

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**WEDNESDAY, THE EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY THREE**

PRESENT

**THE HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
THE HONOURABLE SHRI JUSTICE ANIL KUMAR JUKANTI**

WRIT APPEAL NO: 437 OF 2023

Writ Appeal under clause 15 of the Letters Patent preferred against the order dated 03-03-2023 in the W.P.No.24577 of 2022 on the file of the High Court.

Between:

J. Samson, S/o Guru Swamy, Aged about 40 years, Reserve Sub Inspector, CAR Headquarters, Yadadri-Bhongir Zone, Rachakonda Commissionerate, Hyderabad, Telangana State.

...APPELLANT/WRIT PETITIONER

AND

1. The Commissioner of Police, Rachakonda, Hyderabad.
2. The Director General of Police, Telangana State, Hyderabad.
3. State of Telangana, Home Department, Secretariat Buildings, Hyderabad, rep. by its Principal Secretary.

...RESPONDENTS/RESPONDENTS

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents herein to consider the case of the Petitioner / Appellant for promotion to the post of Reserve Inspector in the existing or future vacancies without reference to the proceedings in D.O.No.141/2021, Rc.No.77/PR-I/Major/RCK/2019, dated 25.01.2021 and its consequential Proceedings No.204/T1/2021, dated 26.07.2021, issued by the 2nd Respondent herein and communicated by the 1st Respondent in D.O.No.1131/2021, Rc.No.77/PR-I/Appeal/Major/ RCK/2019, dated 17.08.2021, pending disposal of the above Writ Appeal.

Counsel for the Appellant: SRI D.LINGA RAO

Counsel for the Respondents: SRI M.V.RAMA RAO, SPL. GP

The Court made the following: JUDGMENT

**THE HON'BLE SHRI JUSTICE ABHINAND KUMAR SHAVILI
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI**

WRIT APPEAL No.437 OF 2023

JUDGMENT: (per AKS,J)

This Writ Appeal is filed aggrieved by the order, dated 03.03.2023, passed in W.P.No.24577 of 2022 by a learned Single Judge of this Court.

2. Heard Sri D. Linga Rao, learned counsel for the appellant and the learned Special Government Pleader appearing for the respondents.

3. Learned counsel for the appellant had contended that the appellant was initially appointed as Reserve Sub-Inspector with the respondents during June, 2013 and he was assigned the task of Mentor to help the young individuals in getting recruited as Police Constables. Accordingly, he was helping several youngsters and training them to prepare and clear the selection process to various posts in the police department. Accordingly, one Smt. K. Preethi, who was one of the aspirants, was also under the Mentorship of the appellant. However, the said Preethi has given a complaint that the appellant has been sending messages to her phone number and disturbing her.

Based upon the said complaint, the disciplinary authority has placed the appellant under suspension *vide* proceedings, dated 25.05.2019, on the ground that the appellant being a police officer had exhibited grave and immoral misconduct and tried to outrage the modesty of a woman. Learned counsel further contended that the disciplinary authority has initiated disciplinary proceedings by issuing Charge Memo, dated 23.09.2019, and the said Preethi also lodged a complaint before Malkajgiri Police Station, Rachakonda Commissionerate, and the same was registered as Crime No.357 of 2019 for the offence under Section 354D of IPC. The appellant has submitted a detailed explanation to the said Charge Memo on 29.10.2019 denying the charge levelled against him. Not satisfied with the said explanation, the disciplinary authority has appointed an Enquiry Officer and the Enquiry Officer, without appreciating the fact that the complainant (Preethi) has turned hostile, held that the charge levelled against the appellant has been proved. Learned counsel further contended that the complainant i.e. Smt. K. Preethi, appeared before the domestic enquiry and categorically stated that she was forced to give complaint against the appellant at the instance of her husband.

