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W.P.No.24803 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2023

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.24803 of 2022 and
W.M.P.No.23734 of 2022

V.Kumaran

... Petitioner

Vs.

1.The Director General of Police,
Kamaraj Salai, Mylapore,
Chennai-600 004.

2.The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai City Police,
Vepery, Chennai-600 007.

3.The Additional Commissioner of Police,
Traffic Zone,
Greater Chennai City Police,
Vepery, Chennai-600 007.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 01.05.2021 passed by the 2nd respondent in R.C.No.25115/PR.V(2)/2021 and quash the same and consequently direct the respondents to reinstate the petitioner in service with all service benefits and monetary benefits.

For Petitioner : Mr.R.Abdul Mubeen

For Respondents : Mr.P.Baladhandayutham,
Special Government Pleader



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ORDER

This Writ Petition has been filed to quash the impugned order, dated 01.05.2021 passed by the 2nd respondent in R.C.No.25115/PR.V(2)/2021 and consequently direct the respondents to reinstate the petitioner in service with all service benefits and monetary benefits.

2.The case of the petitioner is that while he was working as Police Constable at T-12 Poonamallee Traffic Police Station, a criminal case was registered in Crime No.187 of 2008, for offence under Sections 363, 326 and 307 of IPC alleging that the petitioner with an intention to commit murder of a woman with whom he had illegal relationship, poured petrol on her and set ablaze her with fire. Pursuant to which, the petitioner was issued with the charge memo, dated 29.10.2008 and after completion of departmental proceedings, he was dismissed from service on 15.07.2009. Aggrieved over the same, the petitioner preferred an appeal before the 2nd respondent and the 2nd respondent has passed the impugned order, dated 01.05.2021 stating that the punishment awarded against the petitioner could not be modified and directed the petitioner to file a mercy petition before the Director General of Police, Chennai/1st respondent.



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3.It is relevant to note that in the departmental proceedings, the petitioner was found guilty for the charges of committing murder of a woman with whom he had illegal relationship. The specific charges against the petitioner is that he caused murder of a woman by pouring petrol and setting ablaze her with fire. The main evidence placed before the department proceedings is PW2, who was the Sub Inspector said to have recorded the statement of the deceased while she was in the hospital and registered an FIR in this regard. The statement of PW2 is in conformity to the statement of the deceased. That has been taken note by appointing authority and the punishment of removal of service has been imposed.

4.It is also relevant to note that the criminal case and the departmental proceedings are dependent on the same set of facts and same evidence. Normally, the department proceedings will be kept pending till the conclusion of criminal case. Of course, there is no bar for simultaneous proceedings provided the facts that are not interconnected, but when the charges in both the criminal case and departmental proceedings are one and the same and the evidence are also one and the same, the enquiry officer



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ought to have waited till the criminal case is concluded. In the criminal case in S.C.No.108 of 2016, the petitioner was acquitted by the learned Sessions Judge, Magalir Neethimandram, Tiruvallur on 25.09.2019. The trial Court has disbelieved the evidence of PW12 who was examined as PW2 in the department proceedings and, has held that the charges were not proved by the prosecution beyond all reasonable doubt. When the particular evidence of the witness has been disbelieved by the criminal Court, placing reliance on the same witness in the department proceedings and imposing punishment, is in fact leading to serious consequences and the same cannot be sustained in the eye of law. In such view of the matter, the appellate authority ought to have considered the appeal of the petitioner in proper manner, but, mechanically rejected the same. The impugned order clearly indicates that the petitioner may file a mercy petition before the Director General of Police, Chennai/1st respondent.

5.Hence, the petitioner is directed to file a mercy petition before the 1st respondent, within ten days, from the date of receipt of a copy of this order, if the mercy petition is not filed. On such petition is filed, the 1st respondent shall decide the same in the light of the judgment of the criminal



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Court in S.C.No.180 of 2016 which has already referred the evidence of the PW2 who is a star witness in the departmental proceedings and pass orders, within a period of three months, thereafter.

6.With the above directions, this Writ Petition stands disposed of.

No costs. Consequently, the connected Miscellaneous Petition is closed.

22.09.2023

Index : Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
Speaking Order/Non-Speaking Order

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To

- 1.The Director General of Police,
Kamaraj Salai, Mylapore,
Chennai-600 004.
- 2.The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai City Police,
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N.SATHISH KUMAR, J.

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