



W.P.(MD).No.9971 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.9971 of 2023

M.Nazir Hussain

... Petitioner

Vs.

1.The Secretary,
Home Secretary to Government,
Secretariat,
Chennai.

2.The Director General of Police,
Tamil Nadu,
Chennai.

3.The Deputy Inspector General of Police,
Dindigul Range,
Dindigul.

4.The Superintendent of Police,
Theni District.

... 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 pursuant to the order in R.C.No.068004/AP.2(3)/2018, dated 08.08.2018 of 2nd respondent conforming the order passed in Rc.No. AP25/A2/2017 by 3rd respondent dated 04.07.2017 through which the order of



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4th respondent made in PR-08/F1/2016, dated 30.03.2017 was confirmed and quash the same and reinstate the petitioner with all attendant benefits.

For Petitioner : Mr.V.Manikandan

For Respondents : Mr.N.Muthuvijayan
Special Government Pleader

ORDER

The present writ petition has been filed to call for the records pursuant to the order in R.C.No.068004/AP.2(3)/2018, dated 08.08.2018 of 2nd respondent conforming the order passed in Rc.No. AP25/A2/2017 by 3rd respondent dated 04.07.2017 through which the order of 4th respondent made in PR-08/F1/2016, dated 30.03.2017 was confirmed and quash the same and reinstate the petitioner with all attendant benefits.

2. The petitioner was appointed as Grade II Constable on 09.06.1993. He worked in various Armed Reserve Force and was placed as Grade I PC at Kodaikanal Police Station in the year 2004. After that, in 2014, he was posted as Grade I PC at Thendarai Police Station, Periyakulam. While he was serving in Thendarai, the 4th respondent passed a suspension order, dated 10.09.2015, following which the petitioner was visited with a charge memo for 1 count of



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charge, in which it was alleged that the petitioner had indulged in reprehensible conduct in having threatened and received the cell phone from one Ajay of Madurai along with one Deepan @ Nari and as a result of which, criminal case in Crime No.1005 of 2015 has been registered by Dindigul Town North Police Station under Sections 387 and 506 (II) of IPC. The petitioner acknowledged the charge memo, dated 12.01.2016, following which the suspension was revoked by the order of the 4th respondent, dated 21.03.2016 and he had reported duty on 30.03.2016 FN. A parallel criminal proceedings and disciplinary proceedings were initiated as against the petitioner side by side.

3. The learned Chief Judicial Magistrate, Dindigul in C.C.No.467 of 2018 vide order, dated 03.10.2022 acquitted the petitioner from all the offences in the aforesaid criminal case. However, an Enquiry Officer who conducted the enquiry in the department held that the count in charge as proved in his minute, dated 30.01.2017 and the petitioner acknowledged the same on 16.02.2017. In response to the same, the petitioner submitted his explanation on 23.02.2017 explaining that the same is devoid of merits. In the said disciplinary proceedings, 6 prosecution witnesses and 10 prosecution exhibits were examined and filed respectively. The 4th respondent having gone through the



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enquiry report and the explanation submitted by the petitioner, passed the impugned order of punishment by imposing with a punishment of compulsory retirement from service on the petitioner vide proceedings, dated 30.03.2017. As against the punishment imposed, the petitioner preferred an appeal before the Deputy Inspector General of Police, Dindigul Range and the appeal was rejected and the punishment awarded by the 4th respondent was confirmed. As against the same, a review petition was filed by the petitioner before the 2nd respondent and the same was also rejected vide order, dated 08.08.2018.

4. In the meanwhile, citing the acquittal of the petitioner from the criminal case by the learned Chief Judicial Magistrate at Dindigul on 03.10.2022, the petitioner submitted a representation on 29.10.2022 to the respondents 2, 3 and 4 to reconsider the punishment. However, the said representation was not considered and hence, this writ petition came to be filed challenging the punishment order imposed by the 4th respondent vide proceedings, dated 30.03.2017 and the further order passed by the 3rd respondent in appeal vide proceedings, dated 04.07.2017 and the review order passed by the 2nd respondent vide proceedings, dated 08.08.2018.



