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W.P.No.24097 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2024

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THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

W.P.No.24097 of 2013

P.V.Vijaya

...Petitioner

vs.

1. The State of Tamil Nadu
represented by its Secretary to Government,
Home Department,
Fort St.George, Chennai – 600 009

2. The Director General of Police,
Chennai 600 004

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records on the files of the first respondent in G.O.(2D) No.192, Home (Pol-IX) Department dated 06.06.2013 and the second respondent in R.C.No.112685/AP.3(1)/2011 dated 20.07.2011 and quash the same and direct the respondents to reinstate the petitioner in service with all service and monetary benefits.

For Petitioner : Mr.S.Selvathirumurugan

For Respondents : Mr.S.Rajesh

Government Advocate



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ORDER

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The Government Order (2D) No.192 Home (Pol – IX) Department dated 06.06.2013 and R.C.No.112685/AP.3(1)/2011 dated 20.07.2011 issued by the second respondent are under challenge. A direction is also sought for to reinstate the petitioner in service with all service and monetary benefits.

2. The petitioner entered into service as women Havildar in the year 1997 and she fell in love affair with one Police Constable namely Veerasamy (2316) and she became pregnant . At that time, she did not have knowledge about Veerasamy's first marriage with one Valarmathy. When she was pregnant, she came to know about the first marriage of Veerasamy with Valarmathy. As she became pregnant, all the neighbours were speaking ill of her, she had no other choice except to marry the said Veerasamy and married on 05.12.1999. She was a victim of circumstances.

3. It has been further averred that the Department took disciplinary action against both of them, and by an Order dated 14.01.2000, she was suspended as per Rule 19(1) of the Government Servants Conduct Rules. On the same date, a charge memo was issued to her stating that she



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married Veerasamy, Police Constable (2316) as second wife with the knowledge of his first marriage. Upon enquiry, the Commandant Tamil Nadu Special Police, IV-Battalion passed an Order dated 20.04.2000 altering the charges from Rule 19(1) of the Tamil Nadu Government Servants Conduct Rules to Rule 23 of the Tamil Nadu Police Conduct Rules. By an Order dated 05.05.2000, she was removed from service with effect from 04.05.2000. It was challenged by her in O.A.No.9441 of 2000 and the removal order was stayed by the Tribunal, and she was taken back for duty.

4. The said O.A. was transferred to the file of this Court and renumbers as W.P.No.41552 of 2006. The said writ petition was disposed of with a direction to file an appeal against the order of removal. The said appeal was rejected on the ground that she could not be in an advanced stage of pregnancy on 05.12.1999, since the marriage took place on 05.12.1999 and the child born on 12.09.2000. In the appeal, the punishment of removal from service was modified into compulsory retirement by the proceedings of the Director General of Police dated 20.07.2011. The petitioner submitted a petition dated 28.10.2011 to the Government with a request to set aside the modified punishment of compulsory retirement imposed on her in Punishment Roll No.08/2000 and



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to reinstate her in service.

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5. Her petition was rejected by the Government as devoid of merits.

6. Heard Mr.S.Selvathirumurugan, learned counsel appearing for the petitioner and Mr.S.Rajesh, learned Government Advocate appearing for the respondents.

7. Mr.S.Selvathirumurugan, learned counsel appearing for the petitioner would further contend that she was a victim of circumstances and her matter may be considered sympathetically.

8. Mr.S.Rajesh, learned Government Advocate appearing for the respondents, per contra, would contend that as per Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, the punishment was awarded and it was modified in the appeal, and sought for dismissal of the petition.

9. In short, the grievance of the petitioner is that she is a victim of the circumstances and she was forced to marry Veerasamy.



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10. Rule 14(b) of the Tamil Nadu Special Police Subordinate Service

Rules, 1978 is extracted hereunder:

14(b). No person shall be eligible for appointment to the service by direct recruitment unless he satisfies the appointing authority.

i) that he is of sound health, active habits and free from any bodily defect or infirmity unfitting him for such service and

ii) that the character and antecedents are such as to qualify him for such service.

iii) that such a person does not have more than one wife living.”

11. Rule 12 (b) of the Tamil Nadu State and Subordinate Services Rules is extracted hereunder:

“12. Qualifications— (b) No person shall be eligible for appointment to any service by direct recruitment unless he satisfies the commission in cases where the appointment has to be made in consultation with it or the appointing authority, in other cases—

(i) that his character and antecedents are such as to qualify him for such service;

(ii) that such a person does not have more than one wife living or is such a person is a woman, that she is not married to any person who has a wife living.

#(iii) that such a person satisfies the age prescribed in the Special Rules on the first day of July of the year in which the



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vacancy is notified; and

#(iv) that, notwithstanding anything contained in the Special Rules, such a person also possesses the qualifications including experience prescribed for a post, on the date of notification of the vacancy.

#Added Vide G.O.Ms.No.38, P & AR (S) Dept., dated 30-1-1996. w.e.f. 30-1-1996.”

12. As per 14(b) of the Tamil Nadu Special Police Subordinate Service Rules and Rule 12(b) of the Tamil Nadu State and Subordinate Services Rules, there is a statutory bar for the petitioner to claim an appointment. No Court shall pass an order in derogation of statutes.

13. Taking note of the facts given and the effects of orders passed thereof, the petitioner may approach the Government for exemption from the applicability of Rule 14(b) of the Tamil Nadu Special Police Subordinate Service Rules and Rule 12(b) of the Tamil Nadu State and Subordinate Services Rules. The Secretary, Home Department, Government of Tamil Nadu may consider her request sympathetically and pass appropriate orders. If at all exemption is granted by the Government, then alone, the petitioner is entitled to get appointment.



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14. Accordingly, based on these observations, this writ petition is disposed of on merits and the petitioner is given liberty to submit a representation to the Government preferably within a period of four [4] weeks from the date of receipt of a copy of this Order. On receipt of such representation of the petitioner, the Government may consider the same on merits within a period of twelve [12] weeks therefrom. There is no order as to costs. Consequently, connected miscellaneous petition, if any stands closed.

25.07.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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Note:-

Registry may mark a copy of this Order to the Secretary, Home Department, Government of Tamil Nadu, Fort St. George, Chennai – 600 009.



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R.KALAIMATHI, J.

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Copy to:

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2. The Director General of Police,
Chennai 600 004

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