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W.P.(MD)Nos.13889 and 13890 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.13889 and 13890 of 2019
and
W.M.P.(MD)Nos.10398 to 10400 of 2019

W.P.(MD)Nos.13889 of 2019:

J.Kala

... Petitioner

vs.

1.The Director General of Police,
Law and Order,
Mylapore,
Chennai-600 004.

2.The Deputy Inspector General of Police,
Railways,
Old Commissioner of Police Office Complex,
Egmore, Chennai- 600 008.

3.The Superintendent of Police,
Railways, Trichy.

... Respondents



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W.P.(MD)Nos.13889 and 13890 of 2019

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order issued by the 1st respondent in Rc.No.50540/AP.IV(2)/2017, dated 15.04.2018 and confirming the order of the 2nd respondent in Rc.No.A2/1862/2016, dated 06.05.2016 and 3rd respondent in Na.Ka.No.F2/Ta.Pa.90/2015, dated 14.01.2016 and to quash the same and consequently, to direct the respondents to award the increment of petitioner with arrears of salary from the date of penalty imposition and till date.

W.P.(MD)Nos.13890 of 2019:

J.Kala

... Petitioner

vs.

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

2.The Deputy Inspector General of Police,
Railways,
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... Respondents



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W.P.(MD)Nos.13889 and 13890 of 2019

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order issued by the 1st respondent in Rc.No.50541/AP.IV(2)/2017, dated 15.04.2018, the proceeding of 2nd respondent in Rc.No.A2/1863/2016, dated 05.05.2016 and the order of 3rd respondent in Na.Ka.No.F2/Ta.Pa.92/2015, dated 14.01.2016 and to quash the same and consequently, to direct the respondents to award the increment of petitioner with arrears of salary from the date of penalty imposition and till date.

In both cases:

For Petitioner : Mr.S.Ramasundarvijayraj

For Respondents : Mr.N.Muthuvijayan
Special Government Pleader

COMMON ORDER

The writ petition in W.P.(MD)No.13889 of 2019 is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned order issued by the 1st respondent, dated 15.04.2018, which confirms the order of the 2nd respondent, dated 06.05.2016 and 3rd respondent, dated 14.01.2016 and consequently direct



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the respondents to award the increment with arrears of salary from the date of penalty imposed and till date.

2. The brief facts of the case are that the petitioner was recruited as Grade-II Police Constable through Uniform Service Recruitment Board on 03.03.2003 and now is working as a Grade I Police Constable in Armed Reserve Police at Trichy. The petitioner was transferred to various places. While the petitioner was posted at Trichy R.P station from 13.09.2009 to 07.10.2015, on 08.10.2015, she received a charge memo under Rule 3(a) of TNPSS (Discipline & Appeal) Rules, 1955, for the alleged delinquency that on 22.08.2015 night at 11.00 PM, in the Crawford Police quarters, the petitioner was indulged in wordy quarrel with Women Grade I Police Constable 536 Gomathi and used derogatory words, creating problem and causing disturbance to the neighbours, detrimental to the image of the Police Department.



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3. The petitioner was residing in Crawford Police Quarters at D. No. B/33. On 22.08.2015 when the petitioner returned home after duty, at about 22.45 hours the petitioner's neighbour, namely Gomathi, residing at Door No.29/B of the same police quarters, knocked the door of the petitioner's house. When the petitioner's husband opened the door, the said Gomathi shouted at the petitioner using unparliamentarily and disparaging words in an angry mood. She also spoke ill about the petitioner's husband, using unbearable, abusive and filthy language. Immediately, the petitioner contacted the Superintendent of Police and informed the matter and also informed the other officials. The petitioner and the petitioner's husband submitted a petition to the Superintendent of Police through proper channel on 27.08.2015, stating the details of the occurrence. The said Gomathi was severely warned and she also apologized for her behaviour. However, no action was taken against the said Gomathi.

4. Further contention of the petitioner is that one S.I. Mr.Ramachandran



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made sexual harassment on 06.01.2015 when the petitioner was on night duty at the RP station. The said Ramachandran spoke to the petitioner in telephone, in an inebriated condition and he demanded the petitioner to come to his room. The petitioner expressed her condemnation, refused his demand and warned him. Subsequently, the petitioner met the Inspector of Police Mr. Govindaraj, explained him about the incident. Further contention of the petitioner is that the wordy quarrel occurred on 22.08.2015, but after two months, the charge memo had been issued to the petitioner on 08.10.2015. The sexual harassment attempt was made on 06.01.2015. As a result of her complaint against the S.I. Mr. Ramachandran, he purposely used his influence to raise false allegations against the petitioner with cunning manner to wreck vengeance against her after two months and has issued charge memo under rule 3 (a) of TNPSS (Discipline & Appeal) Rules, 1955 for the alleged delinquency. The petitioner contended that without taking into consideration of the explanation, the petitioner was imposed with a punishment of stoppage of increment for two years without cumulative



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effect. The petitioner submitted an appeal to the 2nd respondent and a second appeal was preferred to the Director General of Police, who confirmed the said punishment without any due consideration of merits. Aggrieved over the same, the present writ petition in W.P.(MD)No. 13889 of 2019 is filed.

5. The writ petition in W.P.(MD)No.13890 of 2019 is filed by the same petitioner, to issue a writ of Certiorarified Mandamus, to quash the impugned order issued by the 1st respondent, dated 15.04.2018, the proceeding of 2nd respondent, dated 05.05.2016 and the order of 3rd respondent, dated 14.01.2016 and consequently, to direct the respondents to award the increment with arrears of salary from the date of penalty imposed and till date. The challenge in the present writ petition is another charge, wherein when the petitioner was working as the Assistant Writer, the petitioner had informed the RP SI Thiru. Ramachandran only after three days about the receipt of the BSNL CUG SIM cards from the stores of the Trichy Railway Police Office. On 26.01.2015 the petitioner had thrown the



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duty slip. With the result the petitioner and the SI had been in logger heads and that the petitioner behaved in a manner without respecting the SI, which amount to indiscipline tarnishing the image of the police.

6. The contention of the petitioner is that the said charge was framed after 9 months of the incident of throwing the ID card and the another charge was framed after 14 months of delay in informing about the receipt of SIM cards to Superior. The petitioner had received show cause notice on 08.10.2015 for the false allegations and submitted explanation on 04.12.2015.

7. As far as the charge of not handing over the BSNL CUG Sim cards is concerned, the petitioner submitted that the said sim card was received on 09.06.2014 and handed over to the Station Writer namely, Mr.Kesavan. According to the instructions of the S.I. Ramachandran, the Station Writer has issued the Sim cards to the Police personnel without a proper acknowledgment.



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The petitioner had affixed her signature for getting her sim card from the said Kesavan. The petitioner has no role in the receipt of BSNL CUG Sim cards. However, the said Ramachandran with vengeance has initiated the proceedings against the petitioner. After enquiry, the petitioner was imposed with a punishment of postponement of increment for two years without cumulative effect and the same was confirmed in the appeal and also in the second appeal. Challenging the said punishment, the present writ petition in W.P.(MD)No.13890 of 2019 is filed.

8. As far as the writ petition W.P.(MD)No.13889 of 2019 is concerned, the counter affidavit filed by the 3rd respondent in the said writ petition states that the petitioner has disobeyed the petitioner's immediate authority and has indulged in wordy quarrel with the Police Constable Grade I, which is unbecoming of the Police official. The counter affidavit filed by the 3rd respondent in W.P.(MD)No. 13890 of 2019 states that the charge against the petitioner is without informing



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the higher officials about the BSNL CUG Sim cards, the petitioner has committed dereliction of duty. The 3rd respondent submitted that the impugned orders of punishment are sustainable in law, since there is no violation of principles of natural justice and the petitioner has not raised any legally sustainable ground to interfere in the punishment. Hence, the 3rd respondent prayed to dismiss both the writ petitions.

9. Heard Mr.S.Ramasundarvijayraj, learned Counsel appearing for the petitioner in both the writ petitions and Mr.N.Muthuvijayan, learned Special Government Pleader appearing for the respondents in both the writ petitions.

10. In both the writ petitions, disciplinary proceedings were initiated against the petitioner under rule 3(a) of TNPSS (Discipline & Appeal) Rules, 1955. The Government has issued G.O.Ms.No.559, Home (Police VI) Department, dated 07.12.2021 stating that whenever the disciplinary proceedings



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are initiated under Rule 3(a) and if it is affecting the promotional aspects of the delinquent, the same shall be considered under G.O.Ms.No.559, Home (Police VI) Department, dated 07.12.2021.

11. The learned Special Government Pleader appearing for the respondents vehemently objected for applying G.O.Ms.No.559, Home (Police VI) Department, dated 07.12.2021, since the petitioner has already undergone the punishment and the same cannot be interfered. The said plea is rejected. Since the writ petition is continuation of disciplinary proceedings, the pendency of writ petition will give the right to the petitioner to claim any relief that is granted in G.O.Ms.No.559, Home (Police VI) Department, dated 07.12.2021.

12. Moreover, the first allegation against the petitioner is that she has indulged in wordy quarrel with the neighbour and has used filthy language. It is seen from the records that the said Gomathi is also a Police Personnel and she has



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indulged in wordy quarrel against the petitioner. However, no action was taken against the said Gomathi. Therefore, this Court is inclined to interfere with the disciplinary proceedings, since there was a clear discrimination in taking action against both the Police Personnel.

13. The next contention that was raised by the petitioner is that the petitioner is not at all in-charge to receive BSNL CUG Sim cards. It is one Kesavan who is the official in-charge to receive the Sim cards and to inform the higher officials. Since the said job was not assigned to the petitioner, not informing the receipt of BSNL CUG Sim cards will never arise and there is no dereliction of duty and the allegation against the petitioner is erroneous.

14. The next contention that was raised by the petitioner is that the petitioner's higher official one Ramachandran has indulged in sexual harassment. When such an allegation has been made, the respondents are bound to take



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cognizance of the complaint. There is no averment in the counter affidavit that the respondents have taken any action against the said Ramachandran. Therefore, the present disciplinary proceedings taken by the said Ramachandran has traces of bias and vindictiveness.

15. Therefore, this Court is inclined to set aside the punishment of stoppage of increment for two years without cumulative effect. The impugned orders in both the writ petitions are quashed and consequently, the petitioner is entitled to all monetary and service benefits including the promotion. The respondents are directed to consider the petitioner for promotion by fixing appropriate seniority. The respondents are directed to implement this order within a period of twelve weeks from the date of receipt of a copy of this order. The petitioner shall be considered for promotion when the petitioner's juniors were considered for the promotion.



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16. With the above said observation, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes

10.01.2023

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