



W.P.(MD).Nos.25793 & 25876 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 14.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.25793 & 25876 of 2019

and

W.P(MD)Nos. 22325, 22413 & 22415 of 2019

N.Bright Issac Swaminathan

...

Petitioner in both
Petitions

Vs.

1.The Director General of Police,
Dr. Radhakrishnan Salai Road,
Mylapore,
Chennai – 600 004.

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

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

...

Respondents in both
Petitions

PRAYER in W.P.(MD)No.25793 of 2019 : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of ***Certiorarified Mandamus***, to call for the records of the impugned order passed by the 1st respondent in RC.No.126667/API(2)/2018, dated 13.10.2018 and quash the same as illegal and consequently direct the respondents to absolve the petitioner from charges and punishment imposed by the 3rd respondent in F.Order dated 25.05.2005 with all consequential service benefits.



W.P.(MD).Nos.25793 & 25876 of 2019

PRAYER in W.P.(MD)No.25876 of 2019 :Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, to call for the records of the impugned order passed by the 3rd respondent in C.A.No.A1(1)/30495/486/2018, dated 17.07.2019 and quash the same as illegal and consequently direct the respondents to grant promotion/up-gradation to the petitioner for the post of Special Sub Inspector of Police with effect from 16.03.2019 with all consequential service benefits.

In both writ petitions:

For Petitioner : Mr.M.Kannan
For Respondents : Mr.P.Thambidurai,
Government Advocate

COMMON ORDER

W.P.(MD)No.25793 of 2019 has been filed to quash the impugned order dated 13.10.2018 and consequentially direct the respondents to absolve the petitioner from charges and punishment imposed to the petitioner by the 3rd respondent, dated 25.05.2005.

W.P.(MD)No.25876 of 2019 has been filed to quash the impugned order declining the promotion with consequential direction to grant promotion to the petitioner, with effect from 16.03.2019.

2. Heard Mr.M.Kannan, the Learned Counsel appearing for the petitioner and Mr.P.Thambidurai, the Learned Government Advocate



W.P.(MD).Nos.25793 & 25876 of 2019

for the respondents. Perused the material documents available on records.

Since the issue involved in these Writ Petitions are connected to each other and consequential to each other, hence with the consent of both parties, all the writ petitions are taken up together and disposed of by a common order.

3. The petitioner has joined in the respondents Police service on 16.03.1994 as Grade II Police Constable. On 15.03.2004 the petitioner is entitled to be promoted as Grade I Police Constable. The petitioner was denied promotion since there was a criminal case pending in Crime No. 598 of 2003 on the file of the Korattur Police station, Chennai, for the offence under Sections 279, 337 and 304(A) of IPC and the same was pending before the Judicial Magistrate Court-II, Ambattur. The petitioner was suspended from service on 23.12.2003, thereafter, reinstated on 05.07.2004. The departmental proceeding was initiated and the 3rd respondent, vide order, dated 25.05.2005 imposed punishment of pay reduction for three stages for three years and the period was not postponed for future increments. The petitioner has preferred an appeal to the 2nd respondent and the same was dismissed on 26.09.2005. The currency of punishment imposed in D.No.1140 of 2005 was over as per Rule 3(b). Hence, the petitioner has applied to grant revised pay on



W.P.(MD).Nos.25793 & 25876 of 2019

respondent vide communication, dated 23.04.2009 gave a reply that the period of suspension was regularized and after regularization the petitioner request will be considered.

4. In the meanwhile, the petitioner was convicted in the criminal case. Thereafter, the petitioner has preferred an appeal in CrI.A.No.41 of 2015, on the file of the I Additional Sessions Judge, Thiruvallur. In an appeal, the petitioner was acquitted from criminal charges. Based on the acquittal from the criminal case, the petitioner has preferred an appeal to the 1st respondent on 03.04.2018 requesting for cancellation of the punishment and the same was dismissed on 27.11.2018.

5. By taking the fact of acquittal, the respondents have recalled the suspension period and the same was treated as duty period, as per Fundamental Rule 5(B)(9), thereby the suspension period from 23.12.2003 to 05.07.2004 was regularized. Therefore, the currency of punishment imposed by the 3rd respondent in proceedings, dated 25.05.2005 was over. In view of the same, the contention of the petitioner is that he is entitled to get benefits including consequential promotion.



W.P.(MD).Nos.25793 & 25876 of 2019

6. The contention of the petitioner is that he is entitled to promotion as Grade I Police Constable from 15.03.2004 on which date the petitioner had completed 10 years of service as Grade II Police Constable from the date of appointment on 16.03.1994. Instead of granting promotion on 15.03.2004, the petitioner was promoted by order, dated 29.05.2019 with effect from 01.03.2009. Similarly, after completion of five years in the Grade I Constable, the petitioner ought to have been promoted as Head Constable on 06.03.2009. After completion of 25 years of service, the petitioner ought to have been upgraded Special Sub Inspector of Police (SSI), but the petitioner was granted promotion as Head Constable, with effect from 01.03.2014, whereas the persons who joined along with the persons were granted SSI from 01.04.2019. Hence, the petitioner has challenged punishment as well as the non-granting promotion at the relevant point of time.

7. The respondents have filed counter stating that the petitioner has caused serious fatal accident, whereas the petitioner has driven his vehicle in a rash and negligent manner and caused fatal accident and has sustained injuries to the three children and three persons sustained grievous injuries. By considering the said complaint, both the criminal proceedings as well as the departmental enquiry were initiated.



