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W.P.No.1285 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.1285 of 2020
and W.M.P.No.1544 of 2020

M.Senthilkumar

... Petitioner

Vs.

1. The Inspector General of Police,
Coimbatore Range,
(In-charge DIG),
Coimbatore Circle,
Coimbatore District.

2. The Superintendent of Police,
Tiruppur District,
Tiruppur.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of punishment imposed in Na.Ka.No.T2/13129/2017 dated 23.02.2018 passed by the first respondent confirming the order in PR No.F1/PR16/2017 U/r.3(b), dated 11.10.2017 passed by the second respondent, quash the same and consequently direct the respondents to restore all the attendant service benefits to the petitioner.



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For Petitioner : Mr.N.Manoharan

For Respondents : Mr.V.Manoharan
Additional Government Pleader

ORDER

This writ petition has been filed challenging the order dated 23.02.2018 passed by the first respondent, confirming the order passed by the second respondent dated 11.10.2017, thereby imposed punishment of postponement of next increment for a period of three years which shall operate to postpone the future increments, on the petitioner.

2. The petitioner was appointed as Grade-II Police Constable on 01.03.2009. He got married one Nageswari on 10.03.2016. Due to the cruelty committed by the petitioner, his wife lodged complaint and the same was not registered. Therefore, the petitioner's wife filed direction petition before this Court in Crl.O.P.No.10148 of 2016 for direction directing the jurisdictional police station to register the FIR, alleging that the petitioner had intimacy with his colleague one Savithiri, who is also a woman constable. Thereafter, FIR has been registered in Crime No.17 of 2016 for the offences under Section 498A and 109 of IPC as against the petitioner and the said Savithiri by the Inspector of Police, All Women



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Police Station, Palani. In pursuant to the registration of FIR, the petitioner was placed under suspension by an order dated 22.07.2016.

Subsequently, the petitioner was served with charge memo under Rule 3(b) of the Tamil Nadu Subordinate Police Officers' Conduct Rules, 1964, dated 23.03.2017, consisting one charge as follows :-

"Reprehensible and indisciplinary conduct in having married one Tmt. Nageswari on 10.03.2016, developed illegal conduct with WPC 1606 Savithiri of Palladam PS and tortured your wife in the company of WPC 1606 Savithiri and on the complaint of Tmt. Nageswari the case in Palani AWPS Crime No. 17 of 2016 U/s. 498 A and 109 IPC and thus violating the Rule 23 (2) of the TN Subordinate Police Officer Conduct Rules, 1964"

3. On receipt of the explanation from the petitioner, the disciplinary authority without satisfying the same ordered for domestic enquiry. The enquiry officer conducted enquiry and had examined 16 witnesses. Though the enquiry officer held that the charge was not proved, the disciplinary authority without accepting the same and disagreed with the findings of the enquiry officer, once again issued show cause notice to the petitioner and sought for explanation for taking



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different view.

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4. On receipt of the same the petitioner submitted detailed explanation on 01.10.2017. Thereafter, the second respondent imposed punishment on the petitioner as postponement of increment for a period of three years which shall operate to postpone his future increments by an order dated 11.10.2017. Aggrieved by the same, the petitioner preferred an appeal before the first respondent and the same was also dismissed and confirmed the punishment imposed by the second respondent. Hence, the petitioner filed the present writ petition challenging the above punishment.

5. The learned counsel appearing for the petitioner submitted that the petitioner filed petition before this Court in CrI.O.P.(MD) No.7567 of 2017 to quash criminal case in C.C.No.303 of 2016 on the file of the learned Judicial Magistrate, Palani. This Court by an order dated 21.06.2017 quashed the said criminal case based on the joint compromise memo dated 09.06.2017. Further, in the domestic enquiry no witnesses have spoken about the role played by the petitioner in order to substantiate the charge framed against him. Though the enquiry officer



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found that the charge was not proved, even then the disciplinary authority mechanically ordered punishment on the petitioner. In fact, the criminal case also ended in favour of the petitioner.

