



W.P(MD)No.18217 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.18217 of 2020

M.Nagarajan

... Petitioner

Vs

1.The Director General of Police,
Chennai.

2.The Commissioner of Police,
Chennai Greater City,
Egmore,
Chennai.

3.The Deputy Commissioner of Police,
Armed Reserve Force,
Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order of the first respondent in and by his proceedings RC.No. 304529/AP.3(2)/2019 dated 31.05.2020 confirming the punishment of “Removal from service” imposed in and by the proceedings of the third respondent in P.R.No.228/P.R.3(2)/2013 dated 28.03.2014 and quash the same



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and consequently directing the respondents to reinstate the petitioner in to service with effect from the date of removal from service with all service and monetary benefits.

For Petitioner : Mr.R.Anand

For Respondents : Mr.G.Suriyananth
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2. The writ petitioner joined the Police Department as Police Constable in the year 2009. He got married to one Pitchammal in the year 2012. She committed suicide by hanging herself on 21.08.2013. In this regard, Crime No. 273 of 2013 was registered on the file of Tirunelveli Taluk Police Station. Final report was filed against the petitioner and the case was taken cognizance for the offences under Sections 306 and 498 (A) IPC and committed to the Sessions Court / Mahila Court, Tirunelveli in S.C.No.545 of 2017. Following the registration of the criminal case, the petitioner was arrested and remanded. He was suspended from service on 12.09.2013. Charge memo was issued on 05.01.2014. The first charge was that the petitioner had demanded dowry and harassed his wife. The second charge was that the petitioner abetted his wife's suicide leading to registration of Crime No.273 of 2013. The petitioner offered



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his explanation denying the charges. Enquiry officer was appointed and the petitioner was found guilty of the charges framed against him. The enquiry report was served on the petitioner and after getting his further representation, the disciplinary authority vide order dated 28.03.2014 dismissed the petitioner from service. Aggrieved by the same, the petitioner filed an appeal before the appellate authority / the Commissioner of Police Chennai Greater City. The appellate authority has also confirmed the punishment vide order dated 04.03.2016. Challenging the same, the petitioner filed a mercy petition before the first respondent. The first respondent also confirmed the punishment imposed on the petitioner vide proceedings dated 31.05.2020. Challenging the same, the present writ petition came to be filed.

3. The learned counsel appearing 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 order and grant relief as prayed for.

4. Even before commencing his arguments, the learned counsel appearing for the petitioner on instructions submitted that the petitioner would not claim any backwages and that he would be satisfied if he is reinstated in service. This submission made by the petitioner through his counsel is placed on record.



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5. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. According to the learned Additional Government Pleader, the petitioner had brought disrepute to the organization and that therefore he was rightly dealt with. He points out that the enquiry officer examined all the relevant witnesses including the mother of the deceased. The charges against the petitioner are very grave. He submitted that this Court should view the crimes against women seriously. The petitioner has committed the offence of demanding dowry and abetted self-immolation by his wife. He also would add that the petitioner cannot take the benefit of his acquittal by the criminal Court. He also submitted that since the standard of proof in a departmental enquiry is different, the issue does not call for any interference. He also submitted that as many as three authorities have gone into the question and therefore in exercise of jurisdiction under Article 226 of the Constitution of India, this Court need not interfere. He pressed for dismissal of the writ petition.

6. I carefully considered the rival contentions and went through the materials on record.



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7. As already pointed out the petitioner was charged with two acts of misconduct:

- a) demanding dowry
- b) abetment of his wife's suicide

It is obvious that the misconduct said to have been committed by the petitioner does not in anyway have any bearing on the discharge of his official duties. I fail to understand as to how the enquiry officer or the disciplinary authority could have rendered a finding that the petitioner abetted his wife to commit suicide. Whether there was dowry demand or causing of marital cruelty can only be decided by the jurisdictional Court. In this case, the petitioner was rightly prosecuted. But then, the jurisdictional criminal Court, namely, the Sessions Court / Mahila Court, Tirunelveli vide Judgment dated 24.10.2019 in S.C.No.545 of 2017 acquitted the petitioner of the charges punishable under Sections 498 A and 306 IPC. When the competent criminal Court found that the petitioner was not found guilty, it is not open to the disciplinary authority to take a contra view. It is true that by the time the judgment of acquittal came, the disciplinary authority as well as the appellate authority have rendered findings adverse to the petitioner. However the first respondent took up the



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matter for disposal only in May 2020. The first respondent has the benefit of perusing the judgment of acquittal. The first respondent had not even referred to the judgment of acquittal. I have already held that there are certain matters that cannot be gone into by the disciplinary authority. Charges framed against the petitioner fall under such category. In such cases, the disciplinary authority will have to necessarily await the outcome of the jurisdictional criminal Court. I therefore hold that the punishment of dismissal has to be necessarily set aside in the light of the subsequent developments. The orders impugned in this writ petition are set aside. The respondents are directed to reinstate the petitioner in service forthwith and without any further delay. The period of suspension will have to be regularized. But then, the same will entitle him only for the purpose of pension and notional increments and not for any other purpose. The period from the date of dismissal to the date of reinstatement shall be counted as one on duty only for the purpose of petitioner's retirement benefits and other purposes as mentioned above. The petitioner is not entitled to any backwages for this period. The respondents are directed to issue an order appointing the petitioner within a period of five weeks from the date of receipt of a copy of this order.



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8. This writ petition is allowed accordingly. There shall be no order as to costs.

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Index : Yes / No
Internet : Yes/ No
NCC : Yes / No
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G.R.SWAMINATHAN, J.

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