannot sit as an appellate authority. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court in the case of ***Union of India v. P. Gunasekaran*** reported in ***(2015) 2 SCC 610***, which reads as under:

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second Court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:



- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

13. Under Article 226/227 of the Constitution of India, the High Court shall not:

- i. re-appreciate the evidence;*
- ii. interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*



W.P.No.4326 of 2020

- iii. go into the adequacy of the evidence;*
- iv. go into the reliability of the evidence;*
- v. interfere, if there be some legal evidence on which findings can be based,*
- vi. correct the error of fact however grave it may appear to be;*
- vii. go into the proportionality of punishment unless it shocks its conscience.”*

5. The charge against the petitioner is that the petitioner remained unauthorizedly absent by being as an in-patient at Egmore Police Hospital for twenty days and thereafter, absconded. It is further alleged that on 31.08.2016, after the petitioner went on medical leave on his own volition, he was seen to be present in the gambling group and in this regard, a case has also been registered in Crime No.352 of 2016 at the Bargur Police Station under Section 12 of TNG Act. Since the petitioner had gone out of the District during the alleged medical leave of 415 days, he was given with another charge in this regard. All the three charges have been proved against the petitioner and as a way of punishment, the petitioner was removed from service. The petitioner cannot claim that the principles of natural justice was not complied, in view of the fact that the petitioner himself has waived his right to cross-examine the witnesses. But on perusal of the order of punishment,



W.P.No.4326 of 2020

it is seen that there is nothing stated about the previous conduct of the petitioner while awarding the major punishment of removal from service. Even the appellate authority has not considered the said ground and had simply accepted the order of punishment. The petitioner has raised certain grounds in his appeal memorandum, but the appellate authority did not speak about the appeal grounds while confirming the order of the disciplinary authority.

6.Hence, I feel it is appropriate to set aside the order of the 2nd respondent in order to remand for getting the matter appreciation afresh and pass speaking order after considering the grounds taken by the petitioner in the appeal. But this will not have any impact on the order of the punishment of removal of service that has been imposed and is in force.

7.In view of the above stated reasons, impugned order passed by the 2nd respondent in Rc.No.PRV(1)/99196/CPO/2018 dated 22.10.2018 is set aside and the matter is remanded back to the 2nd respondent to consider all the grounds raised by the petitioner in his appeal afresh and pass a fresh order, within a period of six weeks from the date of receipt of a copy of this order.



W.P.No.4326 of 2020

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8. With the above directions, this writ petition is disposed of accordingly. No Costs. Consequently, connected miscellaneous petitions are closed.

14.12.2023

Index: Yes / No

Speaking order / Non-speaking order

ssr

To:

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Tamil Nadu,
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R.N.MANJULA ,J.

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