5.1. He relied upon the judgment reported in **2006 (5) SCC 446** in the case of ***G.M. Tank vs State Of Gujarat & Anr.***, in which the Hon'ble Supreme Court of India held that the same witnesses were examined in the criminal case but the Court came to the conclusion that the prosecution has not proved the guilt alleged against the petitioner beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand. He further relied upon another case reported in **1999 (3) SCC 679** in the case of ***Capt.M. Paul Anthony vs Bharat Gold Mines Ltd. & Anr.***, on the same line. He also submitted that there is absolutely no evidence much less legal evidence to prove the charge leveled against the petitioner in the disciplinary enquiry.



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6. Heard the learned counsel appearing on either side and perused the material placed before this Court.

7. On perusal of the counter affidavit filed by the second respondent and on the submissions made by the learned Additional Government Pleader revealed that the petitioner involved in a criminal case on the complaint lodged by his wife and FIR has been registered in Crime No.17 of 2016 on the file of the All Women Police Station, Palani and the same has been taken cognizance in C.C.No.303 of 2016 on the file of the learned Judicial Magistrate, Palani. The petitioner filed quash petition before this Court in CrI.O.P(MD).No.7567 of 2017, to quash entire proceedings and a joint compromise memo has been entered between the petitioner and his wife. Therefore, the Madurai Bench of this Court quashed the criminal proceeding by an order dated 21.06.2017. In fact, in the criminal case, the trial was not commenced and no witness was examined. That apart, the petitioner paid huge amount to his wife and entered into compromise for their mutual consent and also to withdraw all the criminal case. Accordingly, the petitioner was relieved from the criminal charges.



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8. As far as the disciplinary proceeding is concerned, the petitioner was served with charge memo. The petitioner is being police personnel has illegal intimacy with other woman constable. Therefore, the petitioner's wife was constrained to lodge complaint and also filed direction petitioner before this Court in CrI.O.P.No.10148 of 2016 for registration of FIR. Only thereafter, the Inspector of Police, All Women Police Station, Palani, had registered the FIR in Crime No.17 of 2016.

9. Further the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings, the preliminary question is whether the employee is guilty of such conduct as would merit action against him. Whereas in criminal proceedings, the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. In the disciplinary enquiry, the technical rules of evidence have no application. The doctrine of proof beyond doubt has no application. Preponderance of probabilities and some material on record are necessary



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to arrive at the conclusion whether or not the delinquent has committed misconduct.

10. On perusal of the criminal proceedings as against the petitioner, it is seen that the petitioner's wife lodged complaint alleging that the petitioner has illegal intimacy with another woman constable. Thereafter the petitioner's wife consented for divorce on mutual consent and agreed to withdraw the criminal proceedings. It shows that the petitioner's wife could not live with the petitioner for the reason that he is having illegal intimacy with another lady. Therefore, the conduct of the petitioner is condemnable and as such the disciplinary authority disagree with the findings of the enquiry officer and imposed punishment.

11. Further before the enquiry officer, the witnesses had turned hostile. Therefore, the enquiry officer held that the charge was not proved. Hence, the disciplinary authority rightly differed the findings of the enquiry officer and imposed punishment on the petitioner. That apart, this Court cannot act as appellate authority and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. Therefore, this Court cannot interfere



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with the findings of fact recorded in the departmental enquiries.

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12. In view of above discussions, this Court finds no infirmity or illegality in the order passed by the respondents and the writ petition is devoid of merits and liable to be dismissed. Accordingly, the Writ Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no orders as to costs.

13.08.2024

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order
rts

To

1. The Inspector General of Police,
Coimbatore Range,
(In-charge DIG),
Coimbatore Circle,
Coimbatore District.
2. The Superintendent of Police,
Tiruppur District, Tiruppur.



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