



W.P.(MD)No.21355 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 21355 of 2015

C.Marimuthu

... Petitioner

Vs.

1.The Director General of Police,
O/o. the Director General of Police,
Chennai-4.

2.The Commissioner of Police
Madurai City,
Madurai.

3.The Deputy Commissioner of Police,
Head Quarters,
Madurai City,
Madurai.

... 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 impugned order in Rc.No.149422/Con.II(2)/2014 on the file of the Respondent No.1 dated 05.12.2014 and the Consequential impugned order in



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C.No.L3/EL/256/2014/CPO.No.22/2015 on the file of the Respondent No.3 dated 05.01.2015 and quash the same as illegal and consequently for a direction, directing the Respondents to regularize the suspension period of the Petitioner from 09.02.2010 to 22.05.2010 as duty period in accordance with the Fundamental Rule 54(9).

For Petitioner : Mr.G.Karthik
for Mr.S.Rajasekar

For Respondents : Mr.P.Thambidurai,
Government Advocate

ORDER

This writ petition has been filed to quash the impugned proceedings, dated 05.12.2014 and the consequential impugned proceedings, dated 05.01.2015 and also sought for a consequential direction to the respondents to regularise the period of suspension in accordance with the Fundamental Rules.

2. Heard Mr.G.Karthik for Mr.S.Rajasekar, the Learned Counsel appearing for the Petitioner and Mr.P.Thambidurai, the Learned Government Advocate appearing for the respondents and perused the material documents available on record.



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3. The petitioner was serving in the respondents Department as a Head Clerk. The petitioner is having a son, namely Gopinath and he was married to one Ilsyarani, daughter of one Mr.Arumugam. The marriage was solemnized on 20.03.2005, but the son and the daughter-in-law had strained relationship. Hence, the petitioner's son had filed HMOP No.162 of 2007 on the file of the III Additional Sub Court, Madurai and the Court had granted divorce on 04.11.2009 on the ground of cruelty. But the daughter-in-law had preferred a Police complaint in All Women Police Station, Rajapalayam, Virudhunagar District, alleging that the family had demanded more dowry and in the complaint the daughter-in-law had included the name of the Father-in-law (the petitioner herein), mother-in-law and Brother-in-law and also against another Brother-in-law who was working in abroad in Merchant ship as Marine Engineer. Therefore, the petitioner was facing criminal proceedings initiated by the Daughter-in-law. Based on the criminal proceedings, the respondents have initiated disciplinary proceedings and he was suspended from service, vide order, dated 30.04.2010.

4. The petitioner has filed W.P.(MD)No.6346 of 2010, whereby this Court has stayed the suspension order, vide order, dated 30.04.2010. When the



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petitioner ought to attain superannuation on 31.05.2010. On 25.05.2010 the respondents had issued charge memo, just 5 days before the date of superannuation. The contention of the petitioner is that as per G.O.(MS)No.144, the respondents cannot issue suspension order or initiate disciplinary proceedings when the employee is on the verge of retirement. Without following the G.O., the respondents had suspended the petitioner and also initiated disciplinary proceedings. The petitioner was allowed to retire from service on 31.05.2010 vide order CPO 1097/2010 C.No.D1(1)/PR.56/2010 dated 30.05.2010 and the petitioner was solely dependent on the pension for his livelihood. The petitioner has filed CrI.O.P.(MD)Nos.3428 and 3493 of 2013 and the criminal case was quashed based on the compromise. The respondents have imposed penalty in the disciplinary proceedings by imposing cut in the pension of Rs.50/- and refused to regularize the suspension period. Aggrieved over the same, the petitioner is before this Court.

5. The contention of the respondents is that criminal case was filed against the petitioner under Sections 498(A), 406 of IPC r/w 384 of Dowry Prohibition Act, where the petitioner was arrayed as A-2 and the criminal case



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was quashed based on compromise and not on merits. The same cannot be considered for deciding the disciplinary proceedings. Moreover, the daughter-in-law has deposed before the authorities and substantiated her case. Based on the evidence of the daughter-in-law it was concluded that the charge against the petitioner was proved and for the proven charges, the respondents have imposed the punishment. The quashing of criminal case, that too the criminal case was quashed based on compromise, cannot be considered in disciplinary proceedings, because both have different level of evidence. The compromise cannot be an honourable acquittal, since it is not on merits. Therefore, the respondents substantiated the punishment imposed on the petitioner is legally valid.

6. After hearing the rival submission of the petitioner and the respondents this Court has given its anxious consideration. It is seen that the petitioner's son had filed HMOP seeking divorce and the same was granted on the ground of cruelty by his wife (the daughter-in-law of the petitioner). It is seen that the respondents have initiated action against the petitioner when he was on the verge of retirement. As per G.O.Ms.No.144 any disciplinary proceeding cannot be initiated when the employee is at the verge of retirement. This Court is of the



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considered opinion that even though the said G.O. is favouring the petitioner it has to be cautiously applied. In the present case the cruelty allegation against the daughter-in-law is proved in HMOP, thereafter the criminal case ended in compromise and the FIR is quashed. Therefore, the respondents ought to have taken these facts into consideration before imposing punishment in the disciplinary proceeding. The evidence of daughter-in-law cannot be a sole ground to impose punishment, when the HMOP was granted on the ground of cruelty.

7. Therefore, this Court is of the considered opinion that the petitioner was unnecessarily dragged into the dispute between his son and the daughter-in-law. Moreover, the criminal case has nothing to do with the official duty of the petitioner and also the disciplinary proceeding is nothing to do with the official duty of the petitioner, hence the punishment imposed on the petitioner is unwarranted.

8. Therefore, this Court is inclined to quash the impugned order and accordingly, the impugned proceedings, dated 05.12.2014 and consequential



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impugned proceedings, dated 05.01.2015 are hereby quashed. The respondents are directed to pay the deducted amount to the petitioner. The said exercise shall be completed within a period of 8 weeks from the date of receipt of a copy of the Order.

9. With these observations, this Writ Petition is allowed. There shall be no order as to Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No

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Internet : Yes

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To

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S.SRIMATHY, J

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**Order made in
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28.06.2023