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W.P. No.26664 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.26664 of 2015 and
M.P. No.1 of 2015

1.M.Balaji (deceased)

2.B.Kogila

3.Masilamani

4.Nagammal

... Petitioners

(P2 to P4 are substituted as LR's of deceased P1, as per the order dated 22.07.2024 in W.M.P.No.5140 of 2024 in W.P.No.26664 of 2015 by MSQJ)

Vs

1.The Director General of Police,
Mylapore, Chennai 4.

2.The Commissioner of Police,
Vepery, Chennai 600 007.

3.The Deputy Commissioner of Police,
Head Quarters, Armed Reserve,
Chennai 600 008.

... 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 connected with the proceedings issued in P.R.No.237/3(2)/2010



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dated 30.05.2011 passed by the 3rd respondent and Tha.Ko.No.237/Tha.Pi.3(2)/2010 Se.Ka. Order No.1454 of 2011 dated 04.07.2011 and PR.No.237/P.R.3(2)/2011 dated 19.01.2012 passed by the 2nd respondent and Na.Ka.No.7848/Me.Mu.3(2)/2013 dated 26.10.2014 passed by the 1st respondent and quash the same and consequently direct the respondents to reinstate the petitioner into service.

For Petitioners : M/S.S.Ilamvaludhi
For Respondents : Mr.Abishek Murthy,
Government Advocate

ORDER

The present writ petition is filed challenging the proceeding dated 30.05.2011 passed by the 3rd respondent and orders dated 04.07.2011 and 19.01.2012 passed by the 2nd respondent and proceeding dated 26.10.2014 passed by the 1st respondent.

2. The first petitioner joined in service as Police Constable in the year 1993. The first petitioner was placed under suspension on 03.03.2010 vide proceeding of the 3rd respondent. Thereafter, charge memo was issued by the 3rd respondent. The imputation of charge by the 3rd respondent is that he had absented himself without appearing on 21.02.2010 and thereafter around 11.20 a.m., allegedly under the influence of alcohol went to orderly Sub-Inspector office and got into a



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verbal quarrel and used harsh words while insisting that he ought not to have been marked as absent. A complaint was lodged with F2 Egmore Police Station and the first petitioner was taken to the Kilpauk Medical College and Government Hospital and a medical certificate for consumption of alcohol was also stated to have been obtained and an FIR was lodged in F.I.R.No. 174 of 2010 under Section 294(b), 353 IPC and Section 75(2) / (a) CP Act. Thereafter, enquiry was conducted and during the course of the enquiry, it is stated that four witnesses have been examined by the prosecution and 10 documents were relied upon before the enquiry officer. The enquiry officer vide his report dated 09.03.2011 found that the charges were proved. Based on the above report of the enquiry officer, the 3rd respondent passed an order dated 30.05.2011 removing the first petitioner from service. Thereafter, an appeal was preferred against the order of the 3rd respondent before the Commissioner of Police who had confirmed the order of the 3rd respondent vide order dated 19.01.2012. The first petitioner preferred a review with the Deputy General of Police which also stood rejected and the order of Disciplinary authority and the Appellate authority was confirmed in the review petition by the first respondent vide order dated 26.10.2014. It is against the above orders, the present writ petition is filed.



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3. It is submitted by the learned counsel for the petitioners that commencing with the enquiry report culminating in the order of review, the following aspects which are relevant has not been taken into account thereby vitiating the proceedings viz.,

a. That medical certificate itself has been issued only on the basis that there was smell of Alcohol on the delinquent though no blood or urine sample was tested, instead the medical certificate was issued only on the basis that the delinquent appeared to have consumed Alcohol on the basis of his speech and his walk / movement. The medical certificate also proceeded to, so that he was not under the influence of Alcohol though it was found that he had consumed Alcohol.

b. Secondly, the criminal case had ended in acquittal before the Criminal Court vide order dated 05.07.2011 that all the witnesses turned hostile except the Sub-Inspector viz., Edward Simon.

4. While so, the first petitioner passed away and his wife and parents have been impleaded as party. To a question as to whether it is permissible for impleading LR's in disciplinary proceeding. It is submitted that the issue stands resolved by a judgment of the Division Bench of this Court in the case of *Marimuthu (K.P) (deceased) v.*



Superintendent of Police, Dharmapuri reported in (1985) 2 LLN 762

wherein, while dealing with the question as to whether legal representatives of a deceased Government Servant are entitled to be substituted in the writ petition which was filed by the Government Servant challenging the order of his dismissal from service, it was held as under:

Marimuthu (K.P.) v. Superintendent of Police, (1985) 2 LLN 762:

“.....