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5. The learned counsel appearing for the petitioner vehemently submitted that he had been acquitted of all charges framed as against him in the criminal case by the learned Chief Judicial Magistrate at Dindigul in C.C.No.467 of 2018 on 03.10.2022. The defacto complainant one Ajay himself has become hostile and as a result of which, the petitioner came to be acquitted and that apart, in the disciplinary proceedings, 6 witnesses were produced by the department and the petitioner took the opportunity of cross-examining each and every witness and during cross-examination, the complainant Ajay with clarity submitted that the petitioner had never ever asked for anything from the said de-facto complainant thereby defying the entire basis on which the disciplinary proceeding has been proceeded and on that ground, the petitioner pressed for dismissal of the writ petition.

6. Per contra, the 4th respondent has filed a counter affidavit and the learned Special Government Pleader vehemently submitted that high esteem and discipline is expected from the officials of the Police department and the petitioner being Grade II Police Constable, who is bound to protect the people himself has indulged in threatening and forcefully receiving the mobile phone from one Ajay conspiring with his friend Deepan @ Nari. That apart, the



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petitioner has been acquitted in the criminal case by the learned Chief Judicial Magistrate, Dindigul only on the benefit of doubt and he drew my attention that in the cross-examination before the learned trial Court, the de-facto complainant though had turned hostile, accepted his signature in the complaint lodged before the jurisdictional police and the same was marked as Exhibit A.1. The disciplinary proceeding is independent of the criminal proceedings before the Criminal Court and hence, the weightage need not be given to the cross-examination whatever had been propagated by the petitioner herein in his affidavit. The gravity of the attitude and indiscipline of the petitioner could be understood from the way, the disciplinary authority in all the 3 level has rejected the petitioner's claim for reconsideration of the punishment which was imposed as against him and on that basis, he pressed for dismissal of the writ petition.

7. Heard the learned counsels on either side and perused the materials available on record.

8. This Court in the case in W.P(MD)Nos.18636 of 2013 and 3070 of 2020 has dealt with a similar case and the portion relevant to this case is extracted as follows:



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“24. Since in the present case the petitioner has issued patta to the Megamalai forest land for 2877.03.0 hectares of land in S.No.280 the petitioner ought to be punished. As stated earlier the co-delinquent punishment were either quashed or dropped based on this Court orders, since the patta were cancelled subsequently based on the orders, dated 26.08.1996 of the Settlement Officer, Thanjavur and as per the directions, dated 29.08.1996, of the District Collector, Madurai, the patta granted in respect of 2877.03.0 hectare of land in S.No.280 Megamalai Village was cancelled and the necessary entries were made in the Village accounts, the punishment ought to be modified. Therefore, this Court is of the considered opinion that the punishment of compulsory retirement ought to be modified as stoppage of increment for six months without cumulative effect and consequential monetary benefits shall be conferred on the petitioner. This punishment is imposed for the act done against mother nature. The respondents are directed to implement this punishment within a period of four weeks from the date of receipt of the copy of the order.”

9. No doubt, only in very rare and exceptional cases, this Court could exercise extraordinary jurisdiction under Article 226 in interfering with a charge memo issued in disciplinary proceedings as against the delinquents in various departmental proceedings. However, in the case in hand, though the petitioner has been acquitted by the learned Chief Judicial Magistrate at



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Dindigul on benefit of doubt from all the charges, the cross-examination made by the petitioner in the departmental enquiry has some substance. Consciously aware that this Court has nothing to do in weighing the merits of the disciplinary proceedings considering the fact that the punishment of compulsory retirement which has been imposed on the petitioner that too, the person who has 7 more years of service, this Court is of the view that the punishment is shockingly dis-proportionate. In view of the same, this Court quash the impugned proceedings, dated 08.08.2018, 04.07.2017 and 30.03.2017 and remand back to the disciplinary authority i.e., 4th respondent and initiate fresh proceedings and impose a proportionate punishment other than compulsory retirement & dismissal from service in accordance with law, within a period of two (2) months from the date of receipt of copy of this order.

10. With the above said observations, this Writ Petition stands allowed.

No costs.

26.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No

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L.VICTORIA GOWRI, J.

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