4. Learned counsel for the appellant had further contended that contrary to the evidence, the Enquiry Officer has held that the charge levelled against the appellant has been proved and based upon such defective enquiry report, the disciplinary authority, *vide* proceedings, dated 25.01.2021, imposed major punishment of postponement of increments for three years with effect on future increments and pension on the appellant, besides treating the suspension period from 25.05.2019 to 30.07.2019 as 'not on duty'. Aggrieved by the same, the appellant has preferred an appeal and the same was rejected *vide* proceedings, dated 26.07.2021. Aggrieved by the said proceedings, dated 25.01.2021 and 26.07.2021, the appellant approached this Court by filing the subject W.P.No.24577 of 2022 and the learned Single Judge of this Court, *vide* impugned order, dated 03.03.2023, was pleased to dismiss the subject Writ Petition, without appreciating any of the contentions raised by the appellant.

5. Learned counsel for the appellant had further contended that the appellant was acquitted in the criminal case *vide* judgment, dated 19.10.2020, rendered in C.C.No.324 of 2020 by the learned XVII Additional Metropolitan Magistrate, Cyberabad at Malkajgiri. When the complainant has not

supported the charge, the Enquiry Officer could not have held that the charge levelled against the appellant has been proved. Therefore, appropriate orders be passed in the Writ Appeal by setting aside the impugned order, dated 03.03.2023, passed by the learned Single Judge in W.P.No.24577 of 2022 and also the order of punishment imposed by the disciplinary authority, *vide* proceedings, dated 25.01.2021, as confirmed by the appellate authority *vide* proceedings, dated 26.07.2021, and allow the Writ Appeal.

6. Learned Special Government Pleader appearing for the respondents had contended that the disciplinary authority has imposed the punishment of postponement of increments for a period of three years with effect on future increments and pension on the appellant for the proven misconduct in the enquiry. Therefore, the learned Single Judge was justified in dismissing the subject Writ Petition. Hence, there are no merits in the Writ Appeal and the same is liable to be dismissed.

7. This Court, having considered the rival submissions made by the learned counsel for both sides, is of the considered view that a perusal of the Enquiry Officer's report would disclose that the complainant has turned hostile in the enquiry and in spite of

the same, the Enquiry Officer has held that the charge levelled against the appellant has been proved and based upon such enquiry report, the disciplinary authority has imposed the punishment of postponement of increments for a period of three years with effect on future increments and pension on the appellant. The Enquiry Officer was not justified in holding that the charge levelled against the appellant has been proved, since the complainant has turned hostile. Therefore, this Court is of the considered view that it would be appropriate if the matter is remanded to the disciplinary authority to re-examine the case of the appellant by duly taking into account the fact that the complainant has turned hostile in the domestic enquiry and that there was no incriminating evidence against the appellant in the enquiry.

8. Accordingly, the Writ Appeal is allowed and the order, dated 03.03.2023, passed by the learned Single Judge of this Court in W.P.No.24577 of 2022 and the punishment order *vide* proceedings, dated 25.01.2021, passed by the disciplinary authority, as confirmed by the appellate authority *vide* proceedings, 26.07.2021, are set aside, and the matter is remanded to the disciplinary authority to re-examine the case of the appellant, by duly taking into account the fact that the

complainant has turned hostile in the domestic enquiry and that there was no incriminating evidence against the appellant in the enquiry, and pass appropriate orders, in accordance with law. There shall be no order as to costs.

Miscellaneous Applications, if any, pending in this Writ Appeal shall stand closed.

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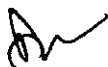
SD/- K. SRINIVAS RAO
JOINT REGISTRAR
SECTION OFFICER

To

1. The Commissioner of Police, Rachakonda, Hyderabad.
2. The Director General of Police, Telangana State, Hyderabad.
3. Principal Secretary, State of Telangana, Home Department, Secretariat Buildings, Hyderabad.
4. One CC to SRI D.LINGA RAO, Advocate [OPUC]
5. One CC to SRI M.V.RAMA RAO, SPL. GP [OPUC]
6. Two CCs to GP FOR HOME, High Court for the State of Telangana, at Hyderabad. [OUT]
7. Two CD Copies

PSK.

GJP



HIGH COURT

DATED:08/11/2023

JUDGMENT

WA.No.437 of 2023



**ALLOWING THE WRIT PETITION
WITHOUT COSTS.**

(10)
MA
24/12/23