



W.P.(MD).No.14514 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.03.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.14514 of 2016

B.Arumugam

... Petitioner

Vs.

1.The Director General of Police,
(Law and Order),
Chennai – 4.

2.The Deputy Inspector General of Police,
Madurai Range,
Madurai.

3.The Superintendent of Police,
Virudhunagar District,
Virudhunagar.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the second respondent in his proceeding C.No: A4/5289/SM-64/2012, dated 02.01.2013 and consequential order passed by the first respondent in his proceedings Rc.No.210200/516/APII(3)/2013 dated 04.05.2016 and quash the same as illegal and consequently to direct the respondents to reinstate the petitioner in service.



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W.P.(MD).No.14514 of 2016

For Petitioner : Mr.K.P.Sankara Kumarakuruparan

For Respondents : Mr.S.R.A.Ramachandran,
Additional Government Pleader.

ORDER

This Writ Petition is filed challenging the order dated 02.01.2013 and the consequential order dated 04.05.2016 with a consequential direction to reinstate the petitioner in service.

2. The petitioner was appointed as Police Constable in the year 2003. While the petitioner was working in Thoothukudi in the year 2007, he met one Vanitha who was waiting for transport without any money. Thereafter, the petitioner has helped her which lead to development of some relationship. The contention of the petitioner is that he was in a friendly relationship with the said Vanitha, but the said Vanitha misunderstood the relationship and she demanded to marry him but he refused to do so. Hence, she submitted a false complaint to the Superintendent of Police, Tuticorin. Subsequently, the said Vanitha withdrew her compliant and the petitioner was transferred to Virudhunagar District. Once again the said Vanitha made a false complaint and the same was forwarded to the All Women Police Station. However, without



W.P.(MD).No.14514 of 2016

any enquiry, a FIR was registered against the petitioner and he was arrested.

The petitioner was placed under deemed suspension and he was facing criminal proceedings. In the criminal case the petitioner was acquitted on 01.12.2011. Thereafter, the respondents revoked the suspension order on 12.07.2012 and the petitioner joined the duty. Subsequently, the second respondent had taken a *suo moto* review against the revocation order of suspension and issued show cause notice on 25.10.2012. The petitioner submitted explanation with all relevant records. The second respondent has passed an order dated 02.01.2013 imposing the punishment of compulsory retirement against which the petitioner preferred Review Petition and the same was returned to file a fresh Review Petition through the third respondent to the first respondent. Since the respondents have not considered the Review Petition, the petitioner filed W.P. (MD)No.23121 of 2015 and this Court directed the respondents to consider and pass orders within a period of 12 weeks. Thereafter, the respondents passed an impugned order dated 04.05.2016, whereby, the petitioner's review was rejected. Aggrieved over the same, the petitioner has filed this Writ Petition.

3. The respondents have filed a counter stating that the petitioner was arrested on 08.09.2008. Hence, he was placed under suspension. A charge memo dated 28.01.2009 was issued and the petitioner has submitted a



W.P.(MD).No.14514 of 2016

representation stating that the criminal case was registered against the petitioner and the same ended in acquittal on 01.12.2011. Hence, the petitioner requested to exonerate him from the Departmental disciplinary proceedings. Based on the representation and by disagreeing with the findings of the Enquiry Officer, the appointing authority withdrew the charge against the petitioner and discharged him from the charges and the suspension was also revoked on 12.07.2012. On *suo moto* review, the second respondent has issued a show cause notice dated 25.10.2012 to the petitioner by considering the delinquency committed by him. After obtaining explanation to the show cause notice, the charges were held proved against the petitioner and the punishment of compulsory retirement was imposed vide order dated 02.01.2013. The petitioner preferred Mercy Petition and the same was rejected vide order dated 04.05.2016.

4. As far as the merits of the case are concerned, the complainant Vanitha preferred a complaint stating that the petitioner herein made a promise to marry her and forced to abort her pregnancy and threatened her with dire consequences. Hence, the criminal case was registered in Crime No.24 of 2008 for offences under Sections 493, 417, 497, 506(ii) IPC. Since the petitioner was arrested and remanded, he was kept under deemed suspension. Thereafter,



W.P.(MD).No.14514 of 2016

WEB COPY

a charge memo dated 28.10.2009 was issued. The enquiry officer has held that the charges were proved. Deviated from the enquiry report, the third respondent has dropped the action and revoked the suspension, allowed the petitioner to join duty. Then on *suo motu* review, the petitioner was imposed with the punishment of compulsory retirement. Since the petitioner is in uniform service, the petitioner should maintain utmost integrity, but the petitioner has committed grave crime. Moreover, the petitioner had compromised the issue with the said Vanitha and agreed to pay Rs.30,000/- to the said Vanitha. Having illicit intimacy with the said Vanitha, but the petitioner had no intention to marry her. Moreover, the petitioner's signature as the husband of Vanitha has been affixed in exhibit-9 dated 03.08.2008 during the admission of the said Vanitha for abortion in Deiva Nursing Home. This evidence would clearly prove the petitioner has committed offence. Therefore, the higher authority on reviewing the order has imposed the punishment and hence the respondents prayed to dismiss the petition.

5. Heard Mr.K.P.Sankara Kumarakuruparan, learned counsel for the petitioner and Mr.S.R.A.Ramachandran, learned Additional Government Pleader for the respondents and perused the records.



6. The allegation against the petitioner is that the petitioner has illegal intimacy with the said Vanitha but subsequently both were married and due to difference of opinion, they were separated. Initially, there might be entice to marry her and had some illegal relationship, but subsequently when the petitioner had married the said Vanitha, it cannot be stated that the petitioner has not kept his promise. Moreover, in the criminal case, the petitioner was acquitted. Therefore, the petitioner is entitled to be considered sympathetically.

7. It is seen from the records that the petitioner was 23 years old at the time of entering the service and as on date the petitioner is 33 years old. Now the petitioner has married some other woman and he is having one daughter. Therefore, the petitioner was directed to submit an undertaking affidavit that he will not commit any such mistake or error which is giving disrespect to the Police force and he has also submitted such affidavit to that effect. The relevant portion of the affidavit is extracted hereunder:

“2. I respectfully submit that I am filing this Writ Petition to challenge my compulsory retirement punishment order passed by the second respondent, which was confirmed by the first respondent also. Now I hereby undertake that I will not do any kind of illegal activity in future. Further, I hereby undertake that I will not give chance to anyone to raise this kind of allegation against me in future, which was raised here against me. Further, I hereby undertake that I will be a perfect Policeman in future”.



W.P.(MD).No.14514 of 2016

8. Considering the age of the petitioner coupled with the fact that he has submitted an undertaking affidavit, this Court is interfering with the punishment order. Hence, this Court is quashing the punishment of compulsory retirement and the respondents are directed to reinstate the petitioner. The petitioner is entitled to continuity of service. As far as backwages are concerned, the petitioner is not entitled to backwages for the period from the date of dismissal i.e. from 02.01.2013 until four weeks from the date of receipt of the copy of the order. For the non-employment period, backwages was denied, which is to be considered as the punishment to the petitioner. The respondents shall implement the order within a period of four (4) weeks from the date of receipt of a copy of this order.

9. In view of the above, this Writ Petition is allowed. There shall be no order as to costs.

21.03.2023

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



W.P.(MD).No.14514 of 2016

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W.P.(MD).No.14514 of 2016

S.SRIMATHY, J.

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