



W.P(MD)No.10190 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.10190 of 2020

and

W.M.P.(MD)No.9062 of 2020

N.Venkatesh

... Petitioner

Vs.

1.The Director General of Police,
O/o. the Director General,
Chennai.

2.The Commissioner of Police,
Madurai City Police,
Madurai.

3.The Deputy Commissioner of Police,
Madurai City Law & Order,
Madurai.

4.The Assistant Commissioner of Police,
Thilagar Thidal Law and Order Range,
Madurai City.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to



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call for the records pertaining to the impugned order passed by the 3rd respondent dated 20.07.2018 and the consequent order passed by the 2nd respondent dated 30.08.2018 and the consequent order passed by the 1st respondent dated 11.06.2019 and consequently direct the respondent to reinstate the petitioner into service with all continuation service benefits and monetary benefits to the petitioner.

For Petitioner : Mr.K.Navaneetharaja

For Respondents : Mr.G.Suriyanath,
Addl. Government Pleader.

ORDER

Heard the learned counsel on either side.

2.The petitioner joined the department as Grade II Police Constable. A complaint was received against the petitioner that he had taken one Kambarajan in the guise of enquiry and illegally detained him near Rajapalayam and thereafter, approached his wife / Jhansi Rani and demanded that she pay a sum of Rs.5 Lakhs for release of her husband. It was further alleged that the petitioner would kill her husband, if the



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demanded amount was not paid. Based on the said complaint, Crime No.156 of 2013 was registered on the file Koodal Pudur Police Station, Madurai for the offences under Sections 147 and 364(A) of IPC.

3.Pursuant to the registration of the said criminal case, the petitioner was arrested and he was in custody. The suspension order was passed on 02.05.2013 placing the petitioner under deemed suspension from 29.04.2013. Parallely, departmental proceedings were also initiated in P.R.No.100 of 2013 under Rule 3(b) of TNPSS (D & A) Rules, 1955. On 18.05.2017, the petitioner was reinstated in service. The criminal prosecution is still going on. The FIR culminated in final report and it has been taken on file in S.C.No.98 of 2018 on the file of VI Additional District and Sessions Court, Madurai. It is stated that the charges are yet to be framed.

4.The departmental enquiry in the meanwhile proceeded further. Charge memo was served on the petitioner on 09.07.2017. The enquiry commenced on 27.11.2017. The enquiry report was submitted on 31.12.2017 holding that the charges framed against the petitioner stood



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proved. The petitioner submitted his explanation in response to the enquiry report. Thereafter, the disciplinary authority vide order dated 20.07.2018 handed out the punishment of compulsory retirement from service. Challenging the same, the petitioner moved the appellate authority. The appellate authority vide order dated 30.08.2018 dismissed the appeal and confirmed the decision of the original authority. The petitioner thereafter filed a mercy petition. The Director General of Police, Chennai – 4 vide order dated 11.06.2019 also confirmed the punishment and rejected the mercy petition. Questioning the same, the present writ petition came to be filed.

5.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 set aside the impugned orders and grant relief as prayed for.

6.The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. The learned Additional Government Pleader submitted that the allegations



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made against the petitioner are very serious in nature. He pointed out that the petitioner is yet to come clean. The criminal prosecution is still pending. The enquiry officer found that the charges framed against the petitioner have been established and that as many as three authorities have chosen to concur with the said finding of guilt. He submitted that the jurisdiction of the Writ Court is limited in such matters and called upon this Court not to interfere with the impugned orders. He pressed for dismissal of the writ petition.

7.I carefully considered the rival contentions and went through the materials on record. No doubt, the charges framed against the writ petitioner are serious. It is equally true that the criminal prosecution is still pending. Since the disciplinary authority had chosen to proceed parallelly even during the pendency of the criminal prosecution, the question that calls for consideration is whether the finding of guilt arrived at by the enquiry officer and which was accepted by the various authorities is based on some evidence. It is well settled that while the standard of proof in criminal case is proof beyond reasonable doubt, in civil cases, it is balance of probabilities. However, in departmental



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proceedings a lesser standard is adopted namely, some evidence. In other words, if there is some evidence which is available, it is open to the disciplinary authority to act on that basis. The allegation against the petitioner is that he illegally confined Kambarajan in a village near Rajapalayam. It was further alleged that he demanded illegal gratification to the tune of Rs.5 Lakhs from Jhansi Rani, wife of Kambarajan. This occurrence is said to have taken place on 27.04.2013. Kambarajan and Jhansi Rani were residing in Railyar Nagar, Madurai. Only two persons are competent to depose on the veracity of the allegation. They are Kambarajan and Jhansi Rani. Both of them were not examined in the departmental enquiry. The learned Additional Government Pleader would of course come out with an explanation that the couple had borrowed loans from various persons and they are absconding and that they were not available when the summons were sought to be served on them. This may be the misfortune of the prosecution. There is a saying that the misfortune of the prosecution can never become the misfortune of the defence. The fact remains that the disciplinary authority could not adduce even a scrap of evidence in support of the charges levelled against the petitioner. The case of the



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prosecution rests on 'zero evidence'. Therefore, I have to necessarily interfere with the impugned orders. The learned counsel for the petitioner on instructions states that he will not press for backwages for the present and that he will agitate this issue after the criminal case is concluded.

8.In this view of the matter, the orders impugned in this writ petition are set aside and the respondents are directed to reinstate the petitioner in service forthwith. The writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

03.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

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O/o. the Director General,
Chennai.
- 2.The Commissioner of Police,
Madurai City Police, Madurai.

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