11. There are, therefore, independent rights which are created in favour of the members of the family of a deceased Government servant. These rights with regard to the death-cum-gratuity or pension can become effective only if a Government servant is not dismissed or removed from service. In other words, if there is an order of dismissal or removal from service in respect of a Government servant and if such Government servant dies during the pendency of a litigation which he has commenced, in order to have his order of dismissal or removal set aside, apart from the Government servant, the members of the family are vitally interested in having that order set aside because the continuance of that order has serious consequences, inasmuch as independent rights which are otherwise enforceable by the members of the family of the deceased cannot be enforced if the order of removal or dismissal stands in the way. The members of the family of the deceased Government servant cannot, therefore, be treated as utter strangers who have no



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interest in the litigation commenced by the Government servant to set aside his order of removal or dismissal from service.

.....

26..... In the view which we have taken, we must hold that the learned Judge was in error in refusing to allow the legal representatives to prosecute the petition.”

4.1. It is thus clear that the wife of the deceased delinquent can prosecute the writ petition.

5. Now turning back to the merits, the learned counsel for the petitioners would submit that the punishment of termination of service is disproportionate taking into account the arguments of the petitioners set out before.

6. To the contrary, Mr.Abishek Murthy, learned Government Advocate submitted that the first petitioner was part of Uniform Service and therefore ought to maintain strict discipline, the charges are serious and grave, thus the impugned order does not warrant interference.

7. Heard both sides. Perused the material on record.

8. Having considered the submission of both sides, this Court is of the view that the punishment of termination is excessive and arbitrary in



view of the following aspects viz.,

a) The Criminal case has ended in acquittal, though criminal proceedings and disciplinary proceedings are independent however, taking into account the peculiar fact where the delinquent passed away, acquittal in the criminal case assumes significance.

b) Secondly, the medical certificate relied upon by the respondent with regard to the charge that the first petitioner consumed Alcohol was issued only on the basis that the delinquent appeared to have consumed Alcohol from his speech and his walk / movement, neither blood nor urine samples were tested and thus the authenticity of the medical certificate appears to be doubtful.

9. The learned counsel for the petitioners would submit that the widow of the delinquent does not have any other source of livelihood and further relied upon the judgment of the Division Bench of this Court in W.A.No.2893 of 2012 dated 24.11.2021 to submit that in similar circumstances, this Court was pleased to modify the punishment of removal of service into one of compulsory retirement. The relevant portions of the aforesaid order is extracted hereunder:

“12. In the said circumstances, we find that the punishment imposed by the disciplinary authority for removal from service is



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disproportionate. When the punishment imposed is found to be disproportionate, this Court has no power to substitute, but can only remit the matter back to the disciplinary authority to reconsider the punishment. But, in the present case, the delinquent had passed away on 07.04.2017 and we find that it may not be possible to remit the matter back to the disciplinary authority. As per Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, both compulsory retirement and removal from service are deemed to be major penalty. The petitioner has put in 38 years of service and he had passed away pending writ appeal. Hence, in view of the peculiar circumstances of the case, we interfere in the quantum of punishment. We impose the punishment of compulsory retirement instead of removal from service. It is needless to point out that the substitution of punishment as a compulsory retirement will result in consequential benefit to the family members of the deceased delinquent. As the misconduct is one of moral turpitude, no gratuity is payable. The eligible person is only entitled to family pension on account of the Compulsory Retirement. The said benefit shall be extended to the family members of the deceased delinquent from 01.12.2021 onwards.”

10. Considering all these factors cumulatively, this Court is of the view that the punishment of termination is excessive and arbitrary. Though the nature and extent of punishment falls within the discretion of the disciplinary authority and this Court ought to only remit the matter back to the disciplinary authority to reconsider the punishment normally,



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if it finds that it does not pass the muster/test of proportionality.

However, taking into account the peculiar facts of the case where the delinquent has passed away and also the factors discussed supra, this Court is of the view that the punishment of termination is excessive and arbitrary and the same be modified as one of compulsory retirement, from service. The petitioners shall be granted consequential terminal/pensionary benefit, if entitled to in law, in view of the above modification.

11. In view thereof, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

02.08.2024

Speaking (or) Non Speaking Order

Index : Yes/ No

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To:

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MOHAMMED SHAFFIQ, J.

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