W.P.(MD).Nos.25793 & 25876 of 2019

the criminal appeal only the petitioner was acquitted. The departmental enquiry was initiated based on the available evidence. The punishment of reduction in scale of pay was imposed, however, the said punishment will not have any impact on the future increments. Thereafter the petitioner had preferred an appeal and the same was dismissed. In the meanwhile, the petitioner was acquitted in the criminal proceedings in the appeal. After acquittal, the petitioner has submitted a representation to consider his claim based on acquittal. On perusal of records and evidence, the respondents have come to conclusion that the punishment imposed on the petitioner is proportionate, based on the allegation against the petitioner. However, the suspension period was regularized as duty period. Therefore, the impugned punishment imposed on the petitioner cannot be interfered with.

8. On perusal of the records, it is seen that the petitioner was appointed as Driver in the Ramanathapuram District in the Srilanka Refugees Camp. The petitioner was allotted duty to Chennai. The petitioner has parked his vehicle at about 10'o clock and was having his dinner. The contention of the petitioner is the keys are with him. A person, who operated the vehicle is no way connected with the petitioner, he is neither his friend or his relative. The accident occurred due to the



W.P.(MD).Nos.25793 & 25876 of 2019

accident had occurred. The petitioner was no way involved in the accident. But the respondents have proceeded as if the petitioner had authorized the person, who is a friend or relative. From the above facts it is evident that the petitioner has not driven the vehicle and so he has not caused any accident. According to the petitioner, the petitioner has never authorized the said person and it is an admitted fact that the keys are with the petitioner. When the keys are with the petitioner it is a clear case that the petitioner has not authorized anybody to operate the vehicle.

9. The Criminal Court has considered the evidence of the prosecution and has elaborately dealt with it. The Court has been held that the only authority who can confirm the in-charge of the vehicle at the time of occurrence is the higher officials of A1, since the alleged time of occurrence is 10.00 p.m. But the prosecution has failed to examine any of the higher authorities.

10. The criminal court has further held that the case of the prosecution is that the alleged accident occurred while the deceased was driving his bicycle, but the prosecution claims that the bicycle was not damaged. Further the prosecution had failed to produce the said bicycle which is a property in the criminal proceedings. Moreover, the witness



W.P.(MD).Nos.25793 & 25876 of 2019

has deposed that she was not in a position to identify the number of the Jeep or whether the petitioner was driving the jeep. Her mental status was that the Vijayalakshmi was not identified not even the vehicle number.

II. The criminal court further held with so many questions are not answered and the prosecution failed to prove the case. The relevant portion is extracted here under:

....

“18. In this case, there are so many questions which remain unanswered. What is meant by high speed, were the traffic lights in the alleged place of occurrence working or not, why were the photographs not taken, why the cycle which was allegedly caught damaged or involved in the accident not seized? Why there was no evidence to prove the which was allegedly caught designation of the A1 not examined? How A1 was related to A2? Whether Ex.P1 is the first complaint received by the prosecution in respect of the alleged accident? These questions remain unanswered purely because the degree of investigation carried out and the quality of investigation carried out is quite unsatisfactory. It is well known in criminal cases, that is for the prosecution to establish its case beyond reasonable doubt. Unfortunately, in the present case, it is found that the prosecution has failed to achieve this standard. On the other hand there are grave doubts that the appellants are at all guilty of the offences for which they had been convicted and sentenced. Accordingly, the conviction and consequential sentence are set aside and the accused are acquitted of the charges.”



W.P.(MD).Nos.25793 & 25876 of 2019

12. On perusal of these findings, this Court is of the considered opinion that the respondents have simply accepted the case of the said Vijayalakshmi and proceeded further, the respondents have not considered the evidence or an explanation of the petitioner at all. Therefore, this Court is of the considered opinion that the punishment imposed on the petitioner is disproportionate.

13. The contention of the petitioner is that the accident had occurred because some person had tried to start the vehicle. Since the time was 10 pm, because of darkness, the said person could not see the persons standing before the vehicle. Hence when he started the vehicle, the vehicle hit the deceased accident. This narration of the petitioner is acceptable. Hence, this Court is inclined to interfere with the punishment.

14. The contention of the petitioner is that because of this punishment the petitioner's promotion was affected. Therefore, the punishment order is hereby quashed. The order declining the promotion was also quashed. The respondents are directed to grant promotion by keeping the petitioner's seniority in the appropriate place above his juniors and from 2004 onwards. The said exercise shall be completed within a period eight weeks, from the date of receipt of a copy of the



W.P.(MD).Nos.25793 & 25876 of 2019

15. With the above terms, these Writ Petitions are allowed.

No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
ksa

14.03.2023



W.P.(MD).Nos.25793 & 25876 of 2019

WEB COPY

- To
1. The Director General of Police,
Dr.Radhakrishnan Salai Road,
Mylapore,
Chennai – 600 004.
 2. The Deputy Inspector General of Police,
Madurai Range,
Madurai.
 3. The Superintendent of Police,
Virudhunagar District,



WEB COPY



W.P.(MD).Nos.25793 & 25876 of 2019

S.SRIMATHY, J

ksa

**Common Order made in
W.P.(MD)Nos.25793 & 25876 of 2019**

14.03.2023