



W.P.(MD).No.6438 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 17.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.6438 of 2017

S.Denial Raja Singh

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by the Secretary,
Department of Home Prohibition and Excise,
Fort St George,
Chennai.

2.The Director General of Police,
O/o. The Director General of Police,
No.601, Radhakrishnan Salai,
Mylapore, Chennai-04.

3.The Superintendent of Police
O/o.The Superintendent of Police,
Tuticorin,
Tuticorin District.

4.The Deputy Superintendent of Police,
O/o. The Deputy Superintendent of Police,
Vilathikulam,
Tuticorin District.

... Respondents



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PRAYER: Writ Petition has been filed under Article 226 of constitution of India pleaded to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in C.No.F1/PRNo.01/2009, dated 27.12.2011, on the file of respondent No.3 and the consequential impugned order in Rc.No. 209114/AP2(1)/2013, dated 02.11.2016 on the file of the respondent No.2 and to quash the same as illegal and consequently to direct the respondent Nos.2 to 4 to reckon the petitioner's seniority and provide all consequential service and monetary benefits within the time frame stipulated by this Court.

(Prayer amended, vide Court order, dated 26.04.2023 in W.M.P.(MD)No.9240 of 2023 in WP(MD)No.6438 of 2017)

For Petitioner : Mr.G.Karthik for
M/s.Lajapathi Roy & Associates
For Respondents : Mr.M.Lingadurai
Special Government Pleader

ORDER

This writ petition has been filed for Writ of Declaration to declare the suspension period from 05.09.2008 to 26.12.2011 as Eligible Leave period by the respondent No.3 as illegal and consequently, direct the respondent to treat the period of suspension 05.09.2008 to 26.12.2011 as Duty period and reckon the petitioner's seniority and provide all consequential service and monetary benefits within the time frame stipulated by this Court.



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2. The petitioner had challenged the suspension and has not challenged the punishment orders at the time of filing the writ petition. Pending writ petition, the petitioner had filed the amendment petition in W.M.P.(MD)No.9240 of 2023 to amend the prayer, thereby had challenged the punishment orders and the same was allowed vide order dated 26.04.2023. Now the prayer is to issue writ of Certiorari-fied Mandamus to quash the impugned order dated 27.12.2011 passed by the 3rd respondent and consequential order dated 02.11.2016 passed by the 2nd respondent and consequently to direct the respondents 2 to 4 to reckon the seniority and provide all consequential service and monetary benefits.

3. On 24.05.1999, the petitioner was recruited in the post of the Grade II Police Constable. On completion of 10 years of service, he was upgraded as Grade I Police Constable under the respondent Department with effect from 04.01.2014. The contention of the petitioner is that he was falsely implicated in a criminal case for the offences under Sections 498(A), 307 @ 304(ii) of IPC and Section 4 of TNWH Act and Section 4 of Dowry Prohibition Act. The petitioner was placed under suspension on 04.09.2008, by the third respondent due to the above criminal case. In the said criminal case, charge sheet was filed against the petitioner and the same was taken on file in S.C.No.29 of 2011. After a full-fledged trial, on 28.01.2013, the petitioner was acquitted for the offences punishable under Sections



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304 (ii) of IPC and Section 4 of Dowry Prohibition Act, by the learned Judge, Mahila Court, Tirunelveli District. In the disciplinary proceeding, the petitioner was awarded with punishment of reduction of time scale of pay by two stages for two years and the same was affecting the future increments. Thereafter, a show cause notice was issued on 09.02.2012 as to why the suspension period should not be treated as eligible leave period. The respondent have passed an order dated 23.02.2012 by treating the suspension period from 05.09.2008 to 26.12.2011 as eligible leave and extraordinary leave and has not treated the same as duty period. In the meanwhile, the petitioner preferred a mercy petition to the first respondent on 27.07.2013 requesting to cancel the punishment of reduction in time scale of pay by two stages for two years with cumulative effect. Subsequently, the second respondent on 02.11.2016 has passed an order modifying the punishment into that of postponement of increment for two years which shall operate to postpone his future increments. Aggrieved over the same, the petitioner herein has filed this writ petition.

4. The respondents had filed counter affidavit stating that based on the criminal case, departmental action was initiated against the petitioner in P.R.No. 01/2009, after granting sufficient opportunity to the petitioner and then punishment was imposed. Even though the petitioner was acquitted in the criminal case, the



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same cannot be considered. In the criminal case, strict evidence is necessary. The disciplinary authority has imposed a minor punishment. Further, it is submitted that the allegations against the petitioner are serious in nature especially, the petitioner is in uniformed service and the petitioner should maintain utmost discipline in the service and the respondents prayed to dismiss the writ petition.

5. Heard Mr.G.Karthik for M/s.Lajapathi Roy & Associates the Learned Counsel appearing for the petitioner and Mr.M.Lingadurai, the Learned Special Government Pleader and perused the materials available on record.

6. In the criminal case the petitioner was acquitted based on the dying declaration of the petitioner's wife, where she has categorically stated as follows:

”இன்று (12.08.2008) மதியம் சுமார் 2 மணியளவில் என் பிள்ளைக்கு பால் காய்ச்சினேன். கேஸ் ஒரு சிலிண்டர் தான். தீர்ந்து போனதால் மண்ணெண்ணை ஸ்டவ்வில் பால் காய்ச்சினேன். அது திரி ஸ்டவ். பால் எடுத்த போது கை தட்டி விட்டது. நைட் டூட்டி பார்த்து தூங்கிக்கொண்டு இருந்த என் புருசன்தான் ஓடிவந்து தண்ணி ஊத்தி தீயை அமத்தி காப்பாத்தினார். பக்கத்தில் குவார்டர்சில் இருந்து எல்லோரும் வந்து காப்பாத்தி ஆஸ்பத்திரியில் சேர்த்தார்கள். வேறு பிரச்சிசனை ஏதும் இல்லை. நானும் என் புருசனும் சந்தோசமாகத்தான் இருக்கிறோம்.”

Where the deceased / wife has stated while she had put on the kerosene stove, the same fell on her. The petitioner after his night duty, was sleeping in the house. The



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petitioner after seeing the same, poured the water on his wife. Therefore, based on the dying declaration, the Criminal Court had acquitted the petitioner from the charges. The criminal court judgment may not be relied on for disciplinary proceeding, since strict evidence is necessary in the criminal case. Whereas in the disciplinary proceeding the evidence is preponderance of probability. Even then the said proposition cannot be applicable in the present case. The petitioner had faced trial and after weighing the evidence, especially dying declaration the petitioner was acquitted. In such circumstances the claim of the petitioner ought to be considered. The specific statement of the deceased wife is that the petitioner was sleeping after his night duty and the petitioner had not committed the crime and hence this Court finds that there is no mistake on the part of the petitioner. Therefore this Court is of the considered opinion that the punishment in the disciplinary proceedings cannot be sustained and the same is liable to be quashed.

7. At this juncture the Learned Special Government Pleader submitted that the petitioner was under suspension from 04.09.2008 and 26.12.2011 and the said period was regularized as eligible period and extraordinary leave, in such circumstances the petitioner may not be entitled to seniority as claimed by the petitioner. It is seen on complaint, FIR was registered against the petitioner. The petitioner was on causal leave for two days, then absented for subsequent days without extending



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the leave, thereafter surrendered before the Judicial Magistrate based on the registration of FIR. Hence based on deemed suspension, the petitioner was suspended from service. Thereafter the respondent ought to have reconsidered the suspension, pending criminal case as per the judgment of Apex Court rendered in Ajay Kumar Choudhary Vs. Union of India vide order dated 07.09.2019 reported in (2015 7 SCC 291). When the respondents had not reconsidered and reinstate the petitioner, the said suspension period ought to be regularized as duty period. Hence, the claim of the respondents that the said period was treated as eligible leave and extraordinary leave is illegal. Therefore, this Court is of the considered opinion that the petitioner is entitled to seniority as well.

8. Accordingly, the impugned orders dated 27.12.2011 passed by the 3rd respondent and consequential order dated 02.11.2016 passed by the 2nd respondent are quashed. Consequently, the suspension period shall be regularized as duty period. The petitioner is entitled to seniority and other benefits, including the service and the monetary benefits and the same shall be granted to the petitioner. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.



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9. Accordingly, this writ petition stands allowed. There shall be no order as to costs.

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NCC : Yes/No

Index : Yes/No

Internet: Yes/No

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S.SRIMATHY, J.

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