

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.1507 of 2019

and

W.M.P.(MD)Nos.1298 and 1299 of 2019

Manmathan

... Petitioner

vs.

1.The Director General of Police,
Mylapore, Chennai-4.

2.The Commandant,
Tamil Nadu Special Police,
(Battalion -IX),
Manimuthar,
Tirunelveli District.

... Respondents

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 order passed by the 2nd respondent in C.No.A4/P.R.22/2012, dated 18.09.2012, the order passed by the 1st respondent rejecting the appeal in C.No.A2/Appeal-9/2012, dated

23.11.2012 and the order passed by the 1st respondent rejecting the mercy petition in R.C.No.152004/AP.3(1)/2017, dated 06.10.2018 and to quash the same as illegal, consequently, to direct the respondents to reinstate the petitioner into service with all monetary and service benefits.

For Petitioner : Mr.T.Lenin Kumar
For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned order dated 18.09.2012 passed by the 2nd respondent and the order passed by the 1st respondent rejecting the appeal, dated 23.11.2012 and the order passed by the 1st respondent rejecting the mercy petition, dated 06.10.2018 and consequently to direct the respondents to reinstate the petitioner into service with all monetary and service benefits.

2. The petitioner was appointed as a Constable in Police Department. On 14.05.2012, he was arrested in connection with Crime No.125 of 2012, for the alleged offences under Sections 9, 10, 11 of the Prevention of Child Marriage Act, 2006. The 2nd respondent placed the petitioner under suspension, vide order, dated 29.05.2012. Based on the deemed suspension, the charge memo levelling two charges were issued. The charge is that the petitioner married 14 years old minor girl, in this connection the petitioner was arrested and the petitioner has not intimated his arrest to the higher officials but moved a petition before this Court. The petitioner submitted his explanation, dated 09.07.2012, then an enquiry officer was appointed. In the enquiry, the Police officer, namely, Suseela, Sub Inspector of Police, who arrested the petitioner has deposed to the effect that the petitioner has intimated the arrest to the higher officials. During the enquiry, the petitioner produced H.M.O.P.No.37 of 2012, wherein, the petitioner has sought to divorce the

marriage between the petitioner and the minor girl Nandhini as null and void. The petitioner filed the said petition as early as 28.02.2012. Even though the petitioner tried to prove that the allegation levelled against the petitioner is incorrect, the petitioner was not able to prove the same. Finally, he was dismissed from service on 18.09.2012. Aggrieved over the same, the petitioner has filed an appeal. In the meanwhile, the criminal case against the petitioner was closed, vide order, dated 09.06.2017 as per Section 468 of Criminal Procedure Code, since the charge sheet was not filed within the prescribed limitation period. Thereafter, the petitioner's appeal was rejected and the mercy petition was also rejected. Hence, the petitioner is before this Court.

3. The 2nd respondent has filed counter affidavit stating that the petitioner has married a minor girl who was 14 years old which is against the law. The very fact that the petitioner had filed H.M.O.P. would indicate that the petitioner had committed the offence of marry minor

girl. Thereby, the petitioner has accepted the guilt. Therefore, the respondents have imposed a punishment of dismissal from service as per law.

4. Heard Mr.T.Lenin Kumar, learned Counsel appearing for the petitioner and Mr.R.Suresh Kumar, learned Additional Government Pleader appearing for the respondents.

5. The contention of the petitioner is that as mentioned in the H.M.O.P., the petitioner was in love with one Monica, but petitioner's parents did not accept the love affair of the petitioner. Hence, the petitioner's parents forcibly arranged the marriage of the petitioner and his maternal uncle's daughter Nandhini, who is a minor girl. In fact, the petitioner did not agree to marry the said Nandhini, but the petitioner was forced to marry the minor girl Nandhini by the parents and his relatives. These facts are evident from the contents of the H.M.O.P. Petition. The

enquiry officer has also observed the aforesaid facts. However, the respondents have come to the conclusion that the very filing of H.M.O.P., itself would indicate that the petitioner has married the minor girl. It is pertinent to note here that after marriage, the petitioner had refused to live with the minor girl, which had led to filing of FIR, the arrest etc. Thereafter with persistent negotiations the petitioner's maternal uncle has agreed to annul the marriage and the said minor girl has already been married to somebody else. Of course, the said minor girl has married after attaining majority.

6. Now, the petitioner is not in marital life with the said Nandhini. The respondents have not taken the fact that the criminal case was closed because the charge sheet was not filed within the period of limitation. Even the respondents are aware of the fact that the marriage was conducted forcibly and that is why the respondent had not filed any charge sheet in the criminal case. The specific stand of the petitioner is

that the family members including the maternal uncle who is a father of the minor girl had forced the petitioner to marry his minor daughter. Subsequently, when the petitioner refused to live with the minor daughter, the maternal uncle has preferred a complaint before the Police Station and has ruined the petitioner's career.

7. The appellate authority had passed a non-speaking order, inspite of the fact that the petitioner has raised various grounds. The respondents have not considered any of the ground and rendered finding for the same.

8. In fact, one of the witnesses, PW 5 Mariappan has specifically deposed before the enquiry officer that the marriage was conducted in coercion and the petitioner was not willing at all. In fact, the victim girl was also not willing to marry the petitioner. The entire family members had coerced the bride and the groom.

9. As far as the allegation of not intimating the arrest is concerned, in the enquiry, one Suseela, Sub Inspector of Police, who arrested the petitioner has deposed to the effect that the petitioner has intimated the arrest to the higher officials. Therefore, this charge is also not sustainable.

10. Based on the above findings and also with sympathetic view, this Court is inclined to allow this writ petition. The impugned orders are quashed. The respondents are directed to reinstate the petitioner within a period of two weeks from the date of receipt of a copy of this order. The petitioner is not entitled to any monetary benefits for the non-employment period. However, the petitioner is entitled to continue his service.

11. With the above said observation, the writ petition is allowed.

No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No

15.03.2023

Internet : Yes

NCC : Yes / No

Tmg

To

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