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W.P.No.21711 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

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THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

W.P.No.21711 of 2021
and W.M.P.No.22892 of 2021

M.Kalimuthu

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Home (Police VI) Department,
Secretariat, Chennai 600 009.

2.The Director General of Police,
Tamil Nadu, Chennai 600 004.

3.The Commissioner of Police,
City Police Office,
Coimbatore City @ Coimbatore 641018.

4.The Deputy Commissioner of Police,
Crime (i/c) Law and Order,
Coimbatore City @ Coimbatore 641018.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order of the fourth respondent herein passed in his Na.Ka.No.F1/P.R.89/2012 u/r 3(b) dated 23.09.2015 imposing the punishment of postponement of next increment for a period of two years



which shall not operate to postpone future increments (with cumulative effect) and the consequential order passed by the third respondent herein in his C.No.F3/AP-78/2015 dated 25.11.2015 rejecting the appeal petition and the further consequential order passed by the second respondent herein in his Rc.No.196258/AP.I(1)/2017 dated 24.03.2018 rejecting the review petition and the consequential order passed by the first respondent herein in G.O(D) No.839, Home (Police VI) Department dated 20.07.2020 confirming the punishment and quash the same and consequently, direct the respondents herein to promote the petitioner as Head Constable with effect from 01.05.2012 with all consequential service and monetary benefits.

For Petitioner : Mr.M.Ravi

For Respondents : Mrs.P.Vijaya Devi, GA

ORDER

This Writ Petition has been filed for quashment of the order of the fourth respondent made in Na.Ka.No.F1/P.R.89/2012 u/r 3(b) dated 23.09.2015 imposing the punishment of postponement of next increment for a period of two years which shall not operate to postpone the future increments (with cumulative effect) and the consequential order passed by the third respondent herein in C.No.F3/AP-78/2015 dated 25.11.2015, rejecting the appeal petition and the further consequential order passed by the



second respondent herein in Rc.No.196258/AP.I(1)/2017 dated 24.03.2018, rejecting the review petition and the order passed by the first respondent in G.O(D) No.839, Home (Police VI) Department dated 20.07.2020, confirming the punishment and consequently, to direct the respondents to promote the petitioner as Head Constable with effect from 01.05.2012 with all consequential service and monetary benefits.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The learned counsel for the petitioner submitted that the petitioner has joined as Grade II Police Constable on 15.04.1997 and later, promoted as Grade I Police Constable on 01.05.2007. Though the petitioner was entitled to be promoted as Head Constable from 01.05.2012, his juniors were promoted and he was discriminated and denied promotion and was only promoted as Head Constable on 01.01.2018. A case was registered against the petitioner on the file of All Women Police Station, Central Coimbatore City in Crime No.20 of 2011 for the offence under Sections 376, 417, 322, 312, 506(ii) and Section 4 of the Prevention of Women Harassment Act.



Based on the said case, the petitioner was placed under suspension and the first respondent by his proceedings in Tha.Pa.No.F.1/89/2012 dated 27.07.2012 has framed charges under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules against him. Meanwhile, the petitioner has filed a writ petition in W.P.No.29876 of 2012 to defer the oral enquiry in P.R.No.89/2012 till conclusion of the trial. This Court, by an order dated 02.11.2012, had allowed the Writ Petition, with a direction that disciplinary proceedings shall be kept in abeyance until finality is reached in the criminal case. On 05.03.2014, the learned Sessions Judge, Mahila Court, Coimbatore, acquitted the petitioner. On 06.06.2015, the Enquiry Officer had concluded his report holding that the charge was partly proved without examining any of the crucial witnesses during oral enquiry.

4. He further submitted that the charges can be held as proved only based on oral evidence or documentary evidence. On 01.07.2015, the petitioner was communicated with the copy of the enquiry report and explanation was called for. Thereafter, the petitioner has submitted his detailed explanation to the enquiry report pointing out that the charges have not been established and he was acquitted by the criminal Court. His



explanation was not considered by the Disciplinary Authority. Hence, on 23.09.2015, the Deputy Commissioner of Police (Law and Order), Coimbatore City, had imposed a punishment of postponement of next increment for a period of two years with cumulative effect. When the evidence let in before the criminal Court and the departmental proceedings are one and the same, the impugned order of punishment passed without application of mind is liable to be quashed. On 17.10.2015, the petitioner preferred an elaborate statutory appeal before the Commissioner of Police, Coimbatore city, to cancel the punishment. On 25.11.2015, the appellate authority had rejected the said appeal by passing a non speaking order, which is contrary to Rule 6 of the Tamil Nadu Police Subordinate Service (D&A) Rules. Against which, the petitioner has preferred a review petition before the Director General of Police, Chennai and the same was also rejected in G.O.(D).No.839, Home (Police VI) Department, dated 20.07.2020, which is also contrary to Rules. Due to the impugned order of punishment, the promotion of the petitioner as Head Constable with effect from 01.05.2012 is denied as he was suspended and charges were issued in the year 2012. Hence, the petitioner has filed the present petition seeking to quash the impugned orders passed by the respondents.



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5. The learned Government Advocate appearing for the respondents submitted that after awarding punishment and completion of period of punishment, the petitioner was promoted as Head Constable on 01.01.2018. The Enquiry Officer, who conducted an oral enquiry held that, count No.1 of the charge as partly proved and count No.2 of the charge as proved. The Enquiry Officer has come to a conclusion that the petitioner has influenced the victim, since the mother of the victim did not appear for enquiry for making deposition against the petitioner. The charges against the petitioner has been proved based on the deposition statement and on the basis of exhibits filed by them. Hence, the Enquiry Officer held that the charges against the petitioner as proved, only based on the presumption and not on the assumption. The acquittal in a criminal case is not a bar for taking departmental action for violation of conduct rules and imposing of punishment, since the charges have been held proved. The petitioner has been awarded with the statutory punishment which is in consonance with the gravity of delinquency.



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6. She further stated that the acquittal in a criminal case could not be a reason to quash the departmental proceedings and the same could not be relied upon to set aside the punishment imposed on him in punishment Roll No.89 of 2012 as the degree of proof required is different in departmental proceedings. Further, the petitioner has not adduced any fresh grounds for consideration, hence, the petitions filed by the petitioner before the Government were considered and rejected as there was no merit in the petitions. It is also revealed that the petitioner was already married and having children and had also concealed his marriage to the victim. The part of the charge is well established during the oral enquiry. Since the petitioner was involved in a criminal case and departmental action was also initiated against the petitioner, there was no provision in the service rules to promote him as Head Constable. After completion of period of punishment of postponement of increment for two years with cumulative effect awarded to him in the departmental proceedings, the petitioner was promoted as Head Constable with effect from 01.01.2018. Therefore, there is no infirmity in the impugned orders passed by the respondents.



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7. On perusal of the records, it is observed that since the petitioner was acquitted by the criminal Court, the punishment of postponement of next increment for a period of two years with cumulative effect passed by the Deputy Commissioner of Police (Law and Order), Coimbatore City, is contrary to law. If the case ends in acquittal, then the petitioner will be entitled to get promotion with all consequential service and monetary benefits. Hence, the impugned order of punishment is liable to be set aside.

8. In the result, this Writ Petition is allowed and the impugned order of the fourth respondent herein passed in his Na.Ka.No.F1/P.R.89/2012 u/r 3(b) dated 23.09.2015 imposing the punishment of postponement of next increment for a period of two years, the consequential order passed by the third respondent herein in his C.No.F3/AP-78/2015 dated 25.11.2015 rejecting the appeal petition, the further consequential order passed by the second respondent herein in his Rc.No.196258/AP.I(1)/2017 dated 24.03.2018 rejecting the review petition and the consequential order passed by the first respondent herein in G.O(D) No.839, Home (Police VI) Department dated 20.07.2020 confirming the punishment, are hereby quashed. The respondents are also directed to promote the petitioner as Head



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Constable with effect from 01.05.2012 with all consequential service and monetary benefits, preferably, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No

Speaking order / Non-speaking order

To

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Home (Police VI) Department,
Secretariat, Chennai 600 009.
- 2.The Director General of Police,
Tamil Nadu, Chennai 600 004.
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VIVEK KUMAR SINGH, J.

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