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W.P.(MD)No.9588 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.9588 of 2018
and
W.M.P.(MD)No.8859 of 2018

I.Ganesh Kannan

... Petitioner

vs.

1.The Inspector General of Police,
Armed Police, Trichy.

2.The Commandant,
TSP IX Battalion,
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 relating to the impugned order of removal of service C.No.A4/P.R.No.31/2016 B.O.410/2017, dated 22.06.2017, passed by



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the second respondent in P.R.No.31/2016 u/r 3(b) of TNPSS(D&A) Rules, 1955, by the commandant TSP.IX Battalion, Manimuthar and order of dismissing the appeal against the punishment of removal from service by the first respondent in C.No.A2/Appeal-33/2017, dated 04.11.2017 and to quash the same as void and illegal and to direct these respondents to revoke the removal order and reinstate the petitioner in his regular post with seniority and back wages.

For Petitioner : Mr.A.W.D.Tilak
For Respondents : Mr.M.Lingadurai
Special Government Pleader

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned order of removal of service, dated 22.06.2017, passed by the second respondent in P.R.No.31/2016 under Rule 3(b) of TNPSS(D&A) Rules, 1955, by the commandant TSP.IX Battalion, Manimuthar and order of dismissing the appeal against the punishment of removal from service by the first respondent, dated 04.11.2017 as void



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and illegal and to direct these respondents to revoke the removal order and reinstate the petitioner in his regular post with seniority and back wages.

2. The petitioner was a Grade II Constable and posted in the 9th Battalion. On 22.10.2016, the petitioner left Manimuthar for the petitioner's native Sorispuram, Thoothukudi, on 3 days casual leave. The following day, i.e., 23.10.2016, the petitioner went to Satur Irukkangudi, Mariamman Temple in a private van with relatives to attend tonsure function of the petitioner's sister's one-year-old child. After attending the function, while returning, the petitioner had returned through another car owned by his friend namely Johns Prasad. It was alleged that one Satheesh a friend of the petitioner, who is working as a Fireman in Athipatti Fire Station and his friend Jeeva who travelled in a van quarreled with each other and exchanged blows. Unaware of this



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incident, the petitioner went to Satheesh's place on the same day to see him off to Chennai. During that time a group of 15 people led by Jeeva started attacking Satheesh.

3. The contention of the petitioner is that he intervened in the fight between Satheesh and Jeeva and he also sustained injuries. Fearing further clash, the petitioner went to Chennai along with Satheesh and also took medical treatment in a Private Hospital at Chennai. In the meanwhile, two cases were registered in Crime Nos.316 and 317 of 2016 under Section 147, 294 (b), 323 and 506 (ii) of IPC. The petitioner was included as one of the accused in the Crime No.316 of 2016, hence the petitioner got anticipatory bail. Thereafter, the petitioner was suspended on 29.11.2016, subsequently, a charge memo, dated 21.12.2016, was served. Based on the enquiry report, the disciplinary authority had imposed punishment of removal from service.



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4. The contention of the petitioner is that during the enquiry, the respondents declined to furnish the copy of prosecution exhibits. The respondents did not allow the petitioner to see the prosecution witnesses face to face to examine them. The petitioner was not granted opportunity to examine the witness and to produce the documents in his defence, thereby, the enquiry officer has not followed any of the rules under Police Standing Order under 80 of Volume 1. In the meanwhile, the petitioner had entered into a compromise in the criminal case and the same is filed in the quash petition in CrI.O.P.(MD)Nos.4501 and 4502 of 2017 along with the joint compromise memo before the Madurai Bench of Madras High Court. Accepting the joint compromise, this Court has quashed the FIR on 17.04.2017. Thereafter the petitioner submitted the relevant records to the enquiry officer in person. However, the enquiry officer has not considered the quash order. Even the disciplinary authority had not considered the quash order but had imposed a



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punishment of removal from service on 22.06.2017. Aggrieved over the order, the petitioner preferred an appeal to the Deputy Inspector of Police to reinstate in service. The respondents did not consider any of the grounds raised by the petitioner. Finally, the same punishment was confirmed on 04.11.2017. Aggrieved over the two orders stated supra, the present writ petition is filed.

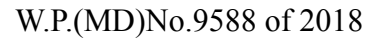
5. The 2nd respondent has filed a counter affidavit stating that the petitioner was involved in the criminal case in Crime No.316 of 2016. He had concealed the fact of his involvement in the criminal case to his superiors. Without informing the fact of involvement in the criminal case, the petitioner had obtained anticipatory bail. Hence for the proven 3 counts of charges the petitioner was removed from service. While the petitioner went on leave for three days, the petitioner had indulged in the criminal activities. The petitioner had assaulted one Shanmugam and



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caused bleeding injuries to him and also abused his wife Parvathi. Hence, in this connection, a criminal case was registered. Thereafter, the petitioner was placed under suspension and issued a charge memo. The petitioner participated in the enquiry and the petitioner was granted opportunity, hence, there is no violation of principles of natural justice. Subsequent to the enquiry report, the petitioner was called to submit a representation by giving sufficient opportunity and he submitted his explanation on 02.06.2017 wherein he has admitted the fact of assaulting the Shanmugam and his wife. The petitioner has executed a compromise deed in the Criminal Original Petition. Hence, further criminal action was dropped. The contention of the petitioner that the petitioner was also assaulted cannot be accepted, if the petitioner had received assault from others, he would have been admitted in nearby hospital and the petitioner would not have left the place of crime. But the petitioner had gone to Chennai and hence the contention of the petitioner is



6.Heard Mr.A.W.D.Tilak, learned Counsel appearing for the petitioner and Mr.M.Lingadurai, learned Special Government Pleader appearing for the respondents and perused the records.

7. The charges against the petitioner is that the petitioner was involved in the criminal case thereby brought disrespect to the department, the petitioner has concealed the fact of involvement in the criminal case to the higher authorities and obtained bail and the



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petitioner had taken three days leave and has involved in the criminal case.

8. The first contention of the petitioner is that he never indulged in a criminal activity, but in order to protect one Satheesh who was beaten by some persons. During protecting the said Satheesh, the petitioner received certain assault. In order to protect himself from such assault, as there was no other way, the petitioner had hit certain persons who assaulted him as self defence. The contention of the petitioner was not accepted by the respondents.

9. After hearing the rival submissions, this Court is of the considered opinion that if the petitioner has acted in self defence it cannot be found fault with. But if there is clash between persons then the petitioner ought to have informed the Police rather than indulging



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himself in the assault, which the petitioner failed to do so. Atleast the petitioner after reducing the tension between the parties, ought to have intimated to the Police Station which the petitioner failed to do so. But the contention of the petitioner cannot be totally brushed aside, since even in criminal case, any action on self defence is acceptable. Therefore, this Court is of the considered opinion that that the petitioner has indulged in self defence may be accepted. But the petitioner has not informed the police ought to be taken into account. However, for not informing the higher authorities, the imposition of punishment of removal from service is on a higher side and absolutely disproportionate punishment.

10. Moreover, the petitioner entered into a compromise and the FIR is quashed by this Court. After considering the quash of FIR, the respondents ought to have considered the petitioner's case. But the



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respondents had taken that as evidence, to prove that the petitioner involved in the criminal case. But the fact remains that the same cannot be a reason to imposed major punishment of removal from service.

11. It is seen at the time of occurrence the petitioner was 24 years old. At the young age the petitioner had acted aggressively. Now the petitioner is married and is having a daughter as well. Therefore, the petitioner ought to be given one more chance. Hence, the impugned is quashed. The respondents are directed to reinstate the petitioner. This Court is suggesting the respondents to impose lesser punishment by taking over all consideration including the petitioner's age and his family. Therefore, the respondents are directed to show some consideration to the petitioner.

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



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No costs. Consequently, connected miscellaneous petition is closed.

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

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