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W.P.(MD)No.9292 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.9292 of 2019

and

W.M.P.(MD)Nos.7299 to 7301 of 2019

V.Selvam

... Petitioner

VS.

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

2.The Deputy Inspector General of Police,
Trichy Region, Trichy.

3.The Superintendent of Police,
Pudukottai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the order passed by the 3rd respondent vide his proceedings in K1/PR.23/2006 U/r.3(b), dated 22.07.2008 and which was confirmed by the 2nd respondent vide his proceedings in C.No.B2/APP.27/2008, dated 13.12.2008 and which was also confirmed by the



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1st respondent vide his proceedings in Rc.No.AP.IV(1)/54545/2009, dated 28.04.2009 and to quash the same.

For Petitioner : Mr.M.Pitchai Muthu

For Respondents : Mr.N.Muthuvijayan
Special Government Pleader

ORDER

This writ petition is filed for issuance of writ of Certiorari, to quash the impugned order passed by the 3rd respondent vide his proceedings, dated 22.07.2008 and which was confirmed by the 2nd respondent vide his proceedings, dated 13.12.2008 and which was also confirmed by the 1st respondent vide his proceedings, dated 28.04.2009.

2. The brief facts of the case are that the petitioner appointed on 25.10.1993, then promoted as Constable on 19.04.2006. The petitioner's wife preferred a false complaint against the petitioner in Crime No.4 of 2005 under section 498(A), 406, 506(I) of IPC read with Section 4 of DP Act, then the case

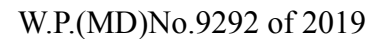


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was taken up for Trial in C.C.No.329 of 2005. When the criminal case was pending, the respondents issued charge memo and placed the petitioner under suspension. Thereafter, the respondents conducted enquiry for the very same allegation stated in the FIR. The petitioner contested the criminal case as well as the departmental enquiry. However, the petitioner submitted before the respondents that since criminal proceedings are pending for the same allegation, the departmental enquiry may be deferred. However, the claim of the petitioner was rejected and the respondents have concluded the proceedings and awarded the punishment of stoppage of treatment of two years with cumulative effect. The petitioner preferred an appeal and the punishment was confirmed. Thereafter, the petitioner preferred review and the same punishment was confirmed. Aggrieved over the same, the present writ petition is filed.

3. The 3rd respondent had filed counter affidavit stating that the charges against the petitioner is serious in nature. Even though it is a private dispute



4. The learned Special Government Pleader appearing for the respondents submitted that this writ petition cannot be entertained because the petitioner has filed this petition belatedly. The impugned orders were passed in the years 2008 and 2009 but the petitioner has preferred this writ petition in the year 2019 and relied on the judgment rendered in W.A.(MD)No.727of 2014, dated 17.02.2017, relevant portion of the judgment is extracted here under:



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“8. It is an admitted fact that on completion of enquiry, the first respondent was removed from service, by order dated 01.12.1999. On appeal, the same was modified into one that of compulsory retirement. The first respondent has also accepted the punishment and started to receive the pension. Thereafter, all of a sudden, that too, after a period of six years, he has chosen to challenge the said order by way of Writ Petition. It is pertinent to be pointed out that for the delay of six years in approaching this Court, the first respondent has not assigned any valid reason.

9. In our considered opinion, when the first respondent started to get benefits, by accepting the order of compulsory retirement, he cannot challenge the said order, that too, with a delay of six years. As rightly contended by the learned counsel for the appellants, since there was a delay of six years, the Writ Petition is liable to be dismissed on the ground of delay and laches and more particularly, when no proper explanation was forthcoming from the first respondent for the inordinate delay.

10. At this juncture, it would be appropriate to refer to the judgment relied upon by the learned counsel for the appellants in State of Punjab v. Dhanjit Singh Sandhu [AIR 2014 SC 3004], wherein, at paragraph Nos.24 and 25, the Hon'ble Supreme Court has observed thus:

"24. The Supreme Court in The Rajasthan State Industrial Development and Investment Corporation and Anr. v. Diamond and Gem Development Corporation Ltd., and Anr., AIR 2013 SC 1241, made an observation that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.

25. It is evident that the doctrine of election is based on the rule of estoppel the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of



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estoppel in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had."

11. In the case on hand, the first respondent, by accepting the order of compulsory retirement and by receiving the pension for six years, is precluded from questioning the order of punishment. However, without considering the aspect of delay and laches, the Writ Petition was allowed by the learned Single Judge only on the ground that the dismissal from service is disproportionate. As observed earlier, when the first respondent has accepted the compulsory retirement and received the pension, he cannot question the same, that too, after a period of six years. Though several judgments were relied upon by the learned counsel for the first respondent to substantiate his contention, those judgments cannot be made applicable to the facts and circumstances of the present case.

12. Having regard to the reasons stated above, the order of the learned Single Judge dated 31.01.2014 is set aside and the Writ Appeal is allowed. No costs. Consequently, the connected miscellaneous petition is closed."

In the judgment referred above, the facts of the case are different, in that case the employee had received the pension based on the punishment of compulsory retirement, but subsequently challenged the order of punishment. However, in the present case the petitioner was acquitted from criminal case, thereafter the petitioner has come forward to file this writ petition to quash the punishment. Therefore, this Court is of the considered opinion the said judgment is not



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applicable to the present facts of the case. Therefore, this Court is inclined to entertain this writ petition and pass the following orders:

- i. The punishment is modified as stoppage of increment for one year without cumulative effect and the consequential benefits shall be granted.
- ii. The respondents shall implement the modified punishment within a period of eight weeks from the date of receipt of a copy of this order.

5. With the above said observation, the writ petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Internet : Yes

NCC : Yes / No

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To

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- 2.The Deputy Inspector General of Police,
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S.SRIMATHY